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Public Law: Labor Law

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court whether the divorce or other principal litigation was initiated there or not. It is assumed that these matters will be cured by amendments to be proposed at the next session of the Legislature.

LABOR LAW

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Last year, in the course of reviewing the court's invalidation of the Little Norris-LaGuardia Act at the 1953-1954 term, the writer voiced concern that the decision foreshadowed a return to the era of the labor injunction.[1] The record of the 1954-1955 term plainly demonstrates that this apprehension was no idle speculation. Three labor cases were decided by the court during the term, each of which held that union picketing for recognition should be enjoined. The cases arose in a variety of factual and legal contexts and hence will be discussed individually.

Taking the cases in their chronological order, the first was *Godchaux Sugars v. Chaisson*.[2] In this case the union was alleged to have picketed the plantation as well as the refineries and mills of the employers at the cane harvesting season for the purpose of compelling the employers to recognize the union as the collective bargaining agent for the agricultural employees working on the plantations. It was further alleged that the picketing was accompanied by violence which threatened the safety of persons and property. No evidence was taken on this issue, counsel for the union conceding "for the purpose of saving time, that if a restraining order were to issue it should cover violence and harm to person and property."[3] The Supreme Court construed this concession as "an admission that violence and tortious acts have, in fact, occurred during the course of this dispute,"[4] and sustained the issuance of the injunction against all picketing on the authority of the *Douglas Public Service* decision of the prior term.[5] This poses an apparent non sequitur, as the concession was made for the point of limiting the injunction, but was taken as an admission for the broader purpose of enjoining all picket-

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1. The case was Douglas Public Service Corp. v. Gaspard, 225 La. 972, 74 So.2d 182 (1954), discussed in *The Work of the Louisiana Supreme Court for the 1953-1954 Term — Labor Law*, 15 LOUISIANA LAW REVIEW 324 (1955).

2. 227 La. 146, 78 So.2d 673 (1955).

3. *Id.* at 165, 78 So.2d at 679.

4. *Id.* at 165, 78 So.2d at 680.

5. Douglas Public Service Corp. v. Gaspard, 225 La. 972, 74 So.2d 182 (1954).

ing — both violent and peaceful. The court itself seemed to have entertained some doubts on the score, for in a later portion of the opinion the issue is more broadly stated, as follows:

> "But we think the question posed here is of such importance that we may concede, for the sake of argument, that the manner of picketing was legal. This focuses for our decision the very vital question remaining for decision, that is, whether the state's public policy permits the assertion of the right to organize and to picket for recognition at the expense of the economy of the state, and at the risk of entirely destroying or wiping out one of the state's principal industries."[6]

The question, stated thus broadly, was unquestionably answered correctly by the court when it replied in the negative. In a long series of decisions beginning in 1942[7] the Supreme Court of the United States has made it clear that even peaceful picketing may be enjoined when it threatens obstruction of the public policy of a state.

But one need not quarrel with the principle of the decision to find a basis for disagreeing with its application to the facts of the *Godchaux Sugars* case. On the basis of the figures relied upon by the court, only 10.5 percent of the sugar cane crop was affected by the strike.[8] It would seem debatable whether the loss of this fraction of the crop actually threatened to wipe out the industry. But it is even more debatable whether sugar cane production is in fact "one of the state's principal industries." A study of the Louisiana economy recently completed by the College of Commerce of Louisiana State University shows: (1) that Louisiana's entire agricultural industry accounts for less than ten percent of the total income of the state,[9] and (2) only fourteen percent of all agricultural income consists of receipts from sugar cane.[10] Citation of these figures is not for the purpose of evaluating the policy which the court adopted in *Godchaux Sugars*, or to take sides in the controversy which it embraced. The

6. 227 La. 146, 169, 78 So.2d 679, 681 (1955).

7. Carpenters Union, AFL v. Ritter's Cafe, 315 U.S. 722 (1942); Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949); Hughes v. Superior Court, 339 U.S. 460 (1950); International Brotherhood of Teamsters v. Hanke, 339 U.S. 470 (1950); Building Service Union v. Gazzam, 339 U.S. 532 (1950).

8. "In 1953 some 5,758,846.9 tons of cane grown in this state were processed into sugar and some 67,872.4 tons were marketed for syrup. . . . In the Parish of Lafourche, where this case arose, . . . the planted acreage in that parish yielded 609,936.5 tons." 227 La. 146, 157, 78 So.2d 673, 676 (1955).

9. Baughn, *The Changing Structure of the Louisiana Economy*, 16 LOUISIANA BUSINESS BULLETIN 11 (1954).

10. *Id.* at 17.

purpose is rather to focus attention upon two other points. The first of these is that Louisiana's labor law is no longer subject to legislative control in this vitally important area. The *Godchaux* decision, foreshadowed by *Douglas Public Service,* marks a return to the era of the labor injunction and because of the substantial influence of injunctions upon the varied activities of unions, it necessarily means that much of Louisiana's labor law will be judge-made. And judge-made policy may differ radically from legislatively declared policy as it did in the *Douglas Public Service* case. The second point is simply this: Policy making in this field of law necessarily involves economic considerations of broad scope, considerations which judges, by training, experience, and function, are not specially qualified to resolve.[11] This is not to say that legislators are always well qualified in this vital field either, but the legislative process seems far better adapted to cope with the problems of labor-management relations. It is to be recognized, of course, that it will require a constitutional amendment to place the labor law policy-making function in the hands of the legislature so long as the decision in *Douglas Public Service* stands.[12]

The *Godchaux* case involved no problem of conflict with federal labor policy because the employees in that case were agricultural workers, specifically excluded from the protection of the Labor Management Relations Act by the terms of section 2(2). But in the second case to come before the Louisiana court during the past term, *Arkansas Oak Flooring Co. v. United Mine Workers,*[13] this perplexing problem of federalism in labor relations was a significant issue. In this case the activities of the employer as well as the employees were of a nature which placed the employment relationship within the general coverage of the federal act. The union confronted the management of the company with a demand for recognition, asserting that 174 of the plant's 225 employees had authorized the union to represent

11. "It thus is widely held that the judiciary generally is not familiar with the labor law, the particular problems involved in the management-worker and management-union relations, and with the specific needs of employers and workers. Hence, it is regarded as ill equipped to handle labor issues with the required special legal, economic, and social expertness." BRAUN, LABOR DISPUTES AND THEIR SETTLEMENT 303 (1955).

12. On November 21, 1955, the United States Supreme Court granted the union's petition for a writ of certiorari and vacated the Louisiana court's judgment on the ground of mootness, remanding the case for appropriate proceedings. *sub nom.* Chaisson v. Southcoast Corp., 76 Sup. Ct. 184 (1955).

13. 227 La. 1109, 81 So.2d 413 (1955).

them. Relying upon the fact that the union had not complied with the non-Communist affidavit provisions of section 9(h) of the federal act and was thus barred from invoking the remedies of the National Labor Relations Board in representation as well as unfair labor practice proceedings, the company's assistant manager advised it "that inasmuch as the Union was not recognized by the National Labor Relations Board, he would not recognize it."[14] Thereupon the union called a strike and established a picket line at the plant "with the result that the employer's operations were greatly curtailed and irreparable loss was sustained."[15] The picketing was apparently wholly peaceful, but the trial court issued an injunction.

On appeal to the Supreme Court the union raised three objections to the injunction order. Two of the three grounds urged on appeal dealt with issues of state law,[16] while the third raised the federal question relating to the jurisdiction of state courts in the context of this case. Although it would appear that there might have been more to the union's contentions based upon the state law grounds than the court accorded them, the more significant aspect of the case is the disposition of the federal question.

The union's specification of error reads as follows:

> "The Court was in error in rendering injunction based upon unfair labor practice where the business involved affected interstate commerce."

Principal reliance for this proposition, of course, was predicated upon the *Garner* case,[17] holding that the jurisdiction of the National Labor Relations Board to hear and restrain unfair labor practices is exclusive and preempts state courts in the exercise of their jurisdiction over peaceful picketing. The court distinguished the *Garner* decision, using language as follows:

14. *Id.* at 1115, 81 So.2d at 415.
15. *Ibid.*
16. The suability of unions and the applicability of the "concerted activities" language of the Louisiana Labor Mediation Board Act, LA. R.S. 23:876 (1950), and of the Little Norris-LaGuardia Act, LA. R.S. 23:822 (1950), which were not before the court in the *Douglas Public Service* case. The majority of the court treated both of these issues as being foreclosed by the prior decisions in the *Godchaux Sugars* and *Douglas Public Service Corp.* cases, respectively. Justice Hawthorne dissented from that portion of the opinion dealing with the method of citing unions and concurred on the issue involving the anti-injunction statute with the same reluctance which he expressed in the *Godchaux Sugars* case, having originally dissented from the court's decision in *Douglas Public Service Corp.*
17. Garner v. Teamster Union, 346 U.S. 485 (1953).

> "However, the labor activity sought to be restrained in the Garner case was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union — an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947."[18]

It is somewhat debatable whether this distinction is a valid one.[19]

18. 227 La. 1109, 1120, 81 So.2d 415, 417 (1955).

19. Whether the distinction drawn and the conclusions reached are correct, would seem to turn upon the allegations of the employer's petition, for in the *Garner* case it was said, "On the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State." 346 U.S. 485, 501 (1953). The writer has not had access to the record in the instant case, and the court's opinion does not set forth the allegations of the petition. In the union's brief in the Supreme Court, however, the statement is made (at p. 27) that "In paragraph 10 of its petition the plaintiff alleged the picket line was unlawful, as its purpose was to compel the employer to deal with Union as the bargaining agent in absence of the employees' selection of said Union as their representative." Taking this language on its face, there is a literal difficulty in reaching the conclusion, urged by the union, that it amounts to an allegation of an unfair labor practice within the meaning of § 8(b)(2) of the federal act. 49 STAT. 452 (1935), as amended, 61 STAT. 140 (1947), 29 U.S.C. § 158 (1952). That section forbids a union "to cause or attempt to cause an employed to discriminate against an employee in violation of subsection (a)(3)" which, in turn, makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization." The employer's allegation that it was the union's "purpose to compel the employer to deal with Union as the bargaining agent in absence of the employees' selection of said Union as their representative," is not a literal charge that discrimination against employees would follow as a matter of course. This is at least left to implication. Nothing of this nature was left to implication in *Garner*, for there it was observed that "the courts below found that respondents' purpose in picketing was to coerce petitioners into compelling or influencing their employees to join the union," 346 U.S. 485, 487 (1953) and later it was said, "Congress has taken in hand this particular type of controversy where it affects interstate commerce. In language almost identical to parts of the Pennsylvania statute, it has forbidden labor unions to exert certain types of coercion on employees through the medium of the employer." *Id.* at 488-89. To be sure, if the facts alleged were true (as they apparently were not), the employer's recognition of the union lacking majority support would violate the fundamental purpose of the act — and specifically would constitute an employer unfair labor practice under § 8(a)(2) — but it does not fall literally within the proscription of § 8(a)(3) and hence not within § 8(b)(2) either. Nor is this to say that the National Labor Relations Board would not find the par-

Assuming, however, that the Louisiana court was correct in concluding that the conduct attributed to the union was not an unfair labor practice, it does not follow that state jurisdiction exists to enjoin it. If in fact the union's picketing was not an unfair labor practice within the meaning of the federal act, it would seem very clearly to be one of the "concerted activities" which "employees shall have the right . . . to engage in" pursuant to the policy declared by section 7 of the federal act. The uniform national policy sought to be achieved by the congressional enactment may be just as effectively frustrated by state court orders which restrain the exercise of rights conferred as by those which seek to restrain the wrongs prohibited by the federal act. This principle was clearly and cogently expressed by Mr. Justice Frankfurter in his opinion for a unanimous Court in *Weber v. Anheuser-Busch, Inc.*,[20] last March reversing an injunction order against union picketing which had been issued by the courts of Missouri. In the course of his opinion it was said "even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the State was free to issue its injunction. If this conduct does not fall within the prohibitions of section 8 of the Taft-Hartley Act, it may fall within the protection of section 7, as concerted activity for the purpose of mutual aid or protection."[21]

The union's noncompliance with the non-Communist affidavit provisions of section 9(h) of the federal act has no bearing upon the problem. The consequences of such noncompliance are explicitly set forth in that section and consist simply of the denial of the Board's remedial procedures in representation and unfair labor practice cases; there is no withdrawal of the rights de-

ticular activity set forth in the allegation to be a violation of § 8(b)(2). The Board might well be willing to make the implication suggested. This is one of the principal difficulties which led the Supreme Court of the United States to adopt the *Garner* principle. It pointed out that "it is not necessary or appropriate for us to surmise how the National Labor Relations Board might have decided this controversy had the petitioners presented it to that body . . . . Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudication as are different rules of substantive law." *Id.* at 489, 490-91. Viewed in this light, it was for the Board, not the state courts of Louisiana to resolve the question whether the allegations of the employer's petition charged the commission of an unfair labor practice.

20. 75 Sup. Ct. 480 (1955).

21. *Id.* at 487.

clared in section 7. An expansion of the sanctions of section 9(h) to effect such a withdrawal would ignore the plain language of the act and constitute judicial legislation in its grossest form.

It is even more obvious, of course, that collective bargaining by noncomplying unions is not prohibited by the federal act. It is common knowledge that the United Mine Workers, the union involved in this case, has continued to maintain the collective bargaining relationships which it enjoyed with employers prior to the enactment of the Taft-Hartley Act, and has expanded those relationships in the course of its organizational activities. Similar activities have been conducted by other noncomplying unions. It has never been suggested that this widely publicized activity constituted a violation of the federal act, for the obvious reason that it is not. Nevertheless the Louisiana court denominated the union's efforts to obtain recognition in this case as an "unlawful objective." After concluding that the picketing was not an unfair labor practice under the federal act (which is seriously debatable as indicated in footnote 19) and pointing out that the union could not obtain certification from the Board pursuant to representation proceedings either upon its own petition or that of the employer, the court said:

> "The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and *the picketing in furtherance of ths unlawful objective* was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy — injurious conduct which the state has jurisdiction to relieve." (Emphasis added.)[22]

As already indicated, the union's efforts to achieve recognition was not an "illegal objective" within the terms of the federal act. If, on the other hand, the court meant to imply that the conduct involved here was in pursuit of an "illegal objective" under state law, two difficulties are presented. In the first place, the court did not say that the objective's illegality stemmed from state law, nor did it cite any state policy, legislative or judicial, which had been offended by the union's action. In the second place, and assuming that the decision itself constitutes a judicial-

22. 227 La. 1109, 1132, 81 So.2d 413, 421 (1955).

ly declared policy of the state to the effect that picketing by a non-complying union is illegal, we are once again confronted with the question whether the state may constitutionally forbid such conduct in an interstate commerce setting when Congress, pursuant to its power to regulate interstate commerce, has adopted a contrary policy, declaring that employees shall have the right to engage in such activities. The dictum in *Weber v. Anheuser-Busch, Inc.*, quoted above, suggests that it may not, and there are three decisions of the Court antedating *Garner* which so hold.[23] Unless the case is to be classified with those in which the United States Supreme Court has held that the power exerted by the state was not preempted by Congress,[24] the decision seems to be plainly wrong.

An answer to this question will soon be forthcoming for the United States Supreme Court granted the union's petition for a writ of certiorari on October 17, 1955, and invited the Solicitor General to file a brief amicus curiae setting forth the views of the National Labor Relations Board.[25]

The third and final labor case decided by the court during the term was *Piegts v. Amalgamated Meat Cutters*,[26] which involved the controversial Right to Work Act,[27] and the result very probably exceeds the expectations of the sponsors of that legislation. The employer, owner of a retail meat market, sought an injunction to restrain recognition picketing of his establishment. No federal issue was presented. The facts as they appear in the opinion were simply these:

> "Relator had two meat cutters in his employ, both of whom were members of the Amalgamated Meat Cutters and

23. Hill v. Florida, 325 U.S. 538 (1945), invalidating a Florida statute imposing restrictions upon the right of employees to designate a bargaining agent which were inconsistent with the unqualified right conferred by the federal act; International Union v. O'Brien, 339 U.S. 454 (1950), invalidating strike-vote provisions of Michigan legislation found to conflict with the rights conferred by section 7 of the federal act, 49 STAT. 452 (1935), as amended, 61 STAT. 140 (1947), 29 U.S.C. § 157 (1952); and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America v. Wisconsin, 340 U.S. 383 (1951), invalidating Wisconsin's compulsory arbitration legislation in public utility employments, similarly found to conflict with the right of employees to engage in concerted action to enforce union demands.

24. Allen-Bradley Local v. Wisconsin, 315 U.S. 740 (1942); International Union v. Wisconsin, 336 U.S. 245 (1949); Algoma Plywood & Veneer Co. v. Wisconsin, 336 U.S. 301 (1949); United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 (1954).

25. 76 Sup. Ct. 102 (1955).

26. 228 La. 131, 81 So.2d 835 (1955), 16 LOUISIANA LAW REVIEW 187.

27. LA. R.S. 23:881 *et seq.* (1950).

Butchers Workmen of North America, Local Union No. 437, AFL of New Orleans and Vicinity, Louisiana. The union presented relator with an agreement, which he refused to sign because of the following clause:

> " *'The employer shall recognize the union as the sole bargaining agent for all the employer's employees in the meat departments, poultry and fish which have to do with wages, hours of labor, and working conditions, excluding all supervisors as defined in the labor management relations act of 1947, as amended.'*
>
> "Upon relator's refusal to negotiate a union contract with the defendant union and its officers and members, his two meat cutters went on strike and commenced picketing his establishment on February 7, 1955. Relator, thereupon, employed a non-union butcher." (Emphasis by the court.)[28]

The employer contended that the union's request to be recognized as the sole bargaining agent for all the employees violated the act and for this reason asked that the picketing be enjoined. The union denied this, relying first upon the fact that it had not requested a closed shop, union shop or any other form of compulsory unionism provision in the proposed contract, and second upon the right of employees to engage in collective bargaining, expressly saved by section 10 of the act which reads as follows: "Nothing contained in this Act shall be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer." The court, dividing five to two, sustained the employer's contention upon the basis of the following syllogism:

> MAJOR PREMISE — Section 1 of the act provides: "That it is hereby declared to be the public policy of Louisiana that the right of a person or persons to work shall not be denied or *abridged* on account of membership or non-membership in any labor union or labor organization." (Emphasis added.)
>
> MINOR PREMISE — Webster's Dictionary declares that the term "abridged" means "diminished, reduced, curtailed, or shortened."
>
> CONCLUSION — A non-union man's rights would be diminished, reduced, curtailed, or shortened if a union acted as his

28. 81 So.2d 835, 836 (La. 1955).

> agent because the union might insist upon higher wages or shorter hours than the non-union man might be willing to accept in order to remain gainfully employed; hence it was a violation of the act for the union to seek recognition as the sole bargaining agent for the plaintiff's employees.

It is not unlikely that many observers, like the writer, experienced the legal equivalent of the proverbial "double take," upon first reading the majority opinion in the case. Most persons familiar with the legislation, including many of its proponents, would unquestionably agree that the result reached here was not within the intendment of the statute.[29] The conclusion is fantastic, but the reasoning of the court has a superficial plausibility that appears to sustain it.

It may be conceded that a non-union man might be willing to accept lower wages or longer hours than the union might demand in order to remain gainfully employed. Indeed, this frequently happens to union members themselves. Whenever the time comes to negotiate or renew a contract with an employer, the union is confronted with the necessity of selecting from among competing items the particular issue or issues on which it will frame its demands. Some members may feel that efforts should be concentrated upon obtaining a substantial wage increase, others may prefer adjustments in vacation, pension or insurance benefits, while still others may wish to press for changes in the seniority or other provisions of the contract. Somehow these preliminary matters must be determined before the union's negotiating team meets with management to bargain the new contract. If the union's affairs are conducted according to democratic ideals, these issues may be debated and voted upon

29. Mr. Paul G. Borron, Jr., who participated in the drafting of the statute and testified for the proponents when the bill was pending in the Legislature, subsequently wrote *The Case for the Right to Work Act*, 15 LOUISIANA LAW REVIEW 66 (1954). In the course of his article Mr. Borron discounted the fears expressed by many persons that the act "will destroy collective bargaining, will interfere with an employee's right to join a labor union or participate in union activities, will permit employer discrimination against unions" and others by saying that, "A mere reading of the act discloses it does nothing more than prohibit the evils of compulsory unionism and union monopoly, and does not impair or affect the many legitimate practices of organized labor to achieve its objectives. . . .

"The power of unions will not be affected. Any particular union which through proper and intelligent leadership and effective collective bargaining has won the support of the employees it represents will not be affected by the act."

It is to be noted that the power of this union was certainly and adversely affected despite the fact that it had the unanimous support of the employees it sought to represent in this case.

in an open union meeting; in other types of unions, the issues may be resolved by less democratic methods; but the significant fact is that, however decided, there will almost inevitably be a dissatisfied minority of members who would have preferred that the negotiations embrace other issues which have been suggested and rejected. So long as the issues which are selected bear a reasonable relation to the subject of wages, hours and working conditions, and do not involve hostile discrimination against the dissentient minority (or non-members) the bargaining agent will be held to have discharged its responsibility.[30]

Viewed in this light, there is an appeal to reason in that part of the majority's conclusion that a non-union man's rights are abridged when the union, acting as his agent, determines to press demands that he might have relinquished, or vice versa. It is to be observed, however, that a similar abridgement of the rights of union members also occurs. But more importantly, it is submitted that this does not constitute a violation of the act for *either* of two valid reasons: (1) The *right* abridged is not protected by the act, and (in the alternative) (2) the *abridgement* is not on account of non-membership in a union.

The policy language of section 1 quoted by the majority in its major premise clearly says that "the right . . . to work shall not be . . . abridged on account of membership or non-membership in any labor union." It is not *all* rights, but merely the unqualified "right to work" which is protected; and furthermore, even that right is not protected against abridgement *on all accounts,* but solely against abridgement "on account of membership or non-membership" in a union. When a union, acting as agent for a non-union man, presses demands which he might relinquish, it does not abridge his unqualified "right to work" (unless it demands his discharge, which was not the case here). The right abridged in such a case is the non-union man's *right to work on terms agreeable to himself* — a right ignored by the statute.

A second, and alternative, analysis likewise demonstrates the fallacy of the majority's conclusion. For the purpose of this analysis, it may be assumed that the right protected by the act is the non-union man's right to work on terms agreeable to himself; or it may even be assumed that his unqualified right to

30. Steele v. Louisville & Nashville R.R., 323 U.S. 192, 202-03 (1944).

work has been abridged as a result of the employer's closing down his establishment in the face of the union's demands. Under either hypothesis, it may be assumed that the non-union man's right to work has been abridged, but the fundamental question to be resolved before concluding that there has been a violation of the act is whether the abridgement is on account of his non-membership in the union. It is submitted that the answer to this question must be "No." Even conceding that the right to work has been abridged in such a case, it is clearly evident that the right is abridged with respect to all workers, both members as well as non-members of the union. Under such circumstances it is obvious that to the extent that abridgement occurs, it falls with an even hand on members and non-members alike and cannot possibly be "on account of membership or non-membership in any labor union."

It is submitted that the majority's preoccupation with the scope and meaning of the word "abridged" caused it to ignore the qualifying language in the surrounding context. To hold that "the right to work" means *the right to work on terms acceptable to himself* is to add language where it was plainly not intended. To hold that an abridgement which affects union members and non-members alike violates a statute forbidding abridgement "on account of membership or non-membership in any labor union" is to disregard the plain language of the statute. It would be no more illogical to hold that an employer violates the act when he reduces wages or discharges employees because of declining business. The employees in such a case have just as clearly suffered an abridgement of their right to work on terms agreeable to themselves as in the instant case. If it be argued that the abridgement is not on account of membership or non-membership in a labor union, the instant case should be cited as holding that such a showing is unnecessary.

One of the most distressing aspects of the case is the majority's failure to make any mention whatever of section 10 which purports to protect the right of employees to bargain collectively. The effect of the decision, of course, is to read this section out of the statute. For if unions (or other agents) may not be designated as the exclusive agents to represent employees in collective bargaining, there will be no collective bargaining. It is this designation of an agent which "collectivizes" the bar-

gaining process and distinguishes it from individual bargaining. Furthermore, the Legislature must have presumed to have had this concept in mind when it referred to collective bargaining in section 10, for prior legislatures had used the term in other enactments similarly stating the public policy of the state. When it enacted the Little Norris-LaGuardia Act in 1934 it made the following declaration of public policy: "In dealing with (organized) employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment. . . ."[31] The intervening decision in *Douglas Public Service,* invalidating the substantive provisions of the Little Norris-LaGuardia Act does not negate this policy, and certainly does not suggest that the Legislature had a different concept in mind when it used the expression "bargain collectively" in the Right to Work Act. In 1948 the Legislature created the Louisiana Labor Mediation Board and again "declared as the public policy of this state that: (1) Sound and stable industrial peace and the advancement of the general welfare, health, and safety of this state and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of collective bargaining between employers and the representatives of their employees";[32] and defined the term "representative of employees" to mean, among other things, labor unions.

Against this background of legislative experience with the term "collective bargaining," it is abundantly clear that when the Legislature wrote section 10 into the Right to Work Act, it intended that the institution of collective bargaining should continue, subject only to the proviso that the parties might not make contracts, or other agreements which force an employee to join or refrain from joining a union. By omitting any reference to this provision of the act, the majority has either (a) exhibited a complete ignorance of the concept of collective bargaining and

31. LA. R.S. 23:822 (1950).
32. LA. R.S. 23:861 (1950).

the Legislature's purpose in protecting it, or (b) has disregarded it.

Two dissenting opinions were filed in the case. Justice Hawthorne stressed the point that a fair reading of the act makes it clear "that its sole purpose is to prevent any person from being forced to join a union or refrain from joining a union," and argued that the absence of such factors from the case rendered the act inapplicable. Justice Hamiter was of the opinion that the union's action in this case was a permissible effort to "bargain collectively" with the employer, specifically preserved by section 10. He makes the point, which is well taken, that if there was any abridgement of any right in this case it was the abridgement by the employer of the right of his employees to bargain collectively. It will be recalled that all of the plaintiff's employees wanted the union to represent them (both went on strike when he refused their request to enter into the contract) but their request, rather than being bargained collectively, encountered the fast one-two punch of (1) the employer's refusal, subsequently reinforced by (2) the court's injunction order.

It is impossible to underestimate the importance of this case. It is the first official decision of the court[33] to interpret and apply the provisions of the act, and while the majority opinion is confined to an interpretation and application of the language found in the policy statement of section 1, it is of tremendous significance for two reasons: first and most importantly because it is so patently wrong, and second, because each of the ensuing sections of the act spelling out substantive violations refers to and prohibits any activity (in comprehensive prolixity) which will "violate any provision of this act." Section 1 is obviously a "provision of this act," and by its interpretation of that section in this case, the court has determined the construction to be afforded each of these other sections.

Despite the fact that the public from time to time may have occasion to criticize the activities of management or labor or both, it is hardly conceivable that any substantial proportion of our citizenry is ready to abandon the principle of collective bargaining. But if, as held here, employees may not designate a

33. The Right to Work Act was also involved in Gulf Shipside Storage Corp. v. Moore, 35 L.R.R.M. 2669 (March 21, 1955), but the case is still pending on rehearing and has not been officially reported.

union (or other agent) to serve as their exclusive agent for collective bargaining, it follows, as previously stated, that there will be no collective bargaining. There is one significant exception to this generalization. Collective bargaining, as previously understood and practiced, will very likely continue in those cases where the relationship affects interstate commerce because of the protection afforded by the federal act. Under the *Garner* principle the right to designate a union as the exclusive agent for collective bargaining will survive as one of the rights conferred by section 7 of the federal act. Section 14(b) of the federal act, impliedly authorizing the adoption of state right to work acts, was not intended and presumably will not be construed to permit the states to destroy the whole concept of collective bargaining. With this exception and in intrastate situations, however, collective bargaining will survive only to the extent that employers are willing to forego the use of the weapon which the court has made available to them in the *Piegts* case. Judging the future by the past it seems unlikely that we will observe many instances of such admirable self restraint.

It is to be hoped, however, that the result will be changed by either of the two avenues which suggest themselves. First, the court itself, upon reflection may conclude that it has adopted a construction of the act which was never intended by the Legislature and overrule the case. The second possibility is for the Legislature to amend the act, specifically authorizing unions to serve as the exclusive agents of employees for the purpose of collective bargaining.

LOCAL GOVERNMENT

*Henry G. McMahon**

OFFICERS

A close and very interesting question was presented to the Supreme Court by the twin cases of *O'Keefe v. Burke*.[1] There, plaintiff judicially challenged defendant's eligibility to be declared the Democratic nominee for public office, on the ground

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1. 226 La. 1026, 78 So.2d 161 (1955); and 226 La. 1039, 78 So.2d 165 (1955). On appeal in the second case, the Supreme Court affirmed the judgment of the trial court overruling certain technical defenses of little importance, and finding on the merits that defendant had not been a resident of Louisiana for the required minimum period.