Missouri Law Review

Volume 24
Issue 4 *November 1959*

Article 4

1959

Labor Law in Missouri

Austin F. Shute

LABOR LAW IN MISSOURI*

AUSTIN F. SHUTE**

During the past legal year, the number of cases dealing with labor relations with which the appellant courts of Missouri have had to deal have increased considerably over like periods of previous years. The cases show no particular trend one way or the other and appear to deal with just about every facet of labor relations.

Glidewell v. Hughey,[1] was a declaratory judgment action to determine the power of the city of Springfield, Missouri, to enter into collective bargaining agreements with labor unions. The case involved the Board of Public Utilities of Springfield, and revolved around a determination of whether the duties of that particular board were legislative in nature or proprietary. Plaintiffs, officers and members of the petitioning union, argued that the functions of the Board of Public Utilities, under Springfield's constitution charter, were proprietary in nature and therefore subject to collective bargaining. The city contended otherwise. The court stated that "the real issue is whether or not, under the city's present charter, wages, hours and working conditions of city employees in its electric and transportation systems can be a matter of bargaining and contract to any extent at all."[2]

After examining the pertinent provisions of the charter, the court came to the conclusion that the employees of the Board of Public Utilities were clearly subject to and regulated by the exercise of the legislative powers of the city. This was based on the fact that the city council has the final decision on the utilities budget, rates and disbursements and may even abolish the Board or transfer its duties to other departments. The court felt that the Board was only an administrative body, a department of the city government, with certain legislative powers delegated to it by the charter.

---

*This Article contains a discussion of selected 1958 and 1959 Missouri court decisions.

**Attorney, Kansas City; A.B., University of Missouri, 1950, LL.B., 1952.

1. 314 S.W.2d 749 (Mo. 1958) (en banc).
2. *Id.* at 753.

This was differentiated from the separation referred to in *City of Springfield v. Clouse*,[3] and *State ex rel. Moore v. Julian*.[4] In those cases, the functions and setup of the departments in question were considered proprietary in nature, rather than legislative. Thus employer and employee relations chould be handled on a basis similar to private industry. The court stated:

> As we held in the Clouse case, § 29, Art. I, Constitution, does not confer any collective bargaining rights upon public officers or employees in their relations with municipal government and we hold that it is not applicable to the situation in this case because there is no such separation of the public utilities of the city from its general governmental functions and legislative powers as would be required to make it applicable. Therefore, our conclusion is that under the present charter of the city the whole matter of qualifications, tenure, compensation and working conditions of the city's public utilities involves the exercise of legislative powers and cannot become a matter of bargaining and contract.
>
> As to the jurisdiction of the State Board of Mediation, we think it must be held that it has no jurisdiction in municipalities in which there is no separation of municipally owned public utilities with provision for their operation in some manner distinctly apart from other city functions so that their employer and employee relations could be handled on a basis similar to private industry.[5]

The case of *Swift & Co. v. Doe*[6] involved a restraining order issued against stranger picketing. The court stated the proposition as follows:

> The principle question is whether peaceful, orderly stranger picketing of the premises of an employer engaged in interstate commerce, the object of which is to force, coerce and intimidate unorganized employees to join a union or to force, coerce and intimidate an employer, by economic pressure, to force, coerce and intimidate the employees to join a union, is an unfair labor practice within the exclusive jurisdiction of the National Labor Relations Board, withdrawn under the doctrine of pre-emption from the orbit of state control, or whether such picketing is out-

3. 356 Mo. 1239, 206 S.W.2d 539 (1947) (en banc).
4. 359 Mo. 539, 222 S.W.2d 720 (1949) (en banc).
5. 314 S.W.2d at 756.
6. 315 S.W.2d 465 (St. L. Ct. App. 1958).

side the field of federal pre-emption and therefore subject to regulation by a state equity court under state law.[7]

The case was originally taken to the supreme court, but it was transferred to the St. Louis Court of Appeals, because of the lack of the supreme court's appellate jurisdiction.[8]

The court held that the circuit court had no jurisdiction to issue the injunction, since Congress had preempted the field in labor relation matters affecting interstate commerce and has vested exclusive jurisdiction in the National Labor Relations Board to determine labor disputes involving unfair labor practices which are either protected or prohibited by the Taft-Hartley Act.[9]

This case is similar to *Weber v. Anheuser-Busch, Inc.*,[10] in that Swift had alleged unfair labor practices. The labor board had refused to issue a complaint. The law is pretty well establish by this time that the refusal of the regional director to issue a complaint does not revest jurisdiction of the state courts on that ground alone. This can only be done where, pursuant to 29 U.S.C. Section 160 (a), the NLRB has ceded jurisdiction to the state in instances where the state has a labor management relations act of its own. Of course, Missouri does not have such an act. The court recognized that in this instance, where the NLRB refuses to act, and the state cannot act, there is a so-called no man's land created. This situation could be cured in Missouri by the legislature adopting new labor laws which are in conformity with federal laws, in other words, by enacting a management relations act of its own along the lines of the federal act.[11]

The case of *State v. Local 8-6, Oil Workers*,[12] is a landmark case in Missouri concerning the constitutionality of the King-Thompson Act.[13]

---

7. *Id.* at 467.
8. See Swift & Co. v. Doe, 311 S.W.2d 15 (Mo. 1958).
9. 49 Stat. 449 (1935), 29 U.S.C. §§ 141-87 (1952). See Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957); Garner v. Teamsters Union, 346 U.S. 485 (1953); Webster v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); Graybar Elec. Co. v. Automotive Union, 365 Mo. 753, 287 S.W.2d 794 (1956); Cooper v. Stufflebeam, 365 Mo. 250, 280 S.W.2d 832 (1955) (en banc).
10. 348 U.S. 468 (1955).
11. After this Article was written legislation was enacted which in large part eliminates the no man's land problem. Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 1959 U.S. CODE CONG. & AD. NEWS No. 14 § 701.
12. 317 S.W.2d 309 (Mo. 1958) (en banc).
13. §§ 295.010-.210, RSMo 1949.

The defendant union had appealed from the judgment of the circuit court of the City of St. Louis enjoining them from continuing and participating in a work stoppage and strike against the Laclede Gas Company of the State of Missouri. Under the provisions of the King-Thompson Act, the state of Missouri had seized control of the public utility on July 5, 1956, five days after the strike began. This was done on the theory that the strike jeopardized the public interest, health and welfare. Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, was designated as the agent of the Governor of Missouri in carrying out the provisions of the executive order seizing the utility. The striking employees refused to return to work until after the circuit court of St. Louis had issued its restraining order enjoining them from continuing the strike.

The union argued that the King-Thompson Act was unconstitutional because of its conflict with the National Labor Relations Act of 1935, as amended by the Labor Management Relations Act of 1947.[14] The court stated that the constitutionality of the act was in issue in the case of *State ex rel. State Bd. of Mediation v. Pigg*,[15] in which case the court held that the act was severable, particularly those sections directly affecting the State Board of Mediation, its legal existence, powers and duties.

The court reviewed the fact that the primary purpose of the King-Thompson Act is to protect the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership or control. The services provided by the act are not forced upon the parties, but are merely made available to them. The court stated:

> The right of a state to regulate and control public utilities operating within its borders is inherent and is referable to the police powers. Statutes with respect thereto being remedial should be liberally construed.[16]

The court stated further:

> A strike or lockout which jeopardizes the public health, safety or interest is not a protected activity under the Labor

14. 49 Stat. 449 (1935), 29 U.S.C. §§ 141-87 (1952).
15. 362 Mo. 798, 244 S.W.2d 75 (1951) (en banc).
16. 317 S.W.2d at 316.

Management Relations Act, 1947, Sec. 1(b) of the Act, 29 U.S.C.A. Sec. 141(b) provides: 'Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, *and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest*'. 61 Stat. 136.... This congressional declaration clearly indicates a purpose to subordinate such 'acts and practices' to the public health, safety and interest. By the use of the term 'under law' state laws must have been intended as well as federal laws because historically and traditionally the state governments has been vested with the protection of the public health, safety and interest under their general police powers.[17]

Of course, the United States Supreme Court early recognized that violations of local laws enacted for the preservation of property rights and personal safety were not within the protection of the federal act.[18]

The union argued that this case was ruled by the case of *Amalgamated Ass'n of Street Employees v. Wisconsin Employment Relations Bd.*[19] The court disagreed. In that case, the Wisconsin act provided for compulsory arbitration while the King-Thompson Act provides for compulsory mediation. In Wisconsin, the parties were required to accept the findings of the Wisconsin board, while in Missouri the parties are not required to accept the findings of the mediation board.

The union next argued that the King-Thompson Act was in violation of article I, section 29 of the constitution of Missouri, arguing that the right to bargain collectively includes the right to strike. Secion 29 provides "that employees shall have the right to organize and to bargain collectively through representatives of their own choosing." The court stated that the King-Thompson Act does not abolish the right of utility employees to strike, but only subordinates that right to the public interest.

---

17. *Id.* at 319.
18. NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939); International Union UAW v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949).
19. 340 U.S. 383 (1951).

The union further argued that the section of the King-Thompson Act which provides for seizure[20] is an unlawful delegation of legislative powers violative of article II, section 1, of the constitution of Missouri, in that it does not provide sufficient standards and guides for carrying out the seizure provisions of the act. The court stated:

> It is not necessary that statutes prescribe a rule of action where they deal with situations which require the vesting of discretion in a public officer such as where the discretion relates to a police regulation and is necessary to protect the public health, safety and welfare. . . . [Citing cases.][21]

All other arguments of the union, including one of involuntary servitude, were rejected by the court as without foundation.

Thus, the supreme court has upheld the constitutionality of the more controversial sections of the King-Thompson Act. Despite the fact that there are many ways in which the King-Thompson Act could be improved, down through the years it would be difficult to point out specific instances where the application of the act has harmed or hurt any legitimate labor or management objective. In fact, in some instances, at least, the application of the seizure provisions of the act would seem to be looked upon with relief by labor as well as by management. Despite their protestations to the contrary, the prospect of a long and costly strike is not looked upon with any great amount of pleasure by labor officials.

The case of *Anderson v. Deering*[22] was a declaratory judgment action to determine whether employees of the Refuse Collection Division of the City of St. Louis were entitled to overtime on a weekly basis or on a yearly employment cycle basis.

The facts showed that the employees concerned worked in excess of forty hours per week during some weeks, and worked less than forty hours a week during other weeks, but always received the same pay whether working more or less. Because of the irregular hours of collection per week, it was determined that overtime or compensatory time off should be computed on a yearly cycle basis of 2080 hours during each

---

20. § 295.180, RSMo 1949.
21. 317 S.W.2d at 323-24.
22. 318 S.W.2d 383 (St. L. Ct. App. 1958).

employment cycle. This included eight hours credit for certain specified holidays.

The court found that there was nothing wrong with the setting up of an employment cycle on a yearly basis and stated:

> The reasonableness of establishing the 'employment cycle' on an annual basis becomes evident when the nature and the amount of work required is subject to variance in the amount of rubbish to be collected from time to time and the other circumstances testified to by Derring. As pointed out by defendants in the instances when the work-load is constant one week may be the employment cycle but it is otherwise when the work-load varies for various reasons.
>
> When construing an ordinance enacted by a municipal legislative body it is our duty to ascertain the intent of that body, and to do so, if possible, from the language used. Christy v. Petrus, 365 Mo. 1187, 295 S.W.2d 122.[23]

Thus, the court upheld that overtime should be payable only after the number of hours required in the annual employment cycle.

The case of *Pfitzinger Mortuary, Inc. v. Dill*,[24] was another declaratory judgment action to determine the validity of a clause in a proposed contract between a labor union and a corporation providing that only licensed embalmers who were members of the union could embalm the dead. The clause had been upheld by the lower court as a lawful objective of the union. The company argued that the clause was against the public policy of the state of Missouri and constituted an unlawful demand.

In prior contracts, there had been a clause to the effect that the funeral director, or owner of the mortuary, could also do embalming provided he was a licensed embalmer. But in the contract in question, this clause was removed and plaintiff funeral director would be prohibited from personally doing any embalming.

The company sought to bring itself within the rule which restricts otherwise lawful union activities which improperly coerce or affect the owner of a small business who conducts his business without outside help and does all or part of the work himself. This rule is based on the public

23. *Id.* at 386.
24. 319 S.W.2d 575 (Mo. 1958).

policy of the State of Missouri, in the encouragement of small businesses.[25]

In analysing the case, the court said "in balancing the rights the state courts may not proscribe the union's activities 'merely by setting artifical bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute.' "[26]

In holding that the proposed contract clause was valid, the court stated:

> In view of the court's limitations in declaring public policy in this field, in the absence of legislative policy and statutes governing employer-employee labor relationships, in view of the basic theory of the exempting small-businessman doctrine, and balancing, in these particular circumstances, one constitutional right against the other, it may not be said that the proposed contract is unlawful or that it improperly and unfairly infringes fundamental constitutional guaranties and is therefore contrary to the state's manifest public policy and should be enjoined.[27]

This appears to be a well reasoned, common sense decision. Aside from its legal implications in the field of contract negotiating, it will also be a source of great comfort to union members to know that when they prepare to pass into the great beyond, no non-union hand will interfere.

ACF Industries v. Industrial Comm'n[28] involved a claim for benefits under the employment security law. The particular employee concerned had been employed by ACF Industries, and had been covered by a collective bargaining agreement while so employed providing for certain rights on layoff and recall. The contract provided that any employee who does not report to work within five days after being called back to work, notice having been sent to his last known address, can be discharged. In the case at hand, the employee had been laid off. Subsequently thereto, he moved from the home in which he had been living at the time of his layoff without informing the company. The company thereafter sent him notice to report back to work, but the employee did not receive this

25. Heath v. Motion Picture Mach. Operators, 365 Mo. 934, 290 S.W.2d 152 (1956); Hughes v. Kansas City Motion Picture Mach. Operators, 282 Mo. 304, 221 S.W. 95 (1920) (en banc).
26. 319 S.W.2d at 578.
27. *Id.* at 582.
28. 320 S.W.2d 484 (Mo. 1959) (en banc).

notice until more than five days had passed. After the five day period, the company discharged the employee. Thereafter, he applied for and was awarded unemployment benefits. Although the employee went to the company to seek employment after the five day period, the company refused to put him back to work. The Industrial Commission found that the claimant employee had not failed without good cause to accept suitable work offered by the employer.

The court found that the employee, although laid off, continued to be an employee of the company until his discharge after the five days notification.

The Commission argued that the claimant could only be held ineligible for benefits if he had failed without good cause to accept suitable work when offered and such offer actually had been communicated to him. The court thought otherwise stating:

> However, we think that rule has no application in the instant case. In order to secure to claimant the right of recall to work following layoff (which he did not have in the absence of contract), his bargaining agent, the union, procured for him such right by inclusion of the seniority provisions set forth in Article IX of the contract. In return for that concession, appellant was granted the privilege of terminating those rights if claimant failed to report for work within five days after notice of recall was mailed to him at his last known address. The reason for and propriety of such provisions are obvious. Without them, any laid-off employee would be enabled by his own neglect or volitional refusal to receive his mail to retain the benefits of seniority granted him under the contract and at the same time deprive his employer of the right to employ another servant to render the services for which the laid-off employee was needed.[29]

The court felt that the employee by not picking up his mail at his old address had volitionally violated the labor contract, and was subject to discharge. When he was discharged for cause, he thereby became ineligible for benefit under the act.

The case of *United Brick v. Wilkinson*[30] was an action by the company for an injunction to restrain the defendant unions from picketing its

29. *Id.* at 492.
30. 325 S.W.2d 50 (K.C. Ct. App. 1959).

plant. The unions stipulated that the company was involved in interstate commerce as defined by the National Labor Relations Act,[31] and further, that it met the jurisdictional standards of the National Labor Relations Board. The background of the case appears to involve a jurisdictional dispute between employees employed by the plaintiff and represented by District No. 50, United Mine Workers, and the defendant unions who wished to organize the same employees.

The gist of the unions' case was that the matters involved were within the jurisdiction of the NLRB, and that the state courts have no jurisdiction to hear the matter. The court accepted the fact that the purpose of the picketing by the rival unions was to coerce the employer and the employees to accept their unions.

In attempting to determine whether or not such picketing should be restrained by the state court, the court stated that such coercive picketing had many times been held to violate the free choice guaranteed to employees by article I, section 29, constitution of Missouri.[32] But the court concluded:

> Appellant Unions insist that Congress has pre-empted the field and delegated exclusive jurisdiction to the National Labor Relations Board, thus leaving to the state courts only authority, under police power, to restrain violence. Rather reluctantly, and in conformity with decisions of the highest court of the land we agree generally with appellants' position.[33]

In reviewing *San Diego Bldg. Trades Council v. Garmon,*[34] the court interprets the case as follows:

> (1) State courts may enjoin and grant compensation for conduct marked by violence and imminent threat to the public order. (2) State courts may neither enjoin nor grant compensation if the conduct is either prohibited or protected by the Act. (a) This is so even though the Board refuses to accept jurisdiction; (b) This is so if the conduct is 'fairly debatable' as either protected or prohibited.
>
> (3) The majority opinion holds or at least strongly intimates

31. 49 Stat. 449 (1935), 29 U.S.C. §§ 141-87 (1952).
32. Quinn v. Buchanan, 298 S.W.2d 413 (Mo. 1957) (en banc); Bellerive Country Club v. McVey, 365 Mo. 477, 284 S.W.2d 492 (1955) (en banc); Tallman Co. v. Latel, 365 Mo. 552, 284 S.W.2d 547 (1955) (en banc).
33. 325 S.W.2d at 52.
34. 359 U.S. 236 (1959).

(and four justices so construed it) that state courts are powerless to act even though the activities are 'neither protected nor prohibited'.[35]

Many of the labor cases over the past years in Missouri point out the desirability of some type of overall labor management relations act to be enacted on a state level. Labor board proceedings are cumbersome at best and time consuming. Both labor and management should be entitled to a timely decision on their cases, something both are denied in many areas at the present time. Since, under federal law as set out in this Article, the NLRB can cede jurisdiction to a state agency should it not desire to assume jurisdiction itself, this would seem to be a desirable means of arriving at a more satisfactory conclusion. Many times, labor and management tactics in the field of labor relations border more on the law of the jungle than on the law of the land. Many of the problems posed could be avoid by a fair, well thought out labor management code for Missouri.

35. 325 S.W.2d at 55.

