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Labor Law - LMRA - Validity Under Federal Act of State Right to Work Statute Interpreted to Bar Exclusive Bargaining Rights Clause

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LABOR LAW—LMRA—VALIDITY UNDER FEDERAL ACT OF STATE RIGHT TO WORK STATUTE INTERPRETED TO BAR EXCLUSIVE BARGAINING RIGHTS CLAUSE—Plaintiff employer, operator of a retail food store, refused to sign a contract with a union representing the only two butchers then employed by him on the ground that acceptance of a clause in the contract making the union the exclusive bargaining representative of all butchers in his establishment would violate the state right to work statute.¹ The two butchers went on strike and began picketing the employer's establishment. The employer thereupon hired a non-union butcher and sought to have the picketing enjoined.² The state district court denied the injunction. On certiorari to the state supreme court, *held*, reversed, two justices dissenting. A non-union butcher's right to work would be abridged if the union acted as his agent without his consent. Therefore, the contract provision at issue, if embodied in the collective agreement, would violate the state right to work statute which provides that "it is hereby declared to be . . . public policy . . . that the right . . . to work shall not be . . . abridged on account of membership or non-membership in any labor union or labor organization."³ *Piegts v. Amalgamated Meat Cutters and Butchers' Workmen, Local No. 437-AFL*, (La. 1955) 81 S. (2d) 835.

The state supreme court's interpretation is open to serious question. It

¹ La. Rev. Stat. (1950; Supp. 1954) tit. 23, §23:881 to 23:888.

² Even though peaceful, picketing for an unlawful purpose, e.g., to compel an employer to negotiate a contract that would violate a valid state statute, may be enjoined. *Local 10, United Assn. of Journeymen Plumbers and Steamfitters v. Graham*, 345 U.S. 192, 73 S.Ct. 585 (1953).

³ La. Rev. Stat. (1950; Supp. 1954) tit. 23, §23:881.

rests upon the proposition that the right to work includes the component right to bargain individually over working conditions, and that, therefore, the statute protects this component right unless a workman voluntarily relinquishes it. While this broad definition is interesting as a piece of legal conceptualism, it is more than likely that the legislature intended the word "work" to have the everyday meaning given it by the layman. Particularly is this true in view of section 10 of the same statute which provides that "nothing in this Part shall be construed to deny or abridge the right of employees by and through a labor organization . . . to bargain collectively with their employer."⁴ Furthermore, the Louisiana statute is not significantly different from those of other states⁵ and, in light of the history of these laws,⁶ the suggestion that they were aimed at agreements other than those requiring union membership as a condition of employment is a novel one. But however questionable the court's interpretation of the state statute may be, it must be accepted by a federal court.⁷ Even though the employment relationship involved in the principal case was held not to be covered⁸ by the amended National Labor Relations Act,⁹ the state statute does not distinguish relationships which are subject to federal jurisdiction. Hence the principal case raises at least the theoretical question of whether a state has the power under the amended NLRA to preserve the right of individual bargaining by non-union members by outlawing contract provisions granting exclusive bargaining rights.¹⁰ Clearly such a power is not conferred by section 14 (b) of the federal act which allows states to prohibit the "execution or application of agreements requiring membership in a labor organization as a condition of employment. . . ."¹¹ While there may

⁴ *Id.*, §23:887.

⁵ For example, the Virginia statute provides that "it is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization." Va. Code (1950) tit. 40, §40-68. A statute more likely to warrant the interpretation given the statute in the principal case is that of Texas which provides that "the inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature." 15 Tex. Civ. Stat. (Vernon, 1947) art. 5207 (a), §1.

⁶ See 21 *BROOK. L. REV.* 245 (1955).

⁷ *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938). No appeal to the Supreme Court has been taken in the principal case as the union withdrew its demand for the clause in issue following the state supreme court's decision, thus ending the particular controversy. Principal case at 841.

⁸ The court stated that all plaintiff's operations are "strictly intrastate." Principal case at 836. However, the test of federal coverage is whether the particular employment relationship *affects* interstate commerce. See *NLRB v. Fainblatt*, 306 U.S. 601, 59 S.Ct. 668 (1939).

⁹ Labor-Management Relations Act, 1947, 61 Stat. L. 136, 29 U.S.C. (1952) §§141 to 168.

¹⁰ Even if this question is answered in the affirmative, the constitutional requirement of due process must also be met. The constitutionality of a typical right to work statute was upheld in *Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*, 335 U.S. 525, 69 S.Ct. 251 (1949). For a discussion of the constitutional issues raised by the principal case, see 8 *STAN. L. REV.* 105 (1955).

¹¹ Labor-Management Relations Act, 1947, 61 Stat. L. 151, 29 U.S.C. (1952) §164 (b).

be disagreement concerning the conditions under which a state may exercise jurisdiction in an area where the federal act is silent or the National Labor Relations Board declines to exercise potential jurisdiction, the cases are unanimous in holding that a state may not enforce policies in conflict with express policies of the federal act.¹² Section 9 (a) of the latter act specifically provides that representatives selected for the purposes of collective bargaining by the majority of the employees in a unit shall be the exclusive representatives of all employees in that unit.¹³ Certainly a state statute interpreted to conflict with this provision should not be sustained by the federal courts.

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¹² For a collection and analysis of the recent cases and literature in this difficult area of labor relations law, see 53 MICH. L. REV. 602 (1955); 54 MICH. L. REV. 540 (1956).

¹³ Labor-Management Relations Act, 1947, 61 Stat. L. 143, 29 U.S.C. (1952) §159 (a).