4-1-1953

Labor Law -- Right of Non-Striking Employees to Enjoin Picketing

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ing between its natural parents.[11] Furthermore, can the testimony of non-access and the results of the blood test be disregarded? Some courts have taken cognizance of the advances of science in the field of blood grouping tests, and have accepted the results as conclusive of non-paternity.[12] The iron clad presumption of legitimacy, is applied in the instant case in an effort to fend off the attacks by modern science.[13]

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LABOR LAW—RIGHT OF NON-STRIKING EMPLOYES TO ENJOIN PICKETING

Non-union employees brought an action to enjoin union from committing acts of violence against them and their families, and from picketing their employer's place of business. *Held*, the violence and the picketing were so enmeshed that the two cannot be separated. Permanent injunction granted. *Ormerod v. Miami Typographical Union*, 61 So.2d 753 (Fla. 1952).

The general rule is that a state can enjoin all picketing, presently peaceful or otherwise, when it would be justified in assuming that past fears—caused by continued and persistent threats, coercion, and violence would survive.[1] The courts have also reasoned that a union forfeits the rights or privileges accorded to labor to engage in labor activity when the picketing has been accompanied by violence.[2] Another reason advanced is that unions which engage in violent picketing cannot be expected to modify their practices.[3]

The leading cases dealing with Florida labor law have been discussed in recent issues of this publication.[4] This case supplements these articles in that it is the first case in Florida brought by a group of *employees*, as distinguished from an employer, to enjoin picketing. It is also the first em-

11. Complaint of Vincent, 284 N.Y. 260, 30 N.E.2d 587, *aff'd* 259 App. Div. 835, 20 N.Y.S.2d 172 (2d Dep't. 1940); North Dakota v. Coliton, 17 N.W.2d 546 (N.D. 1945).

12. Beach v. Beach, 72 App. D.C. 318, 114 F.2d 479 (1940); Jordan v. Mace, 69 A.2d 670 (Me. 1949); C v C, 200 Misc. 631, 109 N.Y.S.2d 276 (Sup. Ct. 1951); Saks v. Saks, 189 Misc. 667, 71 N.Y.S.2d 797 (Dom. Rel. 1947). See note, 6 MIAMI L.Q. 128 (1951).

13. Shatkin, *Paternity Blood Grouping Tests: Recent Setbacks*, 32 J. CRIM. L. 458 (1941); Note, 40 GEO. L.J. 340 (1952).

1. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941); Moore v. City Dry Cleaners & Laundry, 41 So.2d 865 (Fla. 1949).

2. Busch Jewelry Co. v. United Retail Employees Union, 281 N.Y. 150, 22 N.E.2d 320 (1939).

3. Riggs v. Tucker Duck and Rubber Co., 196 Ark. 571, 119 S.W.2d 507 (1938); Balis v. Fuchs, 283 N.Y. 133, 27 N.E.2d 812 (1940).

4. Gramling, *The Development of Florida Labor Law*, 7 MIAMI L.Q. 188 (1953); Kanner and Corcoran, *Florida Employment Peace Statute*, 4 MIAMI L.Q. 161 (1950). See 34 CORNELL L.Q. 81 (1948-49) on picketing and free speech generally.

ployee action involving the right to work versus the right to picket.[5] There have been very few actions in other states brought by non-striking or non-union employees to enjoin unions from interfering with their right to work. In a California case the complaint of non-union employees, *alleging no threats of violence,* sought an injunction against interference with their employment relations. It was said to state no cause of action.[6] An Ohio court held that non-union or non-striking employees could enjoin a union from interfering in the performance of their work even though the employer had already received a similar injunction against the union.[7] Thus, it seems that employees, satisfied with their working conditions, may bring an action in their own names to protect their right to work, at least where union violence is involved. If the employees are the *real* parties in interest it is conceivable that a stronger case would be presented than if the suit were brought in their behalf by the employer.[8] The dispute is then between unorganized and organized labor rather than between labor and management.

Another point of interest in the instant case is that there was no evidence *directly* connecting the union with the acts of violence. The court concluded that there was substantial evidence from which the chancellor was justified in drawing a *reasonable inference* that the defendants were responsible for the violence.[9]

Assuming that the picketing was for a lawful purpose,[10] would it not have been more equitable to enjoin the violence and leave intact the right to picket peacefully? An affirmative answer to this question would clearly be beneficial to the labor movement and must come, if ever, from the Supreme Court of the United States in a re-examination of the principles decided in the famous *Meadowmoor Dairies* case.[11] The application of this case should be limited to facts where there is a direct relation between the violence and the union. Nicholas A. Crane

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5. FLA. CONST. Decl. of Rights, § 12, as amended 1944. "The right of persons to work shall not be abridged on account of membership or non-membership in any labor union or labor organization."

6. McKay v. Retail Automobile Salesmen's Local, 16 Cal.2d 311, 106 P.2d 373 (1940).

7. Lynn v. Laundry Workers Union, 26 LRRM 2529 (Ohio Ct. of App. 1950). For cases holding that the *members* of one of two labor unions, who were prevented from working by mass picketing of the other union, were entitled to injunctive relief, see Hansen v. Local No. 373, 140 N.J. Eq. 586, 55 A.2d 298 (1947); Stockington v. International Brotherhood of Teamsters, 7 LRRM 722 (N.J. Ch. 1940).

8. The court in the instant case did not discuss the union's contention that the employer newspaper was the *real* party in interest and that it assisted the employees financially in bringing the suit. Brief of Appellees, pp. 26, 27.

9. The chancellor below said: "Must this court be so blind to the actualities of life as to conclude, because of the lack of direct evidence, that such incidents and events were the activities of irresponsible outsiders? Certainly not. The circumstances are such that no conclusion can be reached other than that the defendant union and their members are responsible." 1 Fla. Supp. 79, 84 (1951).

10. In this case it was found that the real purpose of the picketing was unlawful in that it was designed to force an employer to coerce its employees to join the defendant unions.

11. Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941).