Michigan Law Review

Volume 46 | Issue 3

1948

LABOR LAW-CONSTITUTIONALITY OF STATUTES PROHIBITING "HOT GOODS" AND "SECONDARY" BOYCOTTS

Jerry S. McCroskey
University of Michigan Law School

LABOR LAW—CONSTITUTIONALITY OF STATUTES PROHIBITING "HOT GOODS" AND "SECONDARY" BOYCOTTS—In a contempt action against the business agent of an A.F.L. furniture and van workers local for violation of an injunction based on statutes prohibiting "hot goods" and "secondary" boycotts,[1] *held*, petitioner discharged; the statutes are violative of the Fourteenth Amendment of the federal Constitution in prohibiting peaceful picketing or other publication of the facts concerning a labor dispute in pursuance of an "agreement or combination to cause" any employee to stop handling certain goods or to put pressure on his employer to do so. *In re Blaney*, (Cal. 1947) 184 P. (2d) 892.

The majority declared that the case fell squarely within the doctrines of the *Thornhill*[2] and *Swing*[3] cases, that picketing is free speech and that it need not be directed against one's own employer to be protected by the Constitution. The majority also rested its opinion in part upon the *Wohl*[4] case in which the Supreme Court declared in a situation analogous to the one presented in this case that picketing customers and suppliers of an "unfair" employer is an exercise of free speech. The concurring opinion stated that the scope of the statutes was so broad as to include casual word-of-mouth or published dissemination of the facts concerning a labor dispute if it "directly or indirectly causes (or) induces" employees of other employers to act in assistance of the disputing employees through "hot goods" or "secondary" boycott action. The concurring justices chose to assume that picketing for such a purpose might be prohibited by a properly drawn statute. The lone dissenting justice, citing the *Ritter*[5] case in particular, maintained that the regulation of picketing by these statutes did not infringe the constitutional guarantee of free discussion. The dissent apparently failed to distinguish between the picketing forbidden in the *Ritter* case (picketing outside the area of the industry in which the labor dispute takes place) and the picketing supported in the *Wohl* case (picketing which follows the product from the supplier to the "unfair" distributor to the customer). Clearly a prohibition of the latter type of picketing was here involved, and the doctrine of the *Ritter* case seems inapplicable. Both statutes in their entirety were declared invalid by the court as being incapable of mechanical severance so as to overcome the faults noted. Perhaps the most interesting feature of this case is that the reasoning of the court seems to apply equally as well to the language of section 8 (b) (4) (A) of the Labor Management Relations Act of 1947[6] (the Taft-Hartley Act). This section of the new federal labor statute brands as an unfair labor practice and makes enjoinable inducement or encouragement of a strike or refusal to handle certain goods where an object thereof is to force or require an employer to cease doing business with any other person. Both "hot goods" and "secondary" boycotts are covered by the language of the section and the prohibitions upon inducement or encouragement of such action seems to cover picketing or other publication

[1] Sections 1131-1136 of the California Labor Code as added by Cal. Stats. (1941) c. 623.

[2] Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736 (1940).

[3] A.F.L. v. Swing, 312 U.S. 321, 61 S.Ct. 568 (1940).

[4] Bakery Drivers Local v. Wohl, 315 U.S. 769, 62 S.Ct. 816 (1942).

[5] Carpenters and Joiners Local v. Ritter's Cafe, 315 U.S. 722, 62 S.Ct. 807 (1942).

[6] U.S. Pub. L., 80th Cong., 1st sess, c. 120 (1947).

of the facts of a labor dispute which seeks to bring about such a boycott. The California court in the instant case, in declaring such inducement or encouragement by picketing to be within the area of free speech, is strictly in line with the Supreme Court picketing cases since 1940, and the conclusion seems inescapable that, barring a repudiation of its previous decisions or a drastic "reading down" of the terms of the Taft-Hartley Act, the Supreme Court will declare invalid section 8 (b) (4) (A) when it is called upon to adjudicate the constitutionality of that section.

Jerry S. McCroskey