Louisiana Law Review

Volume 17 | Number 2
The Work of the Louisiana Supreme Court for the 1955-1956 Term
February 1957

Public Law: Labor Law

Charles A. Reynard

Public Law

LABOR LAW

*Charles A. Reynard**

For those in the ranks of organized labor the most significant development in labor law during the past year was legislative rather than judicial — the repeal of the Right to Work Act.[1] In the course of processing its labor cases, however, the Supreme Court had occasion to note the repeal when the case of *Piegts v. Amalgamated Meat Cutters*,[2] criticised in these pages last year,[3] returned to the scene under the name of *Mirabeau Food Store v. Amalgamated Meat Cutters*.[4] The plaintiff in the former suit had, in the interim, transferred his business to his sons and when the union continued to picket the premises as a means of achieving its objective of a collective bargaining agreement, the new owners sought an injunction on the same theory advanced in the previous case — that the picketing constituted a violation of the Right to Work Act. Taking note of the fact that the Legislature had passed the repealer, the court declined to reconsider its previous ruling that peaceful picketing violated the provisions of the act. Although the repeal had not yet become effective, the court noted that it would become operative before any decree that it might issue would become final.

Three other cases touching upon the employment relation came before the court during the past term, two of which warrant only brief mention here. *Connell v. Dulien Steel Products*[5] was a suit by an employee against his former employer for unpaid overtime wages allegedly due as a result of violations of the Fair Labor Standards Act.[6] The sole issue before the court was one of fact relating to the actual number of hours which the plaintiff, a night watchman, actually worked. The trial court had resolved a serious conflict in the testimony in favor of the plaintiff and the Supreme Court affirmed the decision.

---

*Professor of Law, Louisiana State University.

1. LA. R.S. 23:881 *et seq.* (1950).
2. 228 La. 131, 81 So.2d 835 (1955).
3. 16 LOUISIANA LAW REVIEW 301 *et seq.* (1956).
4. 89 So.2d 392 (La. 1956).
5. 228 La. 1093, 85 So.2d 3 (1956).
6. 29 U.S.C.A. 201 *et seq.*

The second case, *Elliott v. General Gas Corporation*,[7] was another employee suit; this one against an employer for damages and attorney's fees under the provisions of Louisiana Revised Statutes 23:631 and 632. These statutory provisions make it the duty of an employer to pay all wages due to an employee who is discharged or resigns "within twenty-four hours after such discharge or resignation . . . upon demand being made upon the employer by the discharged or resigned laborer." Without reviewing the detailed facts of the case it may be said that it appears that the employer in this instance met the twenty-four hour requirement established by the statute, but there was an error in the check tendered the employee in payment for his services because of an inadvertent failure to include payment for work performed on a holiday which was done without the employer's knowledge. The court applied the principle of strict construction established by prior jurisprudence on the point[8] which has regarded the statute as penal in nature and concluded that the refusal or failure to make the payment required by the statute must be knowing or intentional.

The most significant decision of the term in the area of labor relations was *Mississippi Valley Electric Co. v. General Truck Drivers*,[9] which, for the third consecutive year, presented the court with the troublesome problem of federalism in the regulation of labor-management affairs. As a consequence of the 1953 decision of the United States Supreme Court in the *Garner* case[10] holding that the jurisdiction of the National Labor Relations Board to hear and consider charges of unfair labor practices arising under the federal act is exclusive and ousts state courts of the power to act, the state tribunals have been faced with the troublesome task of determining the extent of their authority in borderline cases. At the 1953-1954 term the Louisiana court correctly applied the principle that state courts may continue to exercise jurisdiction in cases affecting interstate commerce if the conduct imputed to the union consists of violence, calling for the exercise of the state's police power.[11] At the 1954-1955 term

7. 229 La. 128, 85 So.2d 55 (1956).
8. Deardorf v. Hunter, 160 La. 213, 106 So. 831 (1926); Hazel v. Robinson & Young, 187 La. 51, 174 So. 105 (1937); Bannon v. Techeland Oil Corp., 205 La. 689, 17 So.2d 921 (1944) and Strickland v. American Pitch Pine Export Co., 224 La. 949, 71 So.2d 338 (1954).
9. 229 La. 37, 85 So.2d 22 (1956).
10. Garner v. Teamster Union, 346 U.S. 485 (1953).
11. Douglas Public Service Corp. v. Gaspard, 225 La. 145, 74 So.2d 182 (1954).

the court, improperly as this writer saw it,[12] held that the principle of the *Garner* case did not strip state courts of the power to enjoin peaceful picketing by a union which had failed to file the non-Communist affidavits required by the federal act. Since picketing by such a union did not constitute an unfair labor practice, the Louisiana court reasoned that the *Garner* case was no bar to the exercise of state court jurisdiction, and refused to be persuaded that picketing (even by a non-complying union) was one of the rights protected by the federal act.[13] Following a grant of certiorari in that case, the United States Supreme Court reversed.[14]

During the term just closed, the court had occasion to review the matter once again in the *Mississippi Valley* case, and this time declined to intervene because it recognized the jurisdiction of the National Labor Relations Board to be exclusive on the basis of the facts presented in the record. The facts showed that the defendant union was peacefully picketing the premises of the plaintiff employer following unsuccessful attempts to renew a collective bargaining agreement between the parties. In the course of the parties' difficulties, the union had petitioned the National Board for certification as the collective bargaining agent for the unit involved in the dispute, but the Board, after considering the petition, had dismissed the case because it found that the unit, consisting of a single employee, was not appropriate for its certification for collective bargaining. In the interim, the employer had filed its suit for an injunction to restrain the union's picketing, and the trial court granted preliminary relief for the purpose of enabling the employer to obtain a ruling from the National Board concerning its jurisdiction in the premises. The employer then filed a charge with the Board alleging that the union's picketing constituted a violation of Section 8(b) (4) of the federal act. This charge was ultimately dismissed and further consideration by the Board was refused, whereupon the employer renewed his request for injunctive relief at the hands of the state court. Construing the Board's dismissal as a ruling that the union was not guilty of any unfair labor practice, the trial court dismissed the employer's suit and the Supreme Court was asked to review the proceedings. In af-

12. 16 LOUISIANA LAW REVIEW 296 *et seq.* (1956).
13. Arkansas Oak Flooring Co. v. United Mine Workers, 227 La. 1109, 81 So.2d 413 (1955).
14. United Mine Workers of America v. Arkansas Oak Flooring Co., 351 U.S. 62 (1956).

firming the action of the trial court, the Supreme Court said, inter alia,

> "It is not our intention to hold that the peaceful picketing of which the employer complains in the instant case falls within the prohibition or protection of the Taft-Hartley Act, for we recognize that primary jurisdiction to determine these questions rests with the National Labor Relations Board, and not with the state court."[16]

Adopting the rationale of the United States Supreme Court in the case of *Weber v. Anheuser-Busch, Inc.*,[17] the Louisiana court reasoned that the Board's dismissal of a charge of union violation of Section 8(b)(4) was not dispositive of the inquiry whether other sections of the act may not have been violated by the union, and, in any case, it was wholly inconclusive of the issue whether the union's activity constituted a right protected by the act. All of these inquiries are properly referred to the Board and outside the state court's jurisdiction. The decision seems entirely correct and the court appears to have a complete appreciation of this most difficult problem of federalism — or jurisdictional tidelands of labor relations, as it has aptly been called.

LEGISLATION AND STATUTORY INTERPRETATION

*Dale E. Bennett**

ENACTMENT — COMPLIANCE WITH READING REQUIREMENTS

In *Doll v. New Orleans*[1] the Supreme Court invalidated a 1954 act of the Louisiana Legislature[2] on the ground that it had not been read on *three different days* as required by Article III, Section 24, of the Louisiana Constitution.[3] The Constitution does not require that compliance with this provision be shown by a *Journal* entry. If the *Journals* are silent as to compliance or noncompliance with this type of constitutional requirement, the courts conclusively presume that the constitutional mandate has

15. 229 La. 37, 85 So.2d 22 (1956).
16. 229 La. 37, 50, 85 So.2d 22, 27 (1956).
17. 348 U.S. 468 (1955).

*Professor of Law, Louisiana State University.

1. 229 La. 277, 85 So.2d 514 (1956), 17 LOUISIANA LAW REVIEW ... (1956).
2. La. Acts 1954, no. 536, p. 1001, incorporated as LA. R.S. 47:2190 (1950).
3. LA. CONST. Art. III, § 24: "Every bill shall be read on three different days in each house. . . ."