St. John's Law Review

Volume 16
Number 1 *Volume 16, November 1941, Number 1*

Article 19

Labor Law--Demand that Musical Artists Become Members of Musicians' Union (American Guild of Musical Artists, Inc. v. James C. Petrillo, individually and as president of American Federation of Musicians, 286 N.Y. 226 (1941))

St. John's Law Review

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.*

bargaining agreements. In August, 1940, the defendants made a request of the plaintiffs that their membership resign and join with the defendant union. It was in this request that the defendants stated that in the past it had been the policy of the union, and rightfully so, not to interfere with the instrumental artists since they were capable of caring for themselves. However, since the latter have seen fit to join a labor union, to wit, the Guild, then rightfully they should join the defendant union. Should the plaintiffs refuse, then the defendants would not permit their members to fulfill any of their professional engagements where the plaintiffs should perform. The plaintiffs seek an injunction restraining the conduct of the defendants and also damages alleged to have been caused. On a motion by the defendants for a judgment on the pleadings, *held,* complaint sufficiently sets forth a cause of action. *American Guild of Musical Artists, Inc.* v. *James C. Petrillo, individually and as president of American Federation of Musicians,* 286 N. Y. 226, 36 N. E. (2d) 123 (1941).

In the absence of a statute or a constitutional provision, injunctive relief is the only remedy to restrain unjustifiable interference and irreparable injury of one's business.[1] The Norris-LaGuardia Act[2] has served as a model in many states for the enactment of a statute limiting the power of the courts to grant such injunctive relief in labor disputes. One such statute was enacted in New York[3] and it defines what constitutes a labor dispute. Ever since the enactment of this statute judicial opinion has not been harmonious as to whether in certain cases a "labor dispute" does exist.[4] The primary question in this case was whether such a dispute is in existence. In reversing the Appellate Division[5] which had reversed the Special Term,[6] the

[1] Buyer v. Guilian, 271 Fed. 65 (1921); Stuyvesant Lunch v. Reiner, 192 App. Div. 951, 182 N. Y. Supp. 953 (1st Dep't 1920).

[2] Act of March 23, 1932, c. 90, 47 STAT. AT LARGE 70, 29 U. S. C. A. §§ 101–15.

[3] N. Y. CIV. PRAC. ACT § 876-a. "INJUNCTIONS ISSUED IN LABOR DISPUTES. 1. 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 * * *." "10. c—"* * * The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons negotiating * * *, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in relation of employer and employee." See also (1938) 13 ST. JOHN'S L. REV. 174, 201; (1940) 14 ST. JOHN'S L. REV. 387, 392; (1940) 15 ST. JOHN'S L. REV. 81, 110, 111.

[4] May's Furs and Ready to Wear, Inc. v. Bauer, 282 N. Y. 331, 26 N. E. (2d) 279 (1940); Goldfinger v. Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910 (1937); New York Lumber v. Lacey, 245 App. Div. 262, 281 N. Y. Supp. 647 (2d Dep't 1935), *aff'd,* 269 N. Y. 595, 199 N. E. 688 (1936); Wilson v. Pearse, 264 N. Y. 521, 191 N. E. 545 (1933); see (1940) 15 ST. JOHN'S L. REV. 83, 111. *Contra:* see note 7, *infra.*

[5] American Guild v. American Federation of Musicians, 261 App. Div. 272, 24 N. Y. Supp. 854 (1st Dep't 1941).

[6] American Guild v. American Federation of Musicians, 23 N. Y. S. (2d) 947 (Sup. Ct. Spec. T. 1940).

court stated that there is no sign on the face of the complaint that the purpose of the defendant union is a labor objective which reasonably connects itself with the conditions of employment. The court in a 4 to 2 decision seems to have based its conclusion upon the statement in the demand to the plaintiffs, that the reason why the union never interfered with the artists was because they felt "that they were in a position to take care of themselves and were not in competition with the members of the American Federation of Musicians." The majority of the court construed this to mean that the present controversy between the litigants has no relationship to standards of wages or conditions of employment and does not therefore constitute a labor dispute.[7] Chief Judge Lehman and Judge Desmond in separate dissenting opinions felt that this controversy does constitute a labor dispute within the purview of the statute [8] and that therefore an injunction should not be granted.

J. A. S.

MORTGAGE FORECLOSURE—STATUTE RESTRICTING RIGHT TO DEFICIENCY JUDGMENT NOT UNCONSTITUTIONAL.—Deceased executed a mortgage to respondent bank in 1932. Under the statute in force at that time, if the mortgagor defaulted and the sale of the property did not realize enough to satisfy the mortgage debt, the mortgagee was entitled to a deficiency judgment measured by the difference between the sale price and the amount of the debt.[1] In an action brought to foreclose the mortgage a judgment of foreclosure and sale was entered for $18,401.25 in November, 1938, and the property was purchased by the bank's nominee for $4,000 in December, 1938. A deficiency computed at $16,162.12, remained outstanding. Under Section 1083 of the New York Civil Practice Act, in force at the

[7] Stolper v. Straughn, 175 Misc. 87, 23 N. Y. S. (2d) 604 (1940). A "labor dispute" within the purview of the above section [see note 3, *supra*] is not involved where it appears that the defendant which is picketing plaintiff's business is not a labor union or a labor organization of any kind; that it is not a member of any single trade or class of trades; that its demands are unconnected with any specific industry and that the picketing sought to be enjoined is unrelated to any questions of wages, hours of labor, unionization or betterment of working conditions; Opera on Tour, Inc. v. Weber, as president of American Federation of Musicians, *et al.*, 285 N. Y. 348, 34 N. E. (2d) 349 (1941), p. 240, *supra*. An injunction was granted when members of the musicians' union refused to cease intimidating employees of an opera company in order to have them discontinue the use of recorded music. The court stated that the union's interest did not grow out of or have some relationship to employment.

[8] See note 3, *supra*.

[1] N. Y. CIV. PRAC. ACT § 1083 before it was amended in 1938. The moratory deficiency judgment act ceased to be effective on July 1st, 1932. The mortgage in the instant case was executed the following December.