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LABOR LAW - INJUNCTIONS - PEACEFUL PICKETING IN THE ABSENCE OF A STRIKE

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LABOR LAW — INJUNCTIONS — PEACEFUL PICKETING IN THE ABSENCE OF A STRIKE —Defendant union picketed in an orderly manner to secure the cooperation of plaintiff's employees in the unionization of his open shop establishment. Plaintiff had apparently been unopposed to such unionization but, when his employees failed to respond to defendant's solicitations, had declined to encourage it in any way. *Held*, defendants, their agents, etc., enjoined from picketing plaintiff's place of business. *Safeway Store, Inc. v. Retail Clerks' Union*, 184 Wash. 322, 51 P. (2d) 372 (1935).

The labor cases have given a variety of answers to the general question raised by the principal case, whether peaceful picketing is enjoinable when unaccompanied by a strike.[1] A fairly large group of courts consider all picketing inherently intimidatory and enjoin it irrespective of the existence of a strike.[2] This categorical position affords a neat solution to the problem, but one may question whether it is supportable under all facts and circumstances.[3] A second group of courts concede that peaceful picketing is a factual possibility and approve its use by striking employees, but not by outsiders seeking to unionize the establishment.[4] Unionization, it is considered, is too remotely productive

[1] This question arises most frequently in the field of labor law where an outside labor group seeks (1) to unionize an open or nonunion shop, as, for example, in Beck v. Ry. Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13 (1898), or, (2) to oust another union with whom the employer has a contract, as for example in Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1931).

[2] See Cooper, "The Fiction of Peaceful Picketing," 35 MICH. L. REV. 73 (1936).

[3] It has been suggested that intimidation may be inevitable, and the above view justifiable, where a manufacturing plant is being picketed with the purpose of preventing business operations; but that picketing of a wholesale or retail establishment is primarily an appeal for public support without any intimidatory aspect. See 33 COL. L. REV. 1188 (1933). An opposite view is advanced in Cooper, "The Fiction of Peaceful Picketing," 35 MICH. L. REV. 73 (1936). This writer contends in effect that the general public, at which picketing of a wholesale or retail store is directed, is more easily influenced contrary to its better judgment than is the "scab" in the case of the industrial picket; that, consequently, the courts have been properly more severe in the former situation.

[4] Waitresses' Union v. Benish Restaurant Co., Inc. (C. C. A. 8th, 1925) 6 F. (2d) 568; Webb v. Cooks', Waiters' & Waitresses' Union, (Tex. Civ. App. 1918) 205 S. W. 465. A dubious refinement of this view is found in Alco-Zander Co. v. Amalgamated Clothing Workers, (D. C. Pa. 1929) 35 F. (2d) 203. The court held that the primary motive of the unionization efforts must be to augment the defendant union's membership and *not*, as was here the case, to improve the defendant union employer's economic position by eliminating non-union competition.

Another court has recently put itself in this group, reasoning that while peaceful

of economic benefit to the worker to constitute justification for picketing of even the peaceful variety. While this may be more a reasoned position than the previous one, it seems to overlook the realities of the situation. Industry is no longer organized on a single shop basis, and a united labor front extending beyond the confines of individual business units is today unquestionably indispensable to successful labor activity.[5] If the courts are to permit labor to strengthen its bargaining position, unionization must in general be recognized as a legitimate objective, even though the workers in the particular trade are hostile to the union's efforts, as was the situation in the principal case.[6] Such recognition has been given by a considerable number of courts which refuse to thwart peaceful unionization activities, picketing included,[7] unless the defendant union has previously committed acts of violence,[8] or disobeyed other injunctions[9] so that the psychological deterrent of a blanket injunction is deemed necessary to protect recognized rights. Absent prior illegal acts of this sort, the doctrine of the principal case is hardly to be applauded, for it obstructs the

picketing is permissible when for a lawful purpose, it is not lawful for outsiders to seek to enforce a "closed shop" upon an establishment whose employees are non-union members and have no dispute with their employer. Keith Theatre, Inc. v. Vachon, (Me. 1936) 4 U. S. LAW WEEK 160.

[5] See opinion of Andrews, J., in Exchange Bakery & Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130 (1927), presenting essentially these views.

[6] It should be noted, however, that testimony by employees as to their hostility should be regarded with suspicion in view of the great possibility that it was elicited through the witness' fear of losing his job. Yet the court in the principal case relied quite heavily and unquestioningly upon such evidence in arriving at its decision.

[7] F. C. Church Shoe Co. v. Turner, (Mo. App. 1926) 279 S. W. 232; Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1931); Stillwell Theater v. Kaplan, 259 N. Y. 405, 182 N. E. 63 (1932). See also, American Furniture Co. v. I. B. of T. C. and H. of A., Etc., (Wis. 1936), 268 N. W. 250, holding that the Wisconsin Anti-Injunction Act [Wis. Stat. (1933), § 268.29] prohibited the issuance of an injunction against peaceful picketing even though the plaintiff's employees, as in the principal case, were unsympathetic towards unionization, and in fact had an organization of their own. Also, the Wisconsin court gives the most able judicial argument to date in support of the constitutionality of the statute, one of a number of similar state statutes enacted in emulation of the Norris-La Guardia Act (47 Stat. L. 70, 29 U. S. C. A., Supp. 1935, § 101).

The cases which have proscribed picketing carried on to compel an employer to cease operating his business as a family affair, Yablonowitz v. Korn, 205 App. Div. 440, 199 N. Y. S. 769 (1923), or to engage a union man as substitute for himself, Roraback v. Motion Picture Mach. Operators' Union, 140 Minn. 481, 168 N. W. 766 (1918), noted in 28 YALE L. J. 707 (1919), represent no significant departure from this view. A court might properly feel that unionization in these isolated cases affords no benefit to labor proportionate to the serious disturbance of the employer's business policy involved.

[8] Scofes v. Helmar, 205 Ind. 596, 187 N. E. 662 (1933). Cf. Wise Shoe Co. v. Lowenthal, 266 N. Y. 264, 194 N. E. 749 (1935), in which evidence that defendant picketers had shouted excessively was held insufficient to warrant a blanket injunction.

[9] Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1931), annotated in 73 A. L. R. 677 (1931).

unification of labor by depriving unions of one of their most effective organizing weapons. In cases not involving organized labor the courts have, on the whole, been more lenient. Thus, picketing by tenants to publicize alleged fire trap conditions has been enjoined on the ground that the more orderly procedure was to apply to proper public officials.[10] On the other hand, since no such redress is available, the lower New York courts have permitted picketing by tenants protesting against exorbitant rentals,[11] and by a consumer group rebelling against high prices.[12] In two recent cases, members of the negro race picketed with the object of obtaining employment of a definite proportion of colored in the picketed premises.[13] The courts concurred in proscribing all picketing, believing that racial betterment should be achieved by means less injurious to business.[14]

Milton Rabinowitz

[10] People v. Kopezak, 153 Misc. 187, 274 N. Y. S. 629 (1934), affirmed in 266 N. Y. 565, 195 N. E. 202 (1935).

[11] Barnes-Arnow Bldg. Corp. v. Hoffman, (N. Y. S. Ct.) 89 N. Y. L. J. 1324 (Mar. 6, 1933). On the same day the same court enjoined similar conduct by a sympathizer, Birnbaum v. Magosian, (N. Y. S. Ct.) 89 N. Y. L. J. 1323 (Mar. 6, 1933).

[12] Julie Baking Co., Inc. v. Graymond, 152 Misc. 846, 274 N. Y. S. 250, (1934), noted in 4 BROOKLYN L. REV. 91 (1934).

[13] Green v. Samuelson, 168 Md. 421, 178 A. 109 (1935), annotated in 99 A. L. R. 533 (1935), and A. S. Beck Shoe Corp. v. Johnson, 153 Misc. 363, 274 N. Y. S. 946 (1934), noted in 48 HARV. L. REV. 691 (1935).

[14] Also, the New York court feared that the legalization of such picketing might result in race riots and reprisals. See A. S. Beck Shoe Corp. v. Johnson, 153 Misc. 363, 274 N. Y. S. 946 (1934), and 48 HARV. L. REV. 691 (1935).