Volume 56 | Issue 1 Article 10

February 1954

Labor Law--Collective Bargaining--Rent on Company-Owned Houses

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The restrictions against picketing the ultimate consumer and picketing the retailer in order to encourage the public to withdraw totally its patronage from him seem reasonable. The policy behind them is the same declared by the Texas court in the *Ritter's Cafe* case, *supra, viz.,* that the picketing should be confined to those industrially related to the primary employer and unmistakably show that the dispute is with the latter. The public interest in the free flow of commerce is at stake. It will be remembered that a prime requirement in the ambulatory employer picketing cases is also that the placards show with whom the real dispute is.

In summary, the criterion is not so much *can* the secondary employer do something which will influence the primary employer favorably for the union, as *will* the court allow picketing to occur before the secondary employer's premises when he is relatively remote from the dispute, although not a neutral of purest ray. Perhaps in the principal case picketing of the service station which dealt only briefly and occasionally with the primary employer should not have been tolerated while the men working on the sign were absent. Two recent cases are indicative of a trend to forbid product picketing altogether. *Way Baking Co. v. Teamsters & Truck Drivers Local No. 164,* 335 Mich. 478, 56 N.W.2d 357 (1953); *Capital Service v. NLRB,* 204 F.2d 848 (1953).

R. L. D.

LABOR LAW — COLLECTIVE BARGAINING — RENT ON COMPANY-OWNED HOUSES.—Employer announced a rent increase on all of its dwellings leased to employees. Employees protested this unilateral action, deeming it to be a "pay cut", and stated that the matter of house rent must be taken up with the union as a mandatory subject of collective bargaining. The NLRB in *Lehigh Portland Cement Co.,* 101 NLRB No. 110 (Nov. 24, 1952), upheld employees' contention. [Apparently, in *Bemis Bro. Bag Co.,* 96 NLRB 728 (1951), the Board opined rent to be *ipso facto* a mandatory subject of collective bargaining.] *Held,* on review, that the employer must bargain collectively on the proposed rent increase by virtue of §§ 8 (d), 9 (a) of the National Labor Relations Act, 49 STAT. 449 (1935), 29 U.S.C. § 151 (1946), as amended by Labor Management Relations Act 1947, 61 STAT. 136 (1947), 29

U.S.C. § 141 (Supp. 1951). *NLRB v. Lehigh Portland Cement Co.*, 205 F.2d 821 (4th Cir. 1953); *accord, NLRB v. Hart Cotton Mills,* 190 F.2d 964 (4th Cir. 1951). *But cf. NLRB v. Bemis Bro. Bag Co.,* 206 F.2d 33 (5th Cir. 1953).

The facts of the *Lehigh* and *Bemis* cases distinguish the decisions. The conclusions of law in both instances were based solely upon the answers to these inquiries: (1) Is rent on the dwellings below the prevailing rates on comparable housing in the area? (2) Is there a shortage of housing facilities in the community? The *Lehigh* case, which held the subject to be one for mandatory collective bargaining, had affirmative answers to both questions; in the *Bemis* case both were answered negatively. It was said in the latter case that the holding would have been different had a housing shortage and low-rental rate on the company-owned houses been found. The consequences to the employees of affirmative findings to the above two queries were stated by each court to be within the meaning of "wages" (as to question 1) and "conditions of employment" (as to question 2) as used in the statute.

The Act states that the employer must bargain collectively with his employees with respect to "rates of pay, wages, hours of employment, and other conditions of employment." The Act, however, does not define the terms.

When the original act was enacted management contended that Congress did not intend to expand the area of collective bargaining beyond those matters which were historically the subjects of collective bargaining. The courts have rejected this contention on the basis that the legislative intent was to provide for collective bargaining on the increasing problems arising from the employer-employee relationship. *W. W. Cross & Co. v. NLRB,* 174 F.2d 875 (1st Cir. 1949); see *Inland Steel Co. v. NLRB,* 170 F.2d 247 (7th Cir. 1949), *cert. denied,* 336 U.S. 960 (1949); *Weems v. United States,* 217 U.S. 349, 373 (1909).

The courts have avoided giving broad definitions of the terms "wages" and "conditions of employment," merely deciding that a matter is within or beyond the legislative intent. Note, 50 COL. L. REV. 351 (1950). However, the court in *W. W. Cross v. NLRB, supra* at 878, though expressly stating that it did not attempt to mark the outer boundaries of its meaning, said that the term "wages" embraced within its meaning direct and immediate economic benefits flowing from the employment relationship. The

view of the NLRB that "wages" include "emoluments of value . . . which may accrue to employees out of their employment relationship" was thus adopted. *See Inland Steel Co. v. NLRB, supra* at 251. In unrelated fields the term "wages" has been defined similarly, as in § 2 of the Longshoremen's and Harbor Workers' Compensation Act, 44 STAT. 1424 (1927), 33 U.S.C. § 901 (1946), it is stated to include "reasonable value of board, rent, housing, lodging, or similar advantages received from the employer." Thus, "left-overs" customarily eaten by the employees was said to be within this definition. *Harris v. Lambros,* 56 F.2d 488 (D.C. Cir. 1932). In the Social Security Act, 49 STAT. 642 (1935), 42 U.S.C. § 1011 (1946), taxable "wages" embrace "all remuneration."

Among the matters held to be within the scope of "wages" and "conditions of employment" by the appellate courts and the NLRB are: group health and insurance plans (insurance "at a much less cost that such could be obtained through contracts of insurance negotiated individually"), *W. W. Cross & Co. v. NLRB,* 174 F.2d 875 (1st Cir. 1949); prices of meals furnished by employer at logging camp where employees had no public or employer-furnished means of transportation to public eating facilities, *Weyerhaeuser Timber Co.,* 87 NLRB 672 (1949); individual merit increases, *NLRB v. J. H. Allison & Co.,* 165 F.2d 766 (6th Cir. 1948); pension and retirement plans, *Inland Steel Co. v. NLRB,* 170 F.2d 247 (7th Cir. 1948). In each of the above instances the program was instituted unilaterally by the company and collective bargaining was held compulsory with respect to some modification thereof which management or the union proposed.

It was the court's view in both the *Bemis* and *Lehigh* cases that where rent on company-owned houses had been uniformly low it is a partial compensation, an emolument of value and thus within the meaning of "wages." Also, the courts took the position that if adequate private housing is not available in the plant community and because of this circumstance the employee must rent a company house then the terms and conditions of occupancy can well be said to be a "condition of employment."

It is questionable whether the principal cases have extended the outer bounds of matters held to be within the scope of mandatory collective bargaining. Does rent of company-owned houses show less clearly a pertinency to be employment relationship than pension and retirement plans and group health and insurance

plans which have represented the extremity of issues concerning which management must bargain? It does involve an additional relationship between an employer and his employees, namely, landlord-tenant.

Though it may be said that this subject stands on the extremity of mandatory fringe issues to be bargained, have not the two courts been unduly restrictive in saying that only when rentals have been lower than the community average do such become a matter to be bargained within the meaning of "wages?" Is this a fair test; rather, does it not discriminate against the employer who has unilaterally granted a "value" to his employees—as in the *Lehigh* case, a lower than average rent over a period of years? And does it not mean that once an employer grants an "emolument of value" to his employees, henceforth any proposed variation thereof becomes a subject to be bargained; whereas, the employees are denied the benefits of compulsory collective bargaining to secure an "emolument."

Hours of work are not to be bargained only when management proposes an increase nor rates of pay only when about to be decreased. They are also to be bargained when the employees seek to modify them so as to increase their benefits. By the same token should it not be mandatory that management bargain collectively with its employees when the latter propose to make rentals on company-owned houses an emolument of value by a decrease in rent payments? Should it not likewise be mandatory that the employer bargain when the employees propose to inaugurate a "wage" as when the employer grants a wage and then seeks to vary it? If this reasoning be adopted, then the matters about which management must bargain will be greatly expanded, for example, prices of goods sold in company-owned stores.

C. R. M.

LEGISLATION—SEPARABILITY CLAUSES IN STATUTES—CUMULATIVE UNCONSTITUTIONAL ITEMS IN APPROPRIATIONS ACTS.—In an original proceeding in mandamus brought by the state board of school finance to require the state auditor to honor a requisition pertaining to state aid for schools, the auditor's answer challenged the constitutionality of the budget act as passed by the legislature during the regular session of 1953. The Supreme Court of Appeals