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LABOR LAW IN MISSOURI–1957-1958*

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The appellate courts of Missouri were singularly free from labor cases during the past year, having to decide only three. This may well be indicative of a trend among unions and management to settle their difficulties outside of the courtroom because of the recession and lay-off of large numbers of hourly paid employees. When economic conditions are like they are at present, neither particularly good nor particularly bad, unions and management seem more inclined to settle most of their disputes over the bargaining table rather than to risk or encourage a work stoppage.

Cook v. Brotherhood of Sleeping Car Porters[1] involved one aspect of a union-shop contract. Does an employee have to join and belong to the local union under such a union-shop contract, and if he refuses, will he be discharged? The answer to both of these questions was in the affirmative.

Fourteen employees of the Missouri Pacific Railroad filed this suit in equity to restrain their discharges by the company for failure to join the defendant union within the period allowed. The fourteen were members of a dissident union at the time the union-shop contract was entered into between the railroad and the brotherhood. In the contract, continued employment with the railroad was made dependent on the individual employees becoming members of the union within a sixth day period.

Petitioners refused to join, even though the union offered them the chance to join long after the sixty day period had passed. Various appeal steps within the Railway Labor Act[2] were taken by petitioners, including an appeal to the National Mediation Board. The arbitrator appointed by the Mediation Board found that the petitioners had violated the contract and were subject to termination.

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*This Article contains a discussion of selected recent Missouri court decisions.

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1. 309 S.W.2d 579 (Mo. 1958).
2. 44 STAT. 577 (1926), as amended, 45 U.S.C. §§ 151-63 (1952).

Petitioners then forwarded their membership dues under protest, but the union refused to accept them. This suit was filed to restrain their threatened discharges. No further steps were taken under the Railway Labor Act.

The trial court dismissed the case for lack of jurisdiction, and this finding was sustained by the supreme court. In tracing the background of the Railway Labor Act, the court pointed out that Congress had left only a minimum of responsibility and jurisdiction to the courts, state or federal, in the field of railway labor relations.[3] The courts have consistently declined jurisdiction in this type of case, where the members of a rival union protest that they must join the designated bargaining unit and have sought reinstatement when discharged for failure to join.

The court pointed out, "generally speaking, when the accredited bargaining agent executes a union shop contract (or other collective bargaining agreement) it is binding on all members of the bargaining unit, whether members of the union or not."[4]

As to the petitioners' contention that they could not get a fair hearing before the adjustment board, because it would consist of equal representation between the brotherhood and the carrier, the court stated:

> We cannot presume prejudice or bias in a congressionally created tribunal. And the plaintiffs may, in person or by attorney, present their own grievances to the Adjustment Board, if the Brotherhood is unwilling to do so. . . . The Board has the power to order reinstatement as well as to grant money awards. . . . Many of the cited cases hold that the courts may not assume jurisdiction when the complaining parties have not exhausted their administrative remedies. . . . In fact, substantially every decision in which the court has declined jurisdiction has been based upon the holding that jurisdiction was relegated by Congress to the administrative agencies, which is merely another way of saying the same thing . . .[5]

The case of *Swift & Co. v. Doe*[6] involved organizational picketing of a meat packing plant. In an attempt to organize the white collar salesmen employed by packing houses, pickets were placed at the transportation

3. Order of Ry. Conductors v. Pitney, 326 U.S. 561 (1946).
4. 309 S.W.2d at 587.
5. *Id.* at 590.
6. 311 S.W.2d 15 (Mo. 1958).

entrances to the packing house. The result of the picketing was to make it difficult for plaintiff to make delivery of its products to retail outlets. Thereafter, plaintiff applied for and received a restraining order against the picketing.

In its petition for a restraining order, plaintiff alleged that it was engaged in interstate commerce, and that violations of the Taft-Hartley Act[7] as well as Missouri law[8] were involved. The picketing was admittedly peaceful.

The plaintiff, while this case was pending, had filed two unfair labor practice charges with the National Labor Relations Board.[9] One charge was dismissed, but the other one, involving allegations of a secondary boycott was sustained, and a cease and desist order issued.

The court determined that the real and fundamental issue tried in the trial court was whether or not the picketing was unlawful in that it was for the purpose of forcing plaintiff to coerce its salesmen into joining the union, and selecting it as their bargaining representative, contrary to the provision of section 29 of the Missouri constitution. Citing *Quinn v. Buchanan,*[10] and *Bellerive Country Club v. McVey,*[11] the court stated, "in that connection it may be stated that we have repeatedly held that picketing for that purpose is violative of the free choice guaranteed to employees by Section 29."[12]

In holding that it did not have appellate jurisdiction of the case, the court pointed out that it would be necessary for the appeal to involve the validity of a statute of the United States or the validity of authority exercised under the laws of the United States. Such was not the case here. Thus, the case was transferred to the court of appeals.

The final labor case dealt with by the supreme court was *Glidewell v. Hughey,*[13] which was a declaratory judgment action seeking a declaration of rights between a union and the City of Springfield, Missouri, under

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7. Labor Management Relations Act (Taft-Hartley Act), 61 STAT. 136 (1947), as amended, 29 U.S.C. §§ 141-87 (1952).
8. Mo. CONST. art. I, § 29.
9. Alleging violations by the union of Labor Management Relations Act (Taft-Hartley Act), §§ 8(b)(1)(A), (b)(2), (b)(4), 61 STAT. 140 (1947), 29 U.S.C. §§ 158(b)(1)(A), (b)(2), (b)(4) (1952).
10. 298 S.W.2d 413 (Mo. 1957) (en banc).
11. 365 Mo. 477, 284 S.W.2d 492 (1955) (en banc).
12. 311 S.W.2d at 21.
13. 314 S.W.2d 749 (Mo. 1958) (en banc).

article 16 of the city charter of that city. The trial court had found that the King-Thompson Act[14] applied both to privately and publicly owned utilities, and that the State Board of Mediation, created by the King-Thompson Act, had jurisdiction to use its mediation services in labor disputes between the Board of Public Utilities of the City of Springfield and its employees. It further found that the city, acting through the Board of Public Utilities, had the power to enter into collective bargaining agreements with its employees relating to wages, hours and working conditions. Since the employees were under a merit system, however, such collective bargaining agreements could not provide for a closed or union shop, seniority, or recognition of the union as bargaining agent for employees other than those belonging to the union.

The union argued that the limitations thus placed on their bargaining power were erroneous, although agreeing that the mediation board had jurisdiction over their disputes. The supreme court stated that the real issue in the case was whether or not, under the present city charter, wages, hours and working conditions of municipal employees could be a matter of bargaining and contract to any extent at all.

The court found that there was no separation of the corporate functions of the city concerning its public utilities and the employees engaged therein and other city functions. Under the city charter, the Board of Public Utilities was not set up as a separate municipal corporation but is merely an administrative body of the municipal government itself. This differentiates this case from the type of separation referred to in *State ex rel. Moore v. Julian*[15] and *City of Springfield v. Clouse*[16] where there was provision for operation of the utilities involved in some manner distinctly different from the ordinary functions of municipal government.

The court held that under the present city charter of Springfield, the whole matter of qualifications, tenure, compensation and working conditions in the city's public utilities involves the exercise of legislative powers and cannot become a matter of bargaining and contract. The court further held:

> 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

14. C. 295, RSMo 1949.
15. 359 Mo. 539, 222 S.W.2d 720 (1949) (en banc).
16. 356 Mo. 1239, 206 S.W.2d 539 (1947) (en banc).

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. . . .[17]

This completes the review of recent labor law cases in Missouri through July 1958. It does not appear that any new or startling law was written during the period under review.

17. 314 S.W.2d at 756.