Michigan Law Review

Volume 55 | Issue 6

1957

Labor Law - LMRA - Status of a Walkout Prompted by Health Reasons in the Face of a No-Strike Clause

Robert E. Hammell S.Ed.
University of Michigan Law School

LABOR LAW—LMRA—STATUS OF A WALKOUT PROMPTED BY HEALTH REASONS IN THE FACE OF A NO-STRIKE CLAUSE—The employer and the union were covered by a contract which contained a no-strike clause. In spite of this agreement, buffers in the employer's plant walked off their jobs[1] when a blower[2] in the buffing room failed to carry away dust and cool the area properly.[3] The trial examiner found that the walkout was a protected

1 The findings of fact indicate that the blower had broken down twice before. On August 28th all the buffers were sent home while it was being repaired. Apparently the trouble was corrected, but when the morning shift reported for work on August 31st, the blower was still not operating properly, and the employer again shut down for repairs. The afternoon shift began work at 3:30 and complained of heat and excessive dust and lint, but the employer, after making a "cigar smoke test," claimed that the blower was in proper order and warned the men to continue working or face dismissal. The entire shift walked off the job at 5:15. There was also some evidence that one employee on the next morning shift "quit" rather than work in the buffing room.

2 The blower was required under Michigan Compiled Laws (1948) §408.66, a fact which, though not emphasized, may have buttressed the charge that, without such equipment, the buffing room was "abnormally dangerous."

3 Evidence showed that the temperature in the buffing room reached 110° and that the air was clouded with metal and abrasive dust. Experts testified that prolonged work

concerted activity and not a strike, and that the employer had therefore committed an unfair labor practice by refusing to permit the buffers to return to their jobs when the blower had been repaired.[4] On exceptions taken to these findings, the NLRB reviewed and accepted the trial examiner's report. The walkout was a protected concerted activity, in spite of the no-strike clause, by virtue of section 502 of the Labor-Management Relations Act,[5] which specifically excepts walkouts engaged in in good faith and prompted by abnormally dangerous conditions of work from the definition of a strike.[6] *Knight Morley Corp.*, 116 N.L.R.B. No. 6, 38 L.R.R.M. 1194 (1956).

Although the broad problem of a work stoppage in the face of a no-strike clause has frequently been considered, this case is significant in that it explores a new, if somewhat limited, area of that problem. Previous to this decision, the Sixth Circuit had held that spontaneous walkouts and temporary work stoppages prompted by health reasons were protected concerted activities under section 7 of the amended National Labor Relations Act.[7] In that case, however, a no-strike clause was not involved. Whenever such a clause has been present, both state and federal courts have generally held that any work stoppage is a violation,[8] although a recent Supreme Court decision makes an exception for stoppages called in protest against an employer's unfair labor practices.[9] A work stoppage for health reasons, however, had never been considered.[10] This case involved both issues, and

under such conditions could produce nausea, headaches, serious cases of "heat sickness," and even eventual death.

[4] The employer's refusal to permit the afternoon shift of buffers to return to their jobs led to a walkout of approximately two-thirds of his employees. Additional charges against the employer of interference with this concerted activity, discrimination, and refusal to bargain were upheld by the trial examiner and enforced by the Board.

[5] ". . . nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act." 61 Stat. 162 (1947), 29 U.S.C. (1952) §143.

[6] Defined in §501 (2) of the L.M.R.A. 61 Stat. 161 (1947), 29 U.S.C. (1952) §142 (2).

[7] NLRB v. Southern Silk Mills, Inc., (6th Cir. 1953) 209 F. (2d) 155, rehearing den. (6th Cir. 1954) 210 F. (2d) 824.

[8] E.g., NLRB v. Kaiser Aluminum & Chemical Corp., (9th Cir. 1954) 217 F. (2d) 366; General Electric Co. v. International UAW, 93 Ohio App. 139, 108 N.E. (2d) 211 (1952). Other cases are summarized in 2 CCH Lab. Law Rep., 4th ed., ¶¶3170.18, 4045.88, 4070.27, 4085.75, 4090.59, 4095.06, and in the all states section of vols. 5 and 6 (1956).

[9] Mastro Plastic Corp. v. NLRB, 350 U.S. 270 (1956). Although not directly in point here, this case opens up the possibility of interpreting the no-strike clause to exclude various stoppages, including perhaps one prompted by health hazards. The result should call for a more careful wording of such clauses, in the interests of union and management alike. Whether or not state courts will agree with the federal rationale is still an open question.

[10] The decision most nearly approaching this is Waterfront Employers Assn., 4 Lab. Arb. Rep. 234 (1946). The contract there contained a clause forbidding strikes, with a specific exception for health stoppages, but the union made no specific contention that health hazards were involved, and the arbitrator found no such hazards present. The decision in Corning Glass Works, 6 Lab. Arb. Rep. 533 (1947), included as dicta a quotation from Ford Motor Co., 3 Lab. Arb. Rep. 779 (1944), which declared, also as dicta, that employees might forego grievance procedures when an order given for immediate execution endangered health.

the Board answered the question it presented by invoking a phrase of Taft-Hartley never before interpreted.[11] The statute is so explicit in covering this particular problem that, given a contract and set of facts within its scope,[12] there can be no question as to the Board's decision that such a walkout[13] is a protected activity and not a strike. A question may well arise, however, as to what is within its scope. Unions may seize on opportunities to protect a walkout otherwise violative of a no-strike clause behind bogus charges of health hazards, while employers may in turn label as a sham union charges of that kind, including those which are valid.[14] In a concurring opinion, Member Rodgers declared that he would keep the scope narrow by requiring proof that working conditions were objectively dangerous to health rather than a mere showing that the employees subjectively, though reasonably, thought they were.[15] The Board majority likewise used objective standards in examining the evidence, but did not declare itself to be so bound in future cases. In addition, the statute requires a separate and distinct finding that the stoppage was in good faith,[16] although in practice such a finding, if not carefully differentiated, could become little more than a conclusion from proof of objectively dangerous working conditions. Previous decisions would also suggest that the dangerous conditions must be of a type which requires immediate action rather than those which can be safely corrected through the more drawn out operation of the griev-

11 See note 5 supra.

12 Although the statute is explicit, there appears to be no reason why the union may not contract just as explicitly to forego self help even in the face of a health hazard. Both the trial examiner and the Board ignored this possibility here. Yet, even if the union had so contracted here, grievances cannot always be processed in a few hours, and to require employees to remain at their jobs for even those few hours, under conditions present here, could well have resulted in serious illness and possible death. Section 502 is still necessary, even with a broad specific no-strike clause.

13 The language used in the statute, i.e., "quitting of labor by an employee or employees," is broad enough to cover not only walkouts but any form of work stoppage.

14 In fact, the employer in this case argued strenuously that the union was only using the blower breakdown as an excuse to conceal its real reasons for striking. The employer claimed that various economic grievances being processed were the real cause of the strike, and Member Bean, though concurring, also had some doubts on the good faith of the union stand.

15 Waterfront Employers Association, note 10 supra, requires the same objective proof. However, the Southern Silk Mills case, note 7 supra, at 155, holds that a walkout prompted by "what they (the employees) not unreasonably considered excessive heat" is a protected concerted activity under §7 of the amended NLRA. As noted above, no mention was made of either a no-strike clause or §502. The absence of the former should have no controlling effect on the court's interpretation, but the wording of the latter (see note 5 supra) might incline a court to an objective view. Or the difference may simply be one of philosophy which is yet to be worked out.

16 Perhaps the separate statement of a specific requirement of good faith in the statute demands this construction. At least such a construction makes it clear that the union must honestly call any work stoppages for reasons of health and nothing else.

ance procedures.[17] Kept within these bounds, section 502 should prove to be an effective and salutory limitation upon a broad no-strike clause contract.[18]

Robert E. Hammell, S.Ed.

[17] Note 8 supra, and Ford Motor Co., note 10 supra.

[18] Or, if problems become acute enough, it may lead to a stricter and more detailed wording of the no-strike clause. See Daykin, "The No-Strike Clause," 11 UNIV. PITT. L. REV. 13 (1949), on this possibility in particular, and on the entire no-strike clause question in general.