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It is difficult to recognize any distinctive trends in the field of labor law in Missouri during the past year. The cases handed down were merely a continuation of pre-existing law, although the confusion created by the "pre-emption" cases[1] was carried one step further in the case of *United Brick & Tile v. Wilkinson.*[2] This case involved peaceful picketing of United Brick's plant after the picketing union had been rejected by the employees in a National Labor Relations Board representation election. The majority of the company's employees were already represented by District No. 50 of the United Mine Workers. The picketing was enjoined by the trial court, the company alleging that it had suffered considerable damage from the picketing. Neither the company nor the union had attempted to seek relief from the National Labor Relations Board after the representation election, but both sides stipulated that interstate commerce was involved.[3]

The appellate court recognized that the primary purpose of the picketing by the appellant union was to force and coerce both the employer and the employees to accept it. This coercion type of picketing has traditionally been restrained by Missouri courts on the basis that it violates the freedom of choice guaranteed to employees by the Missouri Constitution.[4] But here the appellate court "rather reluctantly" agreed with the appellant union's contention that Congress had pre-empted the field and delegated exclusive jurisdiction to the NLRB.

The court reviewed the various federal cases holding that Congress had

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*This Article contains a discussion of selected 1959 and 1960 Missouri court decisions.

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1. See Guss v. Utah Labor Rel. Bd., 353 U.S. 1 (1957); Garner v. Teamsters Union, 346 U.S. 485 (1953); Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); Graybar Elec. Co. v. Automotive Union, 365 Mo. 753, 287 S.W.2d 794 (1956) (en banc); Jack Cooper Trans. Co. v. Stufflebeam, 365 Mo. 250, 280 S.W.2d 832 (1955) (en banc).

2. 325 S.W.2d 50 (K.C. Ct. App. 1959).

3. National Labor Relations Act, 29 U.S.C.A. § 151 (1952).

4. Mo. CONST. art. I, § 29; Quinn v. Buchanan, 298 S.W.2d 413 (Mo. 1957); Bellerive Country Club v. McVey, 365 Mo. 477, 284 S.W.2d 492 (1955) (en banc); Tallman Co. v. Latal, 365 Mo. 552, 284 S.W.2d 547 (1955) (en banc).

pre-empted the field. The case of *San Diego Bldg. Trades Council v. Garmon*[5] was noted, with the court quoting Mr. Justice Frankfurter as holding:

> (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 (and four justices so construed it) that state courts are powerless to act, even though the activities are 'neither protected nor prohibited.'[6]

Thus, it would seem that peaceful picketing is withdrawn from the scope of state action under the particular circumstances of this case, even though it is coercive picketing, and even though a great deal of damage might be sustained by the picketed company. It is possible that either the company or the certified union might have obtained relief through Board action. It is equally possible that they might not have obtained relief through Board action. In any event, it is questionable whether this type of activity on the part of any labor union is desirable or necessary. Since it is becoming increasingly difficult to get any type of labor legislation through Congress, it would appear that the federal courts are going to have to spell out with greater clarity exactly what the state courts can and cannot do in this field, and that the federal courts furthermore may be forced by necessity to enlarge their own jurisdiction.

City of Joplin v. Industrial Comm'n[7] involved a proceeding under the Prevailing Wage Act.[8] By virtue of this Act, the Department of Labor and Industrial Relations for the State of Missouri is authorized to ascertain prevailing hourly rates of wages for various crafts and types of workmen. The Industrial Commission made certain findings, which were set aside upon appeal to the circuit court. All the parties appealed from the circuit court's ruling.

The Act applies to work done for public bodies and public works. Various aspects of the law were considered, including its constitutionality, but the principal effect of this case on the developing theories of labor relations in the State of Missouri is found in the court's recognition that wage rates vary throughout the state and that the wage rates found by the Commission

5. 359 U.S. 236 (1959).
6. 325 S.W.2d 50, 55 (K.C. Ct. App. 1959).
7. 329 S.W.2d 687 (Mo. 1959) (en banc).
8. §§ 290.210, .310, RSMo 1957 Supp.

were not the prevailing wage rates for similar work existing in the City of Joplin or Jasper County. In other words, the court felt that the Commission had overlooked the fact that the wage rates generally paid in the vicinity concerned should have been taken into consideration.

Miller v. Kansas City Power & Light Co.[9] involved an action by employees for specific performance of the seniority provisions of their collective bargaining agreement. The background of the case involved a member of the bargaining unit who had been promoted out of the bargaining unit, and, several years later, was returned to the same unit. Under the terms of the collective bargaining agreement, a promoted employee would receive no seniority credit for the period he was outside of the bargaining unit. In this case, the promoted employee bumped a member of the bargaining unit who had greater seniority at the time the promoted employee reentered the unit.

Although the defendant company alleged that the state court had no jurisdiction over the case, due to the fact that the action complained of amounted to an unfair labor practice,[10] the court did not agree. Citing from the case of *McCarroll v. Los Angeles County Dist. Council of Carpenters*,[11] the court stated:

> Conduct that constitutes a breach of a collective bargaining agreement is not for that reason alone an unfair labor practice. Proposals to make breach of contract an unfair labor practice were before Congress when it enacted the Taft-Hartley law, but were specifically rejected by the conference committee on the ground that once the parties had entered into [an] . . . agreement, enforcement should be left to the usual processes of the law and not to the National Labor Relations Board.

Going into the more important question of whether or not specific performance of the collective bargaining agreement would be ordered, the court held that a court of equity had no such power. There is little question but what the court is correct in its statements that there are no cases directly in point on this particular question. The court referred to the case of *McAmis v. Panhandle Eastern Pipeline Co.*[12] and stated that it was not applicable. That case involved a refusal by Panhandle Eastern to reinstate a discharged employee after the Arbitration Board called under the contract ordered his reinstatement. The relief granted in that case was an order directing the

9. 332 S.W.2d 18 (K.C. Ct. App. 1960).
10. 29 U.S.C.A. § 158 (1952).
11. 49 Cal.2d 45, 53, 315 P.2d 322, 326 (1957).
12. 273 S.W.2d 789 (K.C. Ct. App. 1954).

company to desist from further disobeying the arbitration decree. On the surface, at least, this would certainly appear to be specific performance of the arbitration provisions of a collective bargaining agreement.

The whole theory of collective bargaining agreements is to keep needless litigation from the courts. Certainly, if this theory is sound, the court should be anxious to impose upon the bargaining parties the same obligations and duties which they have undertaken by virtue of the agreement. The employee returned into the bargaining unit certainly knew at the time he accepted his promotion out of the unit that he was no longer entitled to seniority. He must also have known that in a good many instances, people going into management are often returned into the bargaining unit. That being so, there would seem to be little reason why the employee who was "bumped" should not have been given the relief requested.

Angle v. Owsley[13] was a habeas corpus proceeding by the president of the local union who had been cited for contempt by the circuit court for violation of the anti-picketing provisions of an injunction. The original injunction had been issued in 1951. The picketing complained of occurred in June of 1959; there was no violence in connection with this picketing. There was no question but that the picketing complained of violated the prohibition of the injunction, assuming that the injunction was still valid.

At the time of the 1951 picketing, apparently there had been quite a bit of violence. The court reviewed the case of *Milk Wagon Drivers Union v. Meadowmoor Dairies*,[14] which advanced the theory that where violence was so enmeshed with the picketing that it would be difficult to separate the lawful picketing from the unlawful picketing, all picketing would be enjoined. This was not found to be the case, however, with the 1959 picketing, and the court could not conclude that "resumption of picketing seven years later and by different defendants would likely cause violence to recur so as to bring this case within the rule declared in the Meadowmoor case."

The court then held that the 1951 injunction was valid only insofar as it restrained force and violence, and that the petitioner could not have been guilty of contempt since he had not violated the terms of the injunction as to force or violence. The rest of the injunction was held invalid under the pre-emption theories discussed previously.

Kilgore v. Industrial Comm'n[15] involved the denial by the Industrial

13. 332 S.W.2d 457 (K.C. Ct. App. 1959).
14. 312 U.S. 287 (1941).
15. 337 S.W.2d 91 (Spr. Ct. App. 1960).

Commission of unemployment compensation benefits to a union employee. The particular employee was a movie projectionist who had been asked by the regular movie projectionist at a drive-in theater to work for him once a week. After a number of months, the regular employee decided that he would return to work full time, and the part-time employee thereupon quit.

The union, through its agent, had authorized the regular projectionist to return to work seven nights a week. This led to the Commission's finding that the claimant had left his work voluntarily and without good cause attributable to his work or to his employer. The decision of the Industrial Commission was reversed by the circuit court.

The appellate court held that its inquiry into the case would have to be limited to whether or not the findings of the Commission were supported by competent and substantial evidence upon the whole record. The findings of the Commission could not be set aside unless they were clearly contrary to the overwhelming weight of the evidence. The court agreed that every time an employee leaves his job, it does not necessarily mean that the act is voluntary:

> Extraneous factors and surrounding circumstances must be taken into account and where pressure of circumstances compels termination by the employee, then the termination is involuntary.[16]

In this case, however, the court found that the union was actually the agent of the employee aggrieved, and that the claimant-employee accepted this by going to work under the terms of the collective bargaining agreement in effect. When the regular projectionist returned to work on a seven-day basis, the court found that the union, rather than the employer, was responsible for the withholding of the claimant's services. Thus, the court found that the Commission's findings were supported by competent and substantial evidence upon the whole record.

16. *Id.* at 99.