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# Public Law: Modern Social Legislation

Leila Obier Cutshaw

had been only substituted service on the defendant by serving the Texas Secretary of State, in accordance with the statute.[5]

Although the final word in such cases must rest with the United States Supreme Court, the Louisiana decision appears to be correct and, in the event of such ultimate recourse, it should be sustained.

*Divorce*

The case of *Boudreaux v. Welch*[6] contains a number of important issues but the Supreme Court decision appeared in time for examination along with the opinion of the court of appeal, and these were discussed in last year's symposium.[7]

# PUBLIC LAW

## MODERN SOCIAL LEGISLATION

*Leila Obier Cutshaw**

### UNEMPLOYMENT COMPENSATION

Programs initiated by social legislation represent society's attempt to ameliorate some evil affecting the public welfare. The Employment Security Act is one such program, designed to prevent economic insecurity due to unemployment "by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance."[1] Particularly since these funds are accumulated from the employer only and not the employee, the courts perform a delicate job of balancing competing interests when questions arise over an employee's right to benefits from them.

The act provides the balance with the courts weighing the facts against provisions of it. One disqualifies from benefits any individual "for any week with respect to which the administrator

5. VERNON'S TEXAS CIVIL STATS., art. 2031b, sec. 4 (1964).
6. 249 La. 983, 192 So.2d 356 (1966), *reversing* 180 So.2d 725 (La. App. 1st Cir. 1965).
7. *The Work of the Louisiana Appellate Courts for the 1965-1966 Term—Conflict of Laws*, 27 LA. L. REV. 530-33 (1967).

* Research Associate, Louisiana State University.

1. LA. R.S. 23:1471 (1950).

finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the administrator that he is not participating in or interested in the labor dispute which caused his unemployment."[2] In *Senegal v. Lake Charles Stevedores, Inc.*[3] the Supreme Court refined the meaning of "interested in" and distinguished it from "participation in" a labor dispute. In that case, the claimant for benefits, a longshoreman, was governed by the rules and regulations of the union, received the same wages as union members, and received the increase in wages which union members received as a result of a strike. Claimant was hired through the union hall, turned over five per cent of his net earnings to the union, and made no attempt to cross the picket line, although he took no part in picketing during the strike. The claimant did not receive strike benefits. Justice Hawthorne, speaking for the court, said that the legislature intended "interested in" to have a meaning different from and broader than "participating in"; otherwise the employer is in the position of subsidizing a strike. Under the facts presented in *Senegal* the employee was "interested in" the labor dispute, and where a union shop exists it is difficult to see that it could be otherwise since an employee's wages and working conditions, certainly of vital interest, are determined by the labor dispute. Although the court stated that the question of "interest in" will be determined by the facts and circumstances of each case, the employee, who has the burden of proving that he comes within the exception to disqualification, can rarely be even a passive onlooker to a labor dispute and receive unemployment compensation benefits.

*American Sugar Co. v. Brown*[4] presented a question which is res nova in Louisiana, whether vacation or retirement pay can be the equivalent of wages. In *Brown* certain employees were laid off, and during their layoff the employer's refinery was extensively damaged by fire and explosion. The employer offered the eligible employees vacation or retirement preparation pay, which they accepted. On appeal by the employer, the court determined that these employees were not eligible for unemployment compensation benefits for the entire layoff period. During the weeks in which the vacation or retirement

2. LA. R.S. 23:1601(4) (1950).
3. 250 La. 623, 197 So.2d 648 (1967).
4. 193 So.2d 326 (La. App. 4th Cir. 1967).

pay was received, the employees were not deprived of wages or its equivalent.[5]

Another novel question was presented in *Cotright v. Doyal*[6] where the claimant gave her employer notice that she was leaving employment as a salad girl to move to California but three days later told him she was not leaving because of the illness of a relative. The employer had already hired a replacement. With no precedent in Louisiana, the court reviewed the cases elsewhere and took the liberal position that "by retracting her notice of leaving, . . . and remaining available and desiring to continue her employment we opine that her status was as one who did not voluntarily become unemployed, or stated somewhat differently, she never *left* her job until so directed by her employer."[7] As remedial legislation, the Employment Security Act should be interpreted so as to extend its benefits as far as possible within bounds imposed by the expressed legislative restrictions.[8] This the court did in the instant case, determining that economic security for the employee who had not voluntarily abandoned her employment was, on balance, in the public interest.

## CORPORATIONS

*Leila Obier Cutshaw**

Statutes restricting the inspection of corporate books and records represent an attempt to balance the right of the individual shareholder as part owner of the corporation to inspect the books against the rights of other shareholders that information gleaned from them will not be used to the detriment of the corporation. In qualifying this right to information so as to protect the corporation and other shareholders, the Louisiana Business Corporation Act requires both a specified duration of shareholding and a specified percentage of share ownership for exercise of the inspection right.[1] Inspection rights are usually

5. In an earlier case, George v. Brown, 144 So.2d 140 (La. App. 4th Cir. 1962), the Fourth Circuit held that termination pay received by a claimant, equal to 17 weeks pay, did not constitute wages, so that the claimant was eligible for benefits. Perhaps the distinguishing feature of the two is that on receipt of termination pay the employee is free to seek other employment.

6. 195 So.2d 176 (La. App. 2d Cir. 1967).

7. *Id.* at 179.

8. Jackson v. Administrator of Division of Employment Sec. of Dept. of Labor, 128 So.2d 915 (La. App. 2d Cir. 1961).

* Research Associate, Louisiana State University. Mrs. Cutshaw served as research assistant to the Committee on Revision of Louisiana Corporation Laws of the Louisiana State Bar Association for twenty months.

1. LA. R.S. 12:38 (1950). Louisiana is one of three states requiring both