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Labor Law -- Rights of Employees to Strike Against a Municipality

court in the principal case may be in discouraging insurance companies from unnecessarily bringing the insured into court by awarding attorney's fees to the insured, the statute is clear and unambiguous in stating that its provisions apply to situations where the *insured* prosecutes. When a statute, as here, is clear upon its face, and when standing alone is fairly susceptible of but one construction, that construction should be accepted.[8] Strict interpretation of the provisions warrant the conclusion that the court went beyond the express provisions of the statute to reach a desired result, even though to give the statute this construction would in effect result in defeating the intention of the legislators.

LABOR LAW—RIGHTS OF EMPLOYEES TO STRIKE AGAINST A MUNICIPALITY

Plaintiff, Department of Water of the City of Los Angeles, sought to enjoin defendant labor unions, whose members were employed by independent contractors under contract with the city, from striking, picketing and engaging in other concerted action for the purpose of coercing the Department to comply with certain demands of defendants regarding working conditions. A preliminary injunction issued granting the relief sought and denying the defendants' contention that the strike was not against the government, as the city was acting in a proprietary rather than a governmental capacity. *Held,* on appeal, that since the city charter did not require that the Department grant the unions' demands, the strike was illegal in its purpose, regardless of the peaceful means employed, and the order of the injunction was affirmed. *Los Angeles v. Los Angeles Building & Construction Trades Council,* 210 P.2d 305 (D.C. App. Cal. 1949).

Courts have long refused to recognize that city officials have a duty to enter into agreements with labor unions governing the terms of employment.[1] Today, most courts go even further in holding that a municipality

8. Caminetti v. United States, 242 U.S. 470 (1917); Hamilton v. Rathbone, 175 U.S. 414 (1899).

1. The rights of employees of municipalities to belong to labor unions has not been uniformly allowed. Perez v. Board of Police Comm'rs, 78 Cal. App.2d 638, 178 P.2d 537 (D.C. App. Cal. 1946) (the court upheld an order of the Board forbidding police officers to become, or to continue to be, members of any labor union); *accord,* C.I.O. v. Dallas, 198 S.W. 2d 143 (Tex. Civ. App. 1946), McNutt v. Lawther, 223 S.W. 503 (Tex. Civ. App. 1920). *But see* Mugford v. Baltimore, 185 Md. 266, 44 A.2d 745 (1945); Local Union No. 876 v. Mich. Labor Mediation Board, 294 Mich. 629, 293 N.W. 809 (1940). City ordinances prescribing union labor on public contracts have usually been held invalid. Adams v. Brenan, 177 Ill. 194, 52 N.E. 314 (1898). *Contra:* Amalithone Realty Co. v. New York; 162 Misc. 715, 295 N.Y. Supp. 423 (Sup. Ct. 1937).

does not even have the authority to enter into such agreements.[2] While there is authority holding that the power to enter into an agreement with a labor union is discretionary with the municipality,[3] it has never been recognized that a labor union has a right to demand such an agreement.[4] The basis for this is that any action by labor unions to coerce the municipality to enter into labor agreements would be action against the government itself and contrary to public policy.[5]

The relationship between labor unions and government has been regulated in many states by statute.[6] More often, as in the instant case, it is necessary to look to the charter. Where a charter *forbids* bargaining with unions by the city officials then it would be clear that a strike against the city would be for an illegal purpose.[7] A strike to compel officials to do an act which they are forbidden to do would be analogous to inducing a person to violate the law. But where the charter provides only that there is no *duty* to enter into labor agreements, it would seem that such a strike does not, as a matter of law, have an illegal purpose.

The distinction between a city acting in a governmental or a proprietary capacity was first developed in tort liability cases,[8] and there is no apparent reason why it should not be extended to labor cases as well.[9] Courts have consistently rejected the contention that the distinction should be made in labor cases.[10] When a city engages in corporate or private enterprise, it should not be allowed to shed itself of the obligations and duties arising from its relationship with labor that are borne by private corporations to any greater extent than it can in tort liability cases. Could it be said that a strike by the employees of a city-owned golf course is a strike against the government? Courts have failed to present any valid reason why the distinction should not be made, though in the principal case the court said that since the city was empowered to furnish water to its inhabitants

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2. Petrucci v. Hogan, 27 N.Y.S.2d 718 (Sup. Ct. 1941); Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947).

3. Nutler v. Santa Monica, 74 Cal. App.2d 292, 168 P.2d 741 (D.C. App. 1946).

4. Mugford v. Baltimore, *supra*.

5. The decisions have uniformly held that picketing and strikes against a city for collective bargaining or for closed shops had unlawful purposes. Adams v. Brenan, *supra;* Mugford v. Baltimore, *supra*.

6. MICH. STAT. ANN. § 17.455 (Cum. Supp. 1947); MO. REV. STAT. ANN. § 10178.207 (Cum. Supp. 1948); N.Y. CIVIL SERVICE LAW § 22(a) (1947); OHIO GEN. CODE ANN. § 17(7) (Cum. Supp. 1948); TEX. STAT. REV. CIV. ART. 5154(c) (1947).

7. Illegality of purpose is well recognized as sufficient cause for enjoining strikes, in private employment as well as in public employment. 1 TELLER, THE LAW GOVERNING LABOR DISPUTES & COLLECTIVE BARGAINING, § 84, *supra*.

8. Eastern Ill. State Normal School v. Charleston, 271 Ill. 602, 111 N.E. 573 (1916); Huntingburg v. Morgen, 90 Ind. App. 573, 162 N.E. 255 (App. Court 1928); Christian v. New London, 234 Wis. 123, 290 N.W. 621 (1940).

9. Nutler v. Santa Monica, *supra;* Clouse v. Springfield, *supra;* McNutt v. Lawther, *supra;* Miami Water Works Local No. 654 v. Miami, *supra*.

10. See the dissent in Miami Water Works Local 654 v. Miami, 157 Fla. 445, 26 So.2d 194 (1946).

it was thereby performing a public function regardless whether it was acting in either a proprietary or a governmental capacity.[11]

A strike by the employees of a municipality acting in its proprietary capacity would have a far less detrimental effect on the public welfare than strikes by employees of a vital private industry. The holding in the principal case has a far reaching effect since large numbers of people are now employed by federal, state and municipal governments.[12] While the decision in the instant case is supported by all previous decisions,[13] a far more satisfactory result would have been reached if the court had recognized that the municipality was acting in a corporate capacity and allowed the right of the defendants to strike.

PUBLIC UTILITIES—PECULIAR CHARTER PROVISION RESERVING TO PEOPLE OF HOME RULE CITY THE EXCLUSIVE POWER TO REGULATE PUBLIC UTILITY RATES AS DENIAL OF DUE PROCESS

Plaintiff, a taxpayer, brought an action against defendant city, to have declared void an ordinance governing the operation and rates of defendant tramway corporation. On dismissal of the action by the trial court, plaintiff brought error. *Held,* reversing the judgment, that the ordinance was an unconstitutional attempt by the city council to grant, extend and to enlarge franchise privileges and to regulate charges for service by defendant corporation, contrary to the state constitution [1] and a section of the municipal code [2] adopted pursuant thereto. The council exercised the power given exclusively to the people of the city to initiate ordinances which grant franchises and regulate the rates of public utilities using the streets of the city. *Berman v. Denver,* 209 P.2d 754 (Colo. 1950).

By statute or constitutional provision the regulation of, and fixing of rates for, public utilities situated and operated wholly or principally within a municipality, may be reserved to a municipality or the citizens thereof.[3]

11. Los Angeles v. Los Angeles Building & Construction Trades Council, *supra* at 311.

12. There were approximately six million employees of the federal, state and local governments in 1947, about one-tenth of the total working population of the nation. See MANUEL, PUBLIC EMPLOYMENT, 8 GOV'T. EMP. No. 4 (April 1947); 2 VAND. L. REV. 441 (1949).

13. See notes 1, 2 and 3 *supra.*

1. COLO. CONST. Art. XX, § 4; "No franchise relating to any street, alley or public place of the said city and county shall be granted except upon the vote of the qualified taxpaying electors."

2. Berman v. Denver, 209 P.2d 754, 760 (Colo. 1950); "'*All power* to regulate the charges for service by public utility corporations is hereby *reserved* to the *people*, to be exercised by them in the manner herein provided for initiating an ordinance.' (Emphasis added) Denver Municipal Code, 1927, § 280, p. 141."

3. Welsbach Street Lighting Co. v. Pub. Util. Comm'n, 101 Kan. 774, 169 Pac. 205 (1917); *cf.* Houston v. S.W. Bell Tel. Co., 259 U.S. 318 (1922); Winchester v. Winchester Waterworks Co., 251 U.S. 192 (1920); Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 Pac. 604 (1919). *But cf.* Denver & S.P. Ry. Co. v. Englewood, 62