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SOME RECENT DEVELOPMENTS IN LABOR LAW IN MISSOURI*

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This discussion of a very limited number of recent Missouri cases is presented with no particular purpose either to criticize adversely or to commend the decisions, but rather to call attention to developments that appear to have significance for the future of labor-management relations in Missouri. It appears that the most effective means of pointing up the probable significance of the decisions is to quote generously from the opinions with somewhat limited comments.

The first case selected for consideration is the 1956 case of Adams Dairy v. Burke.¹ In this case Local 603 of the Teamsters Union had represented the milk wagon drivers of Adams Dairy from the time it entered business in St. Louis until July of 1954 when an independent union formed by the drivers was certified by the National Labor Relations Board as the bargaining representative following a Board conducted election.

Charges of unfair labor practices filed against Adams Dairy by Local 603 were dismissed, and the local then started a campaign to urge the public, as well as its members, "to refrain from purchasing the products of Adams Dairy Company"² when doing business with any store selling Adams Dairy products. Pamphlets so urging were distributed at various retail grocery stores handling dairy products.

The alleged purpose was "‘to get the public not to buy Adams Dairy products,’"³ and "‘to get the public to buy milk from people under con-

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¹The original of these materials was presented as part of a program at a Labor-Management Conference on March 28, 1958, at Drury College in Springfield, Missouri. It is currently being published as a part of the proceedings of that conference, largely for local distribution. Besides the addition of footnotes, certain minor elaborations by way of comments are included in the published version.

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1. 293 S.W.2d 281 (Mo. 1956) (en banc).
2. Id. at 285.
3. Ibid.

(265)
tract with Local 603." It was also alleged, by way of justification, that a purpose was to counteract the effect of an advertising campaign being conducted by Adams Dairy "to induce the public to purchase milk at the store instead of by way of home delivery," which campaign, if successful, would cause Local 603 to "lose much business," and "large numbers of salesmen-drivers of other dairies would lose their jobs, Local 603 would lose a substantial portion of its members and would have its representation and bargaining position seriously reduced." and that the pamphlet here under consideration was justifiably prepared for distribution to counteract the campaign of the Dairy.

The Supreme Court of Missouri, in reversing the lower court's decision denying an injunction sought by Adams Dairy, held that the action of Local 603 constituted a "boycott of Plaintiff's products," that there was "no bona fide labor dispute" involved, and no legitimate labor objective, but that the primary purpose was the infliction of "damage to the plaintiff's business" which "constituted a malicious interference with the business of another;" that the "combination of the defendants to stop the sale of plaintiff's products had no lawful objective, it resulted in the restraint of the purchase and sale of plaintiff's products, and was therefore a conspiracy in violation of" the Missouri statutes prohibiting combinations in restraint of trade.

The supreme court denied that the distribution of pamphlets by Local 603 came within the free speech and free press guaranties of either the United States or the Missouri Constitution. And while the court emphasized the illegality of the union's action as being directed against the conduct of the company in dealing with the independent union as it was required to do under federal law, it refuted the contention of Local 603 that the state courts had no jurisdiction "because the processes provided for in the federal Act are exclusive," by the broad assertion that "'concerted activity violating valid state law will not be protected by § 7

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4. Ibid.
5. Ibid.
6. Ibid.
7. Id. at 285-286.
8. Id. at 287.
9. Id. at 288.
10. Id. at 290.
11. Ibid.
12. Ibid.
13. Id. at 292.
of the [federal] Act."

14. Id. at 293.


16. 293 S.W.2d at 294.

17. Ibid.

18. Ibid.


Thus eliminating any basis for exclusive federal jurisdiction, the court came back to its earlier points that the conduct of the union "constituted an illegal conspiracy in violation of state law, that the boycott carried out in pursuance of "that conspiracy was not ... for any lawful" or legitimate "labor objective," and that the court below was in error in denying injunctive relief on behalf of Adams Dairy. The United States Supreme Court denied certiorari in this case in January of 1957.

Insofar as this decision is grounded on the absence of any legitimate or lawful labor objective, the case may well give rise to much the same considerations as were involved in great numbers of early state picketing cases dealing with the labor injunction.

As we all know, the courts habitually emphasized that there were two prime factors, either of which might brand union conduct as illegal and justify the issuance of an injunction. One was the purpose or objective of the union, the other was the method or means employed. And while the latter became rather well standardized in regarding peaceful picketing as entirely lawful; violence, intimidation and mass picketing, for example, very clearly were regarded as unlawful and properly subject to the injunctive process in substantially all jurisdictions.

On the other hand, what constitutes a legitimate labor objective, once we get beyond improved wages, hours and certain aspects of working conditions, became the subject of the most widespread variation from one jurisdiction to another, dependent very largely upon the notions of the individual judge as to what might be desirable. So in a case of the nature just discussed, what may be considered a legitimate labor objective or the opposite, and thus properly subject to the application of the injunction,
is likely to vary greatly dependent upon the point of view of the particular judge writing the opinion.

It is widely true that in the field of public law, such, for example, as the application of due process considerations, much depends on the point of view of the individual judge. His starting point and his method of approach to the problem involved very largely may determine the result. And the starting point and the method of approach employed not infrequently depends upon his notions of desirability of legislation, for example, whose constitutionality he may be determining, or the social desirability or undesirability of the conduct whose legality he may be called upon to determine. There is probably no other field of the law in which this individual viewpoint has quite the leeway for expression in binding judicial decision as is true in this particular aspect of labor law.

A case decided a few weeks earlier than the Adams Dairy case, and yet one that may properly be mentioned in this discussion, is Heath v. Motion Picture Machine Operations Union.20

Incidentally, this case was primarily relied on by the court in the Adams Dairy case in dismissing the contention of the union with respect to constitutional protection of rights of freedom of speech and press.

While the court recognized that picketing is a form of communication, it quoted from the famous Hanke21 case to the effect that it "'cannot dogmatically be equated with constitutionally protected freedom of speech.'"22

The action here involved was a suit to enjoin the union from picketing a drive-in theatre where the court found the purpose to be "to induce the owner-projectionist to cease and desist from operating his own projection machine and to hire a union member to replace him."23

With some difficulty, based on the evidence, and in the face of some admitted lack of clarity, the court determined that the projectionist had become a part-owner partner in the business and thus was an owner-operator. The issue, therefore, became one of whether peaceful picketing with truthful placards and by a process as wholly unobjectionable as

20. 290 S.W.2d 152 (Mo. 1956).
22. 290 S.W.2d at 157.
23. Ibid.
picketing can ever be, for the purpose of making known to the public and prospective patrons the fact that a union projectionist was not employed, as a means of inducing the employment of a union projectionist, is nevertheless properly subject to injunction.

In responding to this issue the court asserted that "picketing, even though properly conducted in all respects, may be enjoined if its objective is unlawful as violative of the public policy of a state, either legislatively or judicially declared. And the enjoining of unlawful-objective picketing does not constitute a denial of the constitutional guaranty of free speech." 24 (Emphasis added.)

The court then proceeded to determine that as of that moment the public policy of the state was inconsistent with any right to picket peacefully under the circumstances of that case. The court arrived at this conclusion by weighing what it considered the disadvantages of such interference with owner-operated businesses in comparison with what it found to be only "slight improvement in the union members' economic positions to be accomplished by the picketing" 25 and asserted "that it is against the public policy of this state to permit the picketing under the instant facts." 26

As mentioned in connection with the Adams Dairy case, concerning what constitutes an unlawful labor objective, what constitutes the public policy of the state, so as to make picketing in conflict therewith unlawful and subject to injunction, depends upon the notions of economic desirability of the particular judge writing the opinion, who declares the public policy of the state as of that instant. 27 Obviously, the opportunity for labor unions to thrive, or the opposite, must, under the impact of this doctrine, depend upon the point of view and the approach of the individual judge writing the opinion.

It is to be noted that unlike the situation in the Adams Dairy case, the court could not very well say, and did not say, that there was no labor

24. Ibid.
25. Id. at 158.
26. Id. at 159.
27. Reference was made by the court to the somewhat similar earlier case of Hughes v. Kansas City Motion Picture Machine Operators, 282 Mo. 304, 221 S.W. 95 (1920) (en banc), but the court in the Heath case purported to be determining on its own what the policy of the state should be in this matter as a basis for its conclusion that the picketing was for the purpose of achieving an unlawful objective and should be enjoined.
dispute existing between the parties in this case, and likewise it apparently could not, and certainly did not purport to find any violation of the laws of the state prohibiting combinations in restraint of trade. It is, of course, also far different from the Giboney\footnote{28} case where the picketing was clearly and admittedly a part of an effort to coerce action in violation of the state’s anti-restraint-of-trade statute.

This case, and others like it, together with the Hanke case upon which it was largely grounded, go far to complete the destruction of the doctrine that peaceful picketing to give publicity to the facts of a labor dispute may be entitled to the protection of the free speech and free press guaranties of the first and fourteenth amendments of the United States Constitution, and similar guaranties of the state constitutions, first given wide currency by the Thornhill\footnote{29} and Carlson\footnote{30} decisions of the United States Supreme Court in 1940.

If anything was left of the doctrine, the case of International Brotherhood of Teamsters, AFL v. Vogt, Inc.,\footnote{31} decided by the United States Supreme Court in 1957, seems to have completed the process of emasculation. There apparently remains only the dictum, based on the Thornhill and Swing\footnote{32} cases, that “state courts, no more than state legislatures, can enact blanket prohibitions against picketing.”\footnote{33} But in each case, although no formulated public policy is in existence, the court exercises largely a free hand in determining what the public policy of the state ought to be and accordingly to proclaim what it is, and to enjoin any picketing thought to run counter thereto as being for an unlawful or improper purpose or objective.\footnote{34}

\footnote{28} Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949).
\footnote{29} Thornhill v. Alabama, 310 U.S. 88 (1940).
\footnote{30} Carlson v. California, 310 U.S. 106 (1940).
\footnote{31} 354 U.S. 284 (1957).
\footnote{32} AFL v. Swing, 312 U.S. 321 (1941).
\footnote{33} 354 U.S. at 294-295.
\footnote{34} On April 28, 1958, the United States Supreme Court had before it the case of Chauffeurs Union v. Newell, 78 Sup. Ct. 779 (1958), in which the Supreme Court of Kansas, 181 Kan. 898, 317 P.2d 617 (1957), had sustained an injunction against all picketing. The case involved picketing for union recognition and in protest against discharge of union members, and because of alleged refusal to bargain, accompanied by some disorders and picture taking alleged to amount to intimidation and coercive pressure. All picketing was enjoined on the theory that any picketing would revive the threat of coercive pressure and intimidation and that freedom of speech afforded no protection. Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941) was cited as authority.

The United States Supreme Court granted certiorari and reversed without opinion, merely citing Thornhill v. Alabama, supra note 29. How far that reversal
We therefore come back very nearly, if not quite, to the situation in the earlier day of freely granted labor injunctions which depended wholly upon the point of view of the individual judge, and when the point of view of the judges varied all the way from that of Judge Andrews in 1902 in the case of *Foster v. Retail Clerks’ Ass’n*, when he said, “Mere picketing . . . if it is peaceful . . . I do not regard in any sense as unlawful, whatever may be the motive of the picketers,” to that of Judge McPherson in 1905 in the *Santa Fe* case when he said, “There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching.”

A case that arose in this city and was decided by the Springfield Court of Appeals before going to the Supreme Court of Missouri is probably sufficiently well known to most of you. I refer to the case of *Kerkemeyer v. Midkiff* involving an attempt by the Barbers’ Union to withdraw union shop cards from shops in which the owner worked with the tools of the trade as one of the barbers in the shop but who refused to join the union.

The shops in question were under collective barbaining agreements with the union regulating wages, hours and working conditions, but which did not specify that the owner-operators must be members of the union.

The union shop cards furnished by the union had printed on the back the agreement governing their use, which included the provision that the person displaying the card agreed “to abide by the laws of the [union] . . . governing Shop Cards and such laws as may be made in the future for the proper government of the same.” It was also provided that the shop card would be given up when demanded by the union.

The laws of the union required that no member of the union should work in a shop that did not display the union shop card, and amendments were added which provided, “No Shop Card shall be displayed in a barber or beauty shop unless all persons working in the shop with the tools of the

may be thought to go by way of reviving the concept of picketing as protected free speech would seem to be highly problematical, but it well may be regarded by labor as a hopeful sign.

35. 29 Misc. 48, 57, 78 N.Y. Supp. 860, 867 (Sup. Ct. 1902).
37. Springfield, Missouri.
38. 281 S.W.2d 516 (Spr. Ct. App. 1955), rev’d, 299 S.W.2d 409 (Mo. 1957) (en banc).
39. 281 S.W.2d at 517.
trade are members of the union in good standing." Thus arose the demand by the union that the owner who worked as a barber must join the union or give up his union shop card, unless, of course, he ceased working as a barber.

The court of appeals determined that it was a proper labor objective for the union to attempt to compel each of the plaintiff owners, who work with the tools of the trade in their shops as barbers in competition with union members to join the union or to give up the union shop card.

The supreme court viewed the issue as one involving coercion, by threat of withdrawal of the union shop card, to force the owner either to cease to work with the tools of his trade or to join the union.

Then the legality of such coercive action was said to turn on the question whether the objective of the union was a lawful labor objective. It reasoned that by becoming members of the union the owners would become subject to the laws of the union, which would make them "subservient to every demand of the Union, and . . . would completely nullify every right presumably arising from their present or any future contract with the union."

The owners and the union, said the court, are adversaries in the negotiating of contracts, but joining the union and accepting the "laws" of the union would "result in the plaintiffs [owners] being forced to negotiate wages and other conditions of employment with their adversary, Local 191, and at the same time being subject to disciplinary action by their adversary if in protecting their interest as employers they oppose the interest of their adversary in the very matters that are the subject of negotiation."

Then says the court, speaking through Commissioner Stockard, "the narrow question . . . in this case is whether or not it is contrary to the public policy of this state for a labor union to exert economic pressure to compel an employer to join the union of his employees when the result is for the union to obtain the right to sit on both sides of the bargaining table in negotiating with the employer the terms of contracts covering conditions of employment."

40. Id. at 518.
41. 299 S.W.2d at 414.
42. Ibid.
43. Ibid.
As if the answer were not clearly implicit in this statement of the issue, the court stated its final conclusion to the effect that "it is contrary to the public policy of this state, and therefore an unlawful labor objective, for a labor union to exert economic pressure on an employer to compel him to join a union of his employees when to do so makes him subject to union 'laws' which destroy or substantially impair his right to assert and protect those interests essential to his status as an employer in negotiations with the union concerning the terms and conditions of employment of his employees."\(^{44}\)

The court made a very short and terse disposition of the union's contention for the applicability of the Missouri statute to the effect that a person who knowingly and wilfully displays a union card "without a contract with such union for the use of its union card" shall be guilty of a misdemeanor,\(^{45}\) by simply saying "the plaintiffs have contracts for the display of the card..."\(^{46}\) That the plaintiffs had, in effect, repudiated that contract by refusing to be bound by its terms seemed to deter the court not at all in its disposition of the contention.

This case gives us again an illustration of the court determining what the state's public policy should be, and is, and adjusting unlawful a labor objective found to be inconsistent therewith, and in which the supreme court and the majority of the court of appeals arrived at opposite conclusions because their starting points were different and their methods of approach were different.

Perhaps the most significant of the recent cases are those involving article I, section 29 of the Missouri constitution which reads as follows:

That employees shall have the right to organize and to bargain collectively through representatives of their own choosing.\(^{47}\)

This language appears to the casual, or possibly even the critical, reader, and obviously was intended by its sponsors in the Missouri constitutional convention, to be a very simple statement of public policy in recognition of already existing and well recognized rights, which, as a part of our bill of rights, would protect these rights to the individual

44. Id. at 417.
45. § 417.060, RSMo 1949.
46. Ibid.
against legislative or other governmental encroachment, and apparently without the creation of rights (or obligations on the part of either employers or employees) that did not exist before.

As interpreted and applied by our supreme court, in connection with its unlawful-purpose picketing doctrine, this provision has perhaps become the most confusing, elusive and controversial pronouncement in the body of the public law of this state affecting the rights and the relationships of labor and management.

A few recent cases will serve to point up this situation.

It may seem a bit strange that the courts appear not to have discovered the potentialities of this constitutional guaranty for application in its unlawful-purpose picketing doctrine during the first seven years of its existence, and that it only became a factor of major significance after its first decade as a part of our fundamental law.

Its first use in this connection appears to have been in 1952 in the case of Katz Drug Company v. Kavner48 when it was joined with the provisions of the National Labor Management Relations Act as a basis for holding that picketing, found to be for the purpose of coercing an employer to recognize as exclusive bargaining representative a union that did not represent a majority of its employees, and thus interfering with his employees’ free choice of representatives, was for an unlawful purpose and could properly be enjoined.

Of much greater significance have been the cases, beginning in 1955, in which interstate commerce and the application of the federal act were not involved and in which the sole determining factor was this constitutional guaranty.

In Tallman Company v. Latal,49 picketing was alleged to be for the purpose of causing the employer to sign a collective bargaining agreement and to force its employees to join the union. This was alleged to be unlawful as in violation of the constitutional guaranty, “that employees shall have the right to organize and to bargain collectively through representatives of their own choosing.”50 The court said:

48. 249 S.W.2d 166 (Mo. 1952).
49. 284 S.W.2d 547 (Mo. 1955) (en banc).
Picketing to coerce employees to join a certain union and to designate that union as a bargaining agent is a violation of our state constitutional provisions. . . .\textsuperscript{51}

Referring to this provision, article I, section 29, and quoting from Judge Leedy's opinion in this case when before the court previously, the court said:

"The right of choice thus guaranteed employees means a free choice uncoerced by management, union, or any other group or organization, so that picketing with an objective in violation of that guaranty must be regarded as equally unlawful as where coercion to violate a statute is involved, as in the Giboney case."\textsuperscript{52}

In \textit{Bellerive Country Club v. McVey},\textsuperscript{53} decided the same day as the \textit{Tallman} case, the same interpretation was given to article I, section 29.

The court, speaking through Commissioner Coil, asserted, "peaceful picketing may be enjoined if one of its objectives or purposes is unlawful."\textsuperscript{54} Then the opinion continued:

'Organizational' or 'advertising' picketing usually, if not always, has the effect, to some extent, of tending to cause the employer, in order that he may avoid the hardship, loss, and inconvenience imposed upon him as the comparatively innocent middleman, to be tempted to persuade his nonunion employees to join a union. And where, as in the instant case, the evidence is such as to compel the inference that the picketing union knew or should have known that one effect of the picketing would, as it did, cause an increase in the cost of . . . operation . . . it reasonably may be said that in one sense one of the objectives or purposes of the picketing was to coerce the employer to violate the employees' constitutionally guaranteed right of free and uncoerced choice 'to organize and to bargain collectively through representatives of their own choosing' and thereby was an unlawful objective.\textsuperscript{55}

The court then went on to say that if the picketing was for an unlawful objective it was not protected as free speech, and since in this case there was:

"no reasonable 'objective' " disclosed "other than to accomplish

\textsuperscript{51} 284 S.W.2d at 552.
\textsuperscript{52} Ibid.
\textsuperscript{53} 284 S.W.2d 492 (Mo. 1955) (en banc).
\textsuperscript{54} Id. at 500.
\textsuperscript{55} Ibid.
the 'effect'...’ of ‘so adversely’ affecting ‘the club’s operation as to cause the employer to intervene and coerce its employees into union membership,... the conclusion that such was the real objective... is inescapable...”

While the court’s opinion, in a statement something less than entirely clear, purported to recognize a possible distinction between “effect” and “purpose” and to indicate that the latter may not always follow from the former, the ease with which the court translated the alleged effect of the picketing into the existence of an unlawful purpose, appears to leave little, if any, leeway for the existence of a real distinction when this court is applying the formula.

The court then held that the picketing, being for the unlawful objective of attempting to cause the plaintiff to coerce its employees to join the union, was illegal picketing and properly subject to being enjoined.

Two 1957 cases may even better serve to indicate the extent to which this constitutional guaranty may be given application, and the confusion that may result therefrom.

In the case of American Hotel Company v. Bartenders’ League,57 the trial court had refused to issue an injunction against peaceful organizational picketing of the Robidoux Hotel in St. Joseph which the company asserted to be in violation of this provision of the constitution, thus for an unlawful purpose, and for that reason properly subject to injunction.

The union had asked the president of the company if he would sign a closed shop agreement, and received a negative reply. A few days later a picket appeared with a placard reading, “'Members of Bartenders' Local 422 A.F.L. Are Not Employed In This Hotel.’”58

Picketing was suspended for several days and then renewed with a placard reading:

“We urge the bartenders employed by Robidoux Hotel to join us in our efforts to maintain union wages and working conditions. We are making no appeal to anyone but the bartenders working here, Local 422.”59

56. Id. at 501.
57. 297 S.W.2d 411 (Mo. 1957).
58. Id. at 413.
59. Ibid.
At the same time the union sent a lengthy letter to the hotel stating that it was interested only in persuading the employees to join the union, and since public opinion might be a factor if it indicated a preference for patronizing unionized establishments, it stated its purpose to advertise to the public that the employees at the hotel were non-union. It is to be noted that some construction work was under way about the hotel and the picketing was calculated to create some interference with the conduct of this work by refusals to cross picket lines. All picketing was entirely peaceful.

The court reasserted its interpretation of the constitutional provision to the effect that “the right of choice, as guaranteed to employees” thereby “means a free choice, uncoerced by management, union, or any other group or organization. . . .”60 It then asserted that picketing “to coerce employees to designate a certain union as a bargaining agent”61 and picketing though peaceful, to cause an employer to coerce his employees to join a union, are both violative of the constitutional guaranty, are thus for an unlawful purpose, and may be enjoined.

The court then held, notwithstanding the message on the placard carried by the picket, and notwithstanding the letter emphasizing the sole purpose to persuade the employees to join the union, that “the conclusion [is] inescapable that the . . . picketing . . . was for the purpose or had for its objective the coercion of plaintiff into coercing its employees to become members of Local No. 422.”62 Such a purpose, said the court, was violative of the constitutional guaranty of article I, section 29, was thus for an unlawful objective, and was properly subject to injunction.

It may at least be of passing interest to observe that such peaceful picketing would not have been regarded as having an unlawful objective, and for that reason subject to an injunction, prior to the insertion of article I, section 29 in the constitution.

In Caldwell v. Anderson63 peaceful picketing for a closed shop which stopped deliveries and seriously interfered with plaintiff's building-construction work, and where there was no labor dispute between the employer and his employees, was held by the Missouri supreme court to be

60. Id. at 414.
61. Ibid.
62. Id. at 415.
63. 212 S.W2d 784 (Mo. 1948).
legal picketing for a lawful labor objective and not subject to restraint by injunction.

To the same effect was the decision in *Gruet Motor Car Co. v. Briner*\(^6\) in 1950, recognizing peaceful organizational picketing as being for a lawful objective and not subject to restraint by injunction.

In *Missouri Cafeteria v. McVey*,\(^5\) picketing to secure recognition and the signing of a contract, carried on both at the customer entrance and at the delivery entrance, the latter stopping deliveries, was held not to be for an unlawful purpose and not subject to injunction. While these cases were decided after the 1945 constitution was adopted containing article I, section 29 here under consideration, no issue was raised under this provision and the decisions represented the law of Missouri as it existed prior to the new constitution.

Now, however, that provision, inserted at the behest of organized labor to protect the freedom of employees to organize and to bargain collectively, becomes the vehicle by means of which such peaceful organizational and recognition picketing is outlawed as being for an unlawful objective.

If these cases indicate that the guaranty so carefully placed in the Missouri constitution at the urging of Mr. Reuben Wood, then President of the State Federation of Labor, with the backing of organized labor, unexpectedly and surprisingly became a lethal weapon in the hands of unfriendly employers to destroy rights previously well recognized on behalf of labor, possibly the other side of the coin, so to speak, may present even more surprising developments. How far, if at all, may organized labor make use of its carefully won guaranty, either to achieve new gains or to protect rights previously thought secure?

Even more peculiar, perhaps, than the cases mentioned thus far, and certainly much more difficult to clarify or to understand, is the case of *Quinn v. Buchanan (Columbia Packing Co.)*\(^6\) decided the same day as the Robidoux Hotel case, in which employees and a labor union sought to find protection in the application of this constitutional guaranty of "the right to organize and to bargain collectively through representatives of their own choosing."\(^7\)

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\(^6\) 229 S.W.2d 259 (St. L. Ct. App. 1950).
\(^5\) 242 S.W.2d 549 (Mo. 1951) (en banc).
\(^4\) 298 S.W.2d 413 (Mo. 1957) (en banc).
\(^7\) Id. at 417.
The question of the self-executing character of this provision and the extent of its application without implementation by legislation became the vital issue in this case.

Three of the five driver-salesmen employed by the company joined Local 833 of the Teamsters and designated it as their bargaining representative. The company not only refused to deal with the union, but discharged the employees who had joined the union, and, by threats of discharge, caused another to withdraw his application for membership in the union.

The discharged employees and the officers of the union, alleging violation of the constitutional provision here under consideration, brought suit for preventive and mandatory injunctive relief and for actual and punitive damages (seeking to enjoin defendant from coercing employees into withdrawing authorization of Local 833 as bargaining agent; from interfering with employees' right to choose the union as bargaining representative; from refusing to recognize and bargain with Local 833; mandatory relief to order defendant to reinstate the discharged employees and to award them back pay, plus actual and punitive damages to the union).

The court asserted that this constitutional guaranty of the right of employees "to organize and to bargain collectively through representatives of their own choosing," like other provisions of the bill of rights, declares "rights that exist without any governmental grant, that may not be taken away by government and that government has the duty to protect," and that such provisions are self-executing to the extent that "any governmental action in violation of these declared rights is void. . . ."

However, the court pointed out that "the constitutional provision provides for no required affirmative duties concerning this right" (to organize and bargain collectively etc.), and that it "does not cast upon all employers a correlative obligation." Then said the court, "implementation of the right to require any affirmative duties of an employer concerning it is a matter for the Legislature."
The court did recognize that the employer had violated the rights of the employees under this constitutional provision, that for such wrong there should be a remedy, and held that in this action, which the court characterized as a class action, the plaintiffs were "entitled to preventive relief enjoining defendant from coercing his employees into withdrawing from the union... and... from otherwise interfering by coercion with these employees' rights to freely choose the union as their collective bargaining representative."\(^{74}\)

The court asserted, however, that "any cause of action these individual employees... personally may have... is not involved in this class action. Thus a cause of action for damages sustained by them personally"\(^{75}\) for their wrongful discharge "would belong to them individually and could only be determined in an action brought by them for that purpose."\(^{76}\)

It was then suggested by the court that the employees appeared to have been working under a hiring at will, in connection with which "'no action can be maintained for wrongful discharge.'"\(^{77}\)

The court went further to emphasize that the constitutional provision does not constitute a labor relations law, and since no affirmative obligations are imposed on the employer, the requested mandatory relief by way of reinstatement of the wrongfully discharged employees with pay for time lost could not be granted, nor could they secure an order for the employer "to recognize and bargain with the union."\(^{78}\) A denial of the union's request for actual and punitive damages was also included.

Finally, in its per curiam statement denying a motion for rehearing or to modify, the court asserted that the constitutional provision "does not purport to require collective bargaining by either employees or employers. The right it gives to employees is the right to organize for the purpose of collective bargaining through representatives of their own choosing." (Emphasis added.)\(^{79}\)

This may seem to have the effect of changing the wording of the constitutional provision in its application. The constitution says, "employees

\(^{74}\) Ibid.
\(^{75}\) Id. at 418.
\(^{76}\) Ibid.
\(^{77}\) Ibid.
\(^{78}\) Id. at 419.
\(^{79}\) Id. at 420.
shall have the right to organize and to bargain collectively through representa-
tives of their own choosing." (Emphasis added.) The court says only that they have "the right to organize for the purpose of collective bargaining through representatives of their own choosing." Thus it may seem to be restricting the right to the matter of organizing and selecting a representative, with no indication of any protection for the second right which the constitution purports to give, namely, the right to bargain, which was certainly effectively destroyed by the employer in this case.

The result of the case seems to be that for an admitted flagrant violation of the constitutional rights of the employees, the employer is subject only to the wholly ineffective remedy of preventive restraint against what is already an accomplished fact, and for which the court seems to imply there may be no remedy.

It is not surprising, therefore, that this case, which involved rather small monetary considerations and a small group of employees with limited financial means, was never processed further after this decision by the Missouri supreme court.

Thus, the net result of the cases so far arising under this provision of our state constitution presents us with the peculiar circumstance of a constitutional provision sponsored by organized labor and calculated and intended to protect what was regarded as a recognized fundamental right in the constitutional convention, being applied at the behest of employers as the basis for enjoining and restraining peaceful organizational and recognition picketing, which had been permitted before this guaranty became a part of our constitution, while by a queer quirk of fate, due to the fact that the employer's acts of discharge because of union activity usually are effectuated before the injunctive process can be applied, the clear and intentional violation by the employer of those rights which the constitutional provision was intended to protect evokes no effective remedy for the employees for whose benefit the provision was expressly intended.

With all of its confusion, this case may appear to be an intended last word by the supreme court on the interpretation of this constitutional provision, as the court, a few days ago, in Swift & Co. and Missouri

81. 298 S.W.2d at 420.
Pacific R.R. v. Local 88, Amalgamated Meat Cutters, AFL-CIO,82 declined to exercise jurisdiction over a case involving application of this constitutional provision, saying the court had repeatedly interpreted the provision, and sent the case to the St. Louis court of appeals for determination.83

It is submitted that these few cases present at least two matters of more than ordinary significance for the future of labor-management relations in Missouri.

In the first place, we seem to have returned to a situation in which the matter of what constitutes a lawful or unlawful labor objective, consistent or inconsistent with the public policy of the state, so as to determine whether peaceful picketing properly may or may not be subjected to the injunctive process, may turn upon the point of view and the approach of the individual judge writing the opinion—a type of situation, the abuse of which by the federal courts, was largely responsible for the passage of the Norris-LaGuardia Anti-Injunction Act in 1932. Related to, if not a part of, this situation is the almost total disappearance from the cases of any effective recognition of the doctrine of freedom of speech and freedom of the press in relation to the picketing process.

In the second place, and of even greater significance, though not unrelated to the first, is the spectacle of a constitutional provision, written into our fundamental law at the behest of organized labor, through the efforts of its representative in the constitutional convention, for the avowed purpose of protecting against any possible future invasion of basic rights of labor, which all members of the convention participating in the discussions freely recognized,84 being applied by our courts, at the

82. 311 S.W.2d 15 (Mo. 1958).
83. A case now pending on appeal to the Supreme Court of Missouri may provide opportunity for further consideration of this constitutional provision. Recently, in the case of Jones (Model Bakery) v. Trotter the Circuit Court of Boone County refused to make permanent a temporary injunction restraining organizational picketing, where apparently demand for a contract also was involved.
84. Mr. William R. Clark, in 1956, as an advanced labor law student in the course in Problems In Labor Relations and the Law at the University of Missouri School of Law, wrote a research paper entitled "Sword, Shield or Machicolation." This paper was based on an exhaustive study of the proceedings of the Missouri constitutional convention which resulted in the adoption of article I, section 29, of the 1945 constitution of Missouri here being considered. The statements made above relative to the purposes of this provision and the intention of its sponsors are amply justified by the results of Mr. Clark's research.

An abbreviated version of Mr. Clark's research paper appears immediately following this Article.
behest of employers, to destroy those rights which our state supreme
court had recognized and protected before that guaranty became a part of
our fundamental law, and, cruelest fate of all, perhaps, from the stand-
point of labor, it is being so applied in the name of protecting employees
from interference by the employer. And, as if this were not miscarriage
enough, in the minds of labor, when consideration is given to the purpose
of the constitutional provision and the intention of its sponsors, the
attempt of labor to find protection in its newly won guaranty against
actual employer interference with its "right to organize and to bargain
collectively through representatives of [its] . . . own choosing,"\textsuperscript{85}
under the circumstances of the case in which it sought relief, failed completely
to produce any effective remedy.

In the light of this situation, it is to be hoped that the pending \textit{Model
Bakery}\textsuperscript{86} case noted above may provide the opportunity for the court
to take a second reassuring look at this constitutional provision.

\textsuperscript{85} \textit{Mo. Const. art. I, § 29 (1945)}.
\textsuperscript{86} \textit{Supra note 83}.