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Labor—State Anti-Injunction Laws—Labor Dispute—Picketing by Outside Union

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of the agent in the Neibro case was made under the old New York statute of the first type above. What effect will the Neibro case have when statutes of the latter type, as the present New York statute, come before the Court? Will the Court hold that designation of an official is sufficient consent to produce the "state of facts" necessary to give jurisdiction over an absent corporation? Or is this case the beginning of a recession from the heretofore consistent policy of limiting federal jurisdiction? 23

W. K.

LABOR—STATE ANTI-INJUNCTION LAWS—LABOR DISPUTE—PIKETING BY OUTSIDE UNION—[Illinois].—Plaintiffs were the owner and all the employees of a beauty shop which the defendant union was picketing in an effort to unionize. There was no dispute between the employer and the employees; unionizing efforts on the premises, with which the employer did not interfere, failed completely. The picketing was accompanied by some minor acts of violence. Held, all picketing enjoined since no labor dispute existed under the Illinois Anti-Injunction Act, the disputants not standing in the relation of employer and employee.1

At the present time twenty-seven states, including Illinois, have Anti-Injunction Acts applicable to labor disputes.2 In all cases arising under such acts, the determination of the existence of a labor dispute presents a difficult problem. Prior to 1939 fifteen states3 had a definition of labor

23. E. g., amendments of the Judiciary Act have increased the jurisdictional amount from five hundred dollars to three thousand dollars, and the amendment of 1887-1888 curtailed jurisdiction by restricting the venue provision.


disputes like that in the Norris-La Guardia Act, which does not require an employer-employee relation to exist between the disputants. Four of these states amended their acts in 1939 to require the dispute to be between an employer and a majority of his employees. Two state acts contain a definition taken from the earlier Clayton Act, similar in purpose to the Norris-La Guardia Act, which, as construed, requires that the dispute be between an employer and those presently or prospectively in his employment. Ten acts, patterned after the Clayton Act, omit that portion of section 20 which defines the circumstances under which a labor dispute arises.

A minority of the lower federal courts in some early cases ignored the language of the Norris Act by requiring an employer-employee relation to exist between the disputants, and these decisions undoubtedly influenced the state courts. Although their acts contain definitions like that of the Norris-La Guardia Act, they have amended their acts in 1939 to require the dispute to be between an employer and a majority of his employees. Four of these states amended their acts in 1939 to require the dispute to be between an employer and a majority of his employees. Two state acts contain a definition taken from the earlier Clayton Act, similar in purpose to the Norris-La Guardia Act, which, as construed, requires that the dispute be between an employer and those presently or prospectively in his employment. Ten acts, patterned after the Clayton Act, omit that portion of section 20 which defines the circumstances under which a labor dispute arises.

1. cases in which the court held that an employer-employee relation existed

6. Minn., Ore., Pa., Wis. Michigan, which has no Anti-Injunction Act, has amended its Labor Relations Act to require this relation in the same situation.
11. (1914) 38 Stat. 738, 29 U. S. C. A. sec. 52. “No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment * * *.” (Italics supplied.)
Norris-La Guardia Act, the courts in Indiana, Massachusetts, and Washington hold that an employer-employee relation between the parties is a necessary element in labor disputes to which the acts apply. Montana, which has an act unlike others, holds contra. The United States Supreme Court, however, reversing the lower federal courts in some instances, has held that even though there is no employer-employee relation between the disputants, a labor dispute may exist within the meaning of the Norris-La Guardia Act. Hence peaceful picketing for the purpose of unionizing may not be enjoined in the federal courts.

The Illinois act is modeled on the Clayton Act but omits that provision which specifically limited the Clayton Act to disputes where there was an employer-employee relation. Since the present case, two other Illinois decisions have held the employer-employee relation must exist or the anti-injunction act will not apply.

As pointed out by the dissenting opinion in the present case, the Illinois legislature, eleven years after the passage of the Clayton Act and four apply: Schuster v. Intl Ass'n of Machinists (1937) 293 Ill. App. 177, 12 N. E. (2d) 50; Dehan v. Hotel and Restaurant Employees Union (1935) 181 La. 941, 159 So. 637; Lichterman v. Laundry and Dry Cleaning Drivers Union (1938) 204 Minn. 75, 282 N. W. 689; Empire Theater Co. v. Cloke (1917) 53 Mont. 183, 163 Pac. 107, L. R. A. 1917E 383; Goldfinger v. Feintuch (1937) 276 N. Y. 281, 11 N. E. (2d) 910; for other N. Y. decisions see (1939) 83 C. C. H. Labor Law Serv. (1939) par. 11,328; Wallace Co. v. Intl Ass'n of Mechanics (Ore. 1936) 63 P. (2d) 1090; Senn v. Tile Layers Protective Union (1936) 222 Wis. 383, 268 N. W. 270, 272.


"No restraining order or injunction shall be granted by any court of this state, or by a judge or judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment ** **"

See note 11, supra, where the omitted portion is italicized.
22. Maywood Farms Co. v. Milk Wagon Drivers Union (Ill. 1939) 22 N. E. (2d) 962; Hendrickson Motor Truck Co. v. Int'l Ass'n of Mechanics (Ill. 1939) 22 N. E. (2d) 969.
years after the Supreme Court's construction of section twenty of that act,23 intentionally omitted that section from the Illinois Act.24 Without this definition clause, the wording of the act seems broad enough to permit an opposite result to that reached in the present case. On the other hand the adherence to legislative intent in interpreting the statute yielded in this case to the policy consideration that an employer who can satisfy his employees as to wages, hours, conditions, _et cetera_, should not be subjected to economic pressure from third parties without some relief from the courts. It is suggested that this view is the more reasonable upon the particular facts. However, in Illinois, labor will have this precedent to face in cases where picketing is economically justifiable because of poor wages, hours, and conditions which the employees themselves are cowed into accepting.25

S. M. M.

SALES—IMPLIED WARRANTY—LIABILITY OF MANUFACTURER TO CONSUMER IN SALE OF FOOD—[California].—Plaintiff Klein purchased from a retailer a sandwich manufactured, packaged, and sold to the retailer by defendant. His wife, co-plaintiff in this action, upon biting into the sandwich found that it was crawling with maggots. She became ill and suffered injuries for which she seeks damages on twin counts of negligence and breach of implied warranty. Defendant's motion for a directed verdict was granted at trial. The supreme court reversed the court below and _held_, (1) that there was a case of negligence for the jury and (2) that defendant was liable in warranty since the legislative intent was that the implied warranty of fitness raised by section 15(1) of the Uniform Sales Act, should inure in the case of footstuffs to the ultimate consumer, and that it was not intended that strict "privity of contract" should be essential in an action for its breach.3

With this decision California joins a growing minority of states attacking privity as it applies to the responsibility in warranty of manufacturers or processors of foodstuffs to the ultimate consumer. Liability has been founded in a number of these states on the technical grounds that the contract between manufacturer and retailer, to the extent that it raises a warranty of quality, is for the benefit of the ultimate consumer;2 or that such a warranty "runs with the goods";3 or that public policy renders the

24. See notes 11 and 21, supra, for the provisions of both acts.