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Article 18

Labor Dispute--Civil Practice Act § 876a--Injunction (Opera on Tour v. Joseph N. Weber, et al., 285 N.Y. 348 (1941))

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When this question finally arises before the Court of Appeals, it is submitted that the court should follow the ruling and theory of the *Schnakenberg* case.

J. E. M.

LABOR DISPUTE—CIVIL PRACTICE ACT § 876A—INJUNCTION.—The plaintiff, a travelling opera company, uses recorded music to accompany its artists and is seeking to enjoin the defendants from interfering with the business. The defendant union, known as the Musicians' Union, in an attempt to have the recorded music replaced by musicians, has induced the Stagehands' Union to call a strike of its members who are employed by the plaintiff. Since the strike was called the plaintiff's business has not been functioning. The plaintiff contends that the agreement between the two unions is an unlawful interference and that if it is forced to employ musicians it will be compelled to close. There is no other grievance existing between the parties. The defendant contends that the strike arose out of a "labor dispute" and that the immunity granted under § 876-a of the Civil Practice Act[1] prevents the court from issuing the injunction. The trial court issued the injunction on the ground that there was no "labor dispute" as defined by the section in question. This was reversed by the Appellate Division. *Held,* Appellate Division reversed and trial court affirmed. The strike did not have a lawful labor objective and the parties in the case are not involved in a "labor dispute"[2] so as to restrict the court from issuing the injunction. *Opera on Tour* v. *Joseph N. Weber, et al.,* 285 N. Y. 348, 34 N. E. (2d) 349 (1941).

The courts do not deny that employees and their representatives have the right to strike,[3] but like every concerted action this right is subject to control and must be to effect some lawful purpose by lawful means * * *.[4] The mere use of a legal method such as a

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[1] N. Y. CIV. PRAC. ACT § 876-a(2). "No court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined," except in accordance with the eleven categories listed in the Act.

[2] N. Y. CIV. PRAC. ACT § 876-a(10-a). "When used in this section, and for purposes of this section: (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation or who are employees of one employer; or who are members of the same or affiliated organization of employees or employers; whether such dispute is between one or more employers or associations of employers and one or more employees or associations of employees; * * *."

[3] May's Furs and Ready to Wear v. Bauer, 282 N. Y. 331, 26 N. E. (2d) 280 (1940).

[4] Exchange Bakery v. Rifkin, 245 N. Y. 260, 157 N. E. 130 (1927).

strike does not make an illegal objective legal.[5] To make impossible the continuance of a business and thus to prevent the employment of a full complement of actors, singers and stagehands merely because a machine is not discarded and in place thereof live musicians employed is not a lawful objective since it has no reasonable connection with wages, hours of employment or protection from labor abuses. The claim of the defendant that from the economic standpoint the use of machines was undesirable because it prevented men from working, has not met with much favor in other jurisdictions. A request to remove machinery which when installed decreased the employment in the making of barrels was held unlawful.[6] The court refused to allow a union to coerce the owner of a motion picture theatre into replacing a hand organ by a five-piece orchestra.[7]

When a case shall be held to grow out of a "labor dispute" [8] and what constitutes a "labor dispute"[9] have been defined in Section 876-a of the Civil Practice Act. In interpreting this section the courts have held an employer-employee relationship to be essential for its application [10] although the employees of the company need not be members of the striking union and their working conditions are satisfactory.[11] Since in the case at Bar there was no employer-employee relationship between any live musicians and the plaintiff an essential prerequisite for the application of Section 876-a of the Civil Practice Act is lacking.

L. S.

LABOR LAW—DEMAND THAT MUSICAL ARTISTS BECOME MEMBERS OF MUSICIANS' UNION.—The plaintiffs are a group of instrumental artists and symphony orchestra conductors who have formed a membership corporation known as the American Guild of Musical Artists, Inc. They are a professional class who are outstanding in the field of opera and concert and are individual contractors who have agents to obtain their engagements. The defendant, the American Federation of Musicians, is an organization of musicians who form parts of bands and orchestras and who are paid pursuant to collective

[5] Dorchy v. Kansas, 272 U. S. 306, 47 Sup. Ct. 86 (1926).
[6] Hopkins v. Oxley Stav Co., 83 Fed. 912 (1897).
[7] Haverhill v. Gillen, 229 Mass. 413, 118 N. E. 671 (1918).
[8] See note 2, *supra.*
[9] N. Y. CIV. PRAC. ACT § 876-a(10-b). "The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, or changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee."
[10] Baillis, *et al.* v. Fuchs, 283 N. Y. 133, 27 N. E. (2d) 812 (1940).
[11] See note 3, *supra.*