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Labor—Norris-Guardia Act—Labor Dispute

No United States Supreme Court decision is available to test the accuracy of these conflicting state court decisions. Whether a state can ratify after rejection, and whether it makes any difference that the rejection has or has not been certified is still in question. The nearest analogy is the usually conceded position that ratification is a final and irrevocable act, whether or not there has been certification, but this is founded upon Congressional and not judicial interpretation of the Constitution.[9]

It is the belief of this commentator that an amendment should remain open to ratification, so long as the conditions which induced the original proposal remain the same. A proposed amendment should continue to be considered until it is adopted or until it is nullified by the passage of more than a reasonable time under the *Dillon v. Gloss* rule. So long as conditions remain the same, a state legislature should be able to reverse its prior act of ratification or rejection, irrespective of certification. The argument that a state can withdraw a rejection and not a ratification, because the fifth article mentions ratification and not rejection seems specious. Equally unconvincing seems the contention that rejection by more than one-fourth of the state legislatures terminates the offer. In the absence of judicial construction of the amending procedure, however, these questions will remain the subject of legal dispute.

W. A. H.

LABOR—NORRIS-GUARDIA ACT—LABOR DISPUTE—[Federal].—The defendant labor union, in order to compel plaintiff employer to recognize the union and force his employees to become members, carried on an intensive campaign of propaganda, persuasion, and threats of force. The employer had no quarrel with his employees, all of whom were satisfied with their own shop union. When suit for injunction was brought against the union, it defended upon the ground that the immunities provided for in the Norris-LaGuardia Act should be granted defendant, since the situation was a "labor dispute" within the scope of the Act.[1] *Held*, that the injunction should be granted, since there was no "labor dispute" concerning conditions

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The conclusion is also based on the fact that Congress declared the 14th amendment to be adopted, although New Jersey, Ohio and Oregon attempted to withdraw a prior certified ratification. Conversely the 14th amendment was rejected by the legislators of N. Carolina, S. Carolina and Georgia but later ratified by the reorganized government of those states and in each instance the ratification was treated as authoritative. The Kentucky court says that this is no basis for saying that ratification can follow rejection, since the legislatures which rejected were a part of state governments later declared illegal.

See (1866) 14 Stat. 428; (1867) 15 Stat. 706, 708; (1870) 16 Stat. 1131.

9. See note 8, supra.

1. Norris-LaGuardia Act (1932) 47 Stat. 70, c. 90, 29 U. S. C. A. secs. 101-115. The purpose of the Act is discussed in note (1936) 84 U. Pa. L. Rev. 771. One of the most recent resumes of the Act is found in note (1937) 2 Mo. L. Rev. 1.

of employment, nor concerning representation of persons in fixing conditions of employment.[2]

The Act provides that a labor dispute shall exist "* * * regardless of whether or not the disputants stand in the proximate relation of employer and employee."[3] The question whether a "company-union" employer and an outside union are "labor disputants" under this broadened definition of eligible parties under the act has been variously decided. Some courts, both federal[4] and state,[5] in refusing the injunction under circumstances similar to the instant case, have stressed greatly the fact that the issuance of the injunction does not now depend upon the employer-employee relationship The courts in these cases apparently reason that the abandonment by the legislature of the old employer-employee test of a "dispute" means practically that no injunction should issue unless there is actual violence. The theory of the instant case however attaches no such significance to the abandonment of this test. The court here indicated that a *bona fide* dispute about working conditions or representatives of the employees must exist before the parties enjoy the status of "disputants," and that a mere incidental reference by the outside union to working conditions of the company's employees will be regarded as a sham to hide the real intent of the union, *i. e.*, to unionize the company shop, a matter which of itself does not, in the court's opinion, involve any controversy over employment conditions.[6]

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2. Donnelly Garment Co. v. International Ladies' Garment Workers' Union (D. C. W. D. Mo. 1937) C. C. H. Lab. Law Serv., par. 16, 404, 5 U. S. Law Week 11.

3. Sec. 113(c) of the Act declares, "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*" (Italics supplied.) This last clause is perhaps one of the most controverted additions over the Clayton Act (1914) 38 Stat. 730, 29 U. S. C. A. sec. 52. The clause purportedly corrects the law stated in Duplex Printing Press Co. v. Deering (1921) 254 U. S. 443, 41 S. Ct. 172, 65 L. ed. 349, to the effect that labor injunctions would be granted unless the relation of the disputants was that of employer-employee.

4. Federal cases declaring existence of a "labor dispute" even though none of the plaintiff's employees were union members: Cinderella Theatre Co. v. Sign Writers' Local Union (D. C. Mich. 1934) 6 F. Supp. 164; Dean v. Mayo (D. C. La. 1934) 9 F. Supp. 459 (injunction granted on amended bill); Miller Parlor Furniture Co. v. Furniture Workers' Industrial Union (D. C. N. J. 1934) 8 F. Supp. 208. Cf. Levering & Garrigues Co. et al. v. Morrin et al. (C. C. A. 2, 1934) 71 F. (2d) 284.

5. For decisions of state courts with same theory, see: Restful Slipper Co. v. United Shoe & Leather Union (1934) 116 N. J. Eq. 521, 174 Atl. 543; George B. Wallace Co. v. International Association of Mechanics (Ore. 1936) 63 P. (2d) 1090; American Furniture Co. v. I. B. etc. Chauffeurs etc. General Local No. 200 (1936) 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335; Dr. Lietzman v. Radio Broadcasting Station W. C. F. L. (1935) 282 Ill. App. 203.

6. For other cases with restricted view of sec. 113 of the Act, see Lauf v. Skinner (C. C. A. 7, 1936) 82 F. (2d) 68; Safeway Stores Inc. v. Retail Clerks' Union (Wash. 1935) 51 P. (2d) 372; Keith Theatre v. Vachon

The decision of the instant case, therefore, takes the position that the section of the Act abolishing the employer-employee test is not a "catch-all" phrase, immunizing labor unions from injunctions in controversies not concerned with the actual working conditions of employees. What then is the import of the abolition of that test? Certainly, a discharged employee, although he is no longer, strictly speaking, an employee of the company, should have the status of a "disputant" and receive benefit of the Act if he engages in strike activity for better conditions.[7] Furthermore, the clause in question should be regarded as complementary to section 13(a) of the Act, which extends immunity from injunction to persons who are in the same industry, or who "have direct or indirect interests therein." But, as the instant case declares, these "interests" must not be fanciful. Indicative of this restrictive requirement that the parties in interest must be arguing about matters vital to the laborer, it has even been held that a jurisdictional dispute between two or more opposing unions is not a matter involving working conditions of employees, and that an injunction will lie at the suit of the employer who has suffered business injury as a result of a controversy between the two unions.[8]

It is highly desirable that the decisions on this comparatively new legislation should have a high degree of conformity.[9] It is to be regretted that the decisions thus far show no substantial accord as to what constitutes a "labor dispute."[10] If the courts continue to differ in the interpretation of

(1936) 134 Me. 392, 187 Atl. 692. Cf. United Electric Coal Companies v. Rice et al. (C. C. A. 7, 1936) 80 F. (2d) 1; Scavenger Service Corp. v. Courtney et al. (C. C. A. 7, 1936) 85 F. (2d) 825; New Negro Alliance v. Sanitary Grocery Co. (App. D. C. 1937) C. C. H. Lab. Law Serv., par. 16400.

7. "While out on strike it is not considered that the strikers have abandoned their employment, but rather have only ceased from their labor." Keith Theatre v. Vachon (1936) 134 Me. 392, 187 Atl. 692. See also United Chain Theatres v. Philadelphia Motion Picture Operators' Union (D. C. Pa. 1931) 50 F. (2d) 189; Iron Moulders' Union v. Allis-Chalmers Co. (C. C. A. 7, 1908) 166 Fed. 45, 20 L. R. A. (N. S.) 315; American Steel Foundries v. Tri-City Central Trades Council (1921) 257 U. S. 184, 42 S. Ct. 72, 66 L. ed. 189, 27 A. L. R. 360. Cf. Alco-Zander Company v. Amalgamated Clothing Workers of America (D. C. Pa. 1929) 35 F. (2d) 203; Hitchman Coal & Coke Co. v. Mitchell (1918) 245 U. S. 229, 38 S. Ct. 65, 62 L. ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461.

8. United Electric Coal Companies v. Rice (C. C. A. 7, 1935) 80 F. (2d) 1, cert. denied sub. nom. Rice v. United Electric Coal Companies (1936) 297 U. S. 714, 56 S. Ct. 590. For comments on this case, see (1937) 50 Harv. L. Rev. 1295; (1936) 45 Yale L. J. 1320. Dictum to same effect is found in In re Cleveland & Sandusky Brewing Co. (D. C. Ohio 1935) 11 F. Supp. 198, 205.

9. Several states have legislation similar to the federal Act. Illustrative of these state acts are: 1933 Colo. Laws, ch. 59; 1935 Md. Laws, ch. 574; 1935 N. Y. Laws, ch. 11, secs. 298, 299, 477; 1937 Pa. Laws, Act No. 308; 1933 Ind. Laws, ch. 12. An example of more limited anti-injunction legislation is found in Kansas, 1913 Kan. Laws, ch. 233; and in Massachusetts, 1935 Mass. Laws, ch. 407.

10. In Lauf v. Skinner (C. C. A. 7, 1936) 82 F. (2d) 68, the court declared, in the very face of sec. 113(c) of the Act that a "dispute" con-

the Act, additional legislation should be enacted to define more adequately the term "labor disputant."[11]

W. A. E.

SALES—FRAUDULENT CONVEYANCES—STATUS OF CREDITORS UNDER BULK SALES LAW—[Missouri].—In a recent Missouri case[1] the plaintiff brought an action to set aside the sale in bulk of a retail store. Defendant vendor was indebted to plaintiff on a promissory note. The note had been executed by defendant as surety for a co-defendant and had been reduced to judgment. The note had been given by co-defendant in return for merchandise furnished him by plaintiff. As to the co-defendant, plaintiff was a merchandise creditor; as to the defendant, plaintiff was adjudged a general creditor. *Held:* affirming decision of trial court, that plaintiff was a creditor of defendant within the terms of the Bulk Sales Law.[2]

The question before the court was whether the Bulk Sales Law protects only those creditors who sell merchandise to merchants for resale, or whether it extends to all general creditors of the seller.[3] In two earlier cases involving the same point the Springfield Court of Appeals had expressed contrary opinions. In the first Missouri case[4] the court had favored the broad view of extending protection to all general creditors of the seller, but in the later case of *Rubenstein v. Bryson* the court had adopted a limited construction of the term "creditors."[5] In *Roberts v. Kaemmerer*, the only other Missouri decision on the same point, the St. Louis Court of Appeals, in a well considered opinion, held the Bulk Sales Law extended

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cerns only controversies between employer and employee. Accord, Safeway Stores v. Retail Clerks' Union, (1935) 184 Wash. 322, 51 P. (2d) 322, arising under statute later declared unconstitutional in Blanchard v. Golden Age Brewing Co. (Wash. 1936) 63 P. (2d) 397. See criticisms of these holdings in comments (1937) 31 Ill. L. Rev. 688; (1935) 35 Mich. L. Rev. 340.

11. This difference of interpretation has arisen in spite of the confident expression of the Senate Committee on the Judiciary (S. R. Report 163, 72d Congress, First Session), favorably reporting the bill: "Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. * * * In order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections of the procedure required."

1. McKnight-Keaton Grocery Co. v. McFadden (Mo. App. 1937) 107 S. W. (2d) 176.

2. R. S. Mo. (1929) sec. 3127-3131.

3. McKnight-Keaton Grocery Co. v. McFadden (Mo. App. 1937) 107 S. W. (2d) 176. For general treatment of subject see 84 A. L. R. 1406; also 102 A. L. R. 565.

4. Joplin Supply Co. v. Smith (1914) 182 Mo. App. 212, 167 S. W. 649.

5. Rubenstein v. Bryson (Mo. App. 1922) 245 S. W. 585, where the court held the statute did not apply to a note for a personal debt for family supplies not intended for resale.