St. John's Law Review

Volume 12
Number 2 *Volume 12, April 1938, Number 2*

Article 19

Injunction--Labor Union--Picketing--Section 876-a of the Civil Practice Act (Goldfinger v. Feintuch, 276 N.Y. 281 (1937))

St. John's Law Review

to the trustees was illusory and thus ineffective to prevent the rights from accruing under the recently enacted statute.[10]

L. I.

INJUNCTION—LABOR UNION—PICKETING—SECTION 876-a OF THE CIVIL PRACTICE ACT.—W. and I. Blumenthal employed non-union labor in manufacturing meat products which they sold to retailers under the name "Ukor". In an effort to induce the manufacturers to hire union workmen, the defendant Butcher Union Local 174 picketed the shops of those retailers, among them the plaintiff, who dealt in this non-union product. The pickets bore placards making public the nature of the dispute and requesting customers to buy union-made delicatessen only. The plaintiff was denied an injunction at Special Term on the ground that a situation governed by Section 876-a of the Civil Practice Act, which prohibits issuance of preliminary injunctions in labor disputes, was involved. The Appellate Division reversed both on the law and the facts. On appeal to the Court of Appeals, *held,* injunction denied.[1] Picketing may be carried on in a proper and peaceful manner, not only against the manufacturer but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit. *Goldfinger* v. *Feintuch,* 276 N. Y. 281, 11 N. E. (2d) 910 (1937).

Picketing is not violative of either the Federal[2] or the New York State[3] Constitutions. Although it is illegal to use violence and intimidation incidentally to picketing,[4] any injury resulting from peaceful picketing in conjunction with a labor dispute is *damnum absque injuria.*[5] The use of temporary injunctions against picketing had become such a formidable employers' weapon to combat unions that Section 876-a of the Civil Practice Act was enacted to eliminate

---

[10] N. Y. DEC. EST. LAW § 18.

[1] The Court of Appeals and Special Term were in disagreement concerning the reliability of evidence offered by the plaintiff in proof of illegal coercive conduct by the defendant for which an injunction might be issued lawfully.

[2] No one "has a constitutional right to a remedy against the lawful acts of another." Senn v. Tile Layers' Protective Union, 301 U. S. 468, 57 Sup. Ct. 857 (1936); Levering and Garrigues Co. v. Morrin, 71 F. (2d) 284 (1934).

[3] J. H. & S. Thea., Inc. v. Fay, 260 N. Y. 315, 183 N. E. 509 (1932); Aberdeen Restaurant Corp. v. Gottfried, 158 Misc. 785, 285 N. Y. Supp. 832 (1935); (1937) 35 MICH. L. REV. 1320.

[4] Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921); Stuhmer and Co. v. Korman, 265 N. Y. 481, 192 N. E. 281 (1934); Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1931); Auburn Draying Co. v. Wardell, 227 N Y. 1, 124 N. E. 87 (1919); Remington Rand, 248 App. Div. 356, 289 N. Y. Supp 1025 (4th Dept. 1932).

[5] Exchange Bakery and Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130 (1927).

this abuse.[6] Only by disregarding the express provisions of the section, can the law be limited in its application to cases where the parties to the dispute are employer and employee.[7] Such construction would defeat, to some extent, the purpose of the law.

A retailer may be a proper party to a labor dispute between a manufacturer and union where the parties involved are engaged in the same industry and have the same business interests.[8] In the instant case, the presence of this relationship prevented the facts from establishing the existence of a secondary illegal boycott.[9] It is unlawful to persuade the public to withdraw patronage from a business of one who is not a party to a labor quarrel in order to force him to take sides,[10] yet, where a manufacturer undersells his competitors and thereby puts the retailer in an advantageous position, the retailer is in *unity of interest* and the union may picket him.[11] Although a business may be small and require no employees for its operation, this factor does not immunize the proprietor from becoming involved in a labor dispute.[12] If workmen are employed who strike or picket because of the selling of non-union products by the retailer, such an occurrence constitutes a labor dispute.[13]

The phrase "unity of interest," as used by the court and nowhere appearing in Section 876-a of the Civil Practice Act, indicates a relation sufficient to make one a party to a labor dispute.[14] However, in order for the parties to have "unity of interest," it would seem to be necessary that they be engaged in some branch of the same industry.[15]

M. M.

---

[6] "What Is a Labor Dispute" N. Y. L. J., Jan. 11, 1938, vol. 99, no. 8, p. 4; (1937) 46 YALE L. J. 1064).

[7] N. Y. CIV. PRAC. ACT § 876-a, which defines labor disputes as "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, 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.*" (Italics ours.)

[8] See N. Y. Lumber Trade Ass'n v. Lacy, 269 N. Y. 595, 199 N. E. 688 (1935); Willson and Adams Co. v. Pearce, 264 N. Y. 521, 191 N. E. 545 (1934); Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917).

[9] Instant case at 291, Rippey, J. (concurring in part).

[10] American Gas Station v. Doe, 250 App. Div. 227, 293 N. Y. Supp. 1019 (2d Dept. 1937).

[11] Hydrox Ice Cream Co., Inc. v. Doe, 250 App. Div. 770, 296 N. Y. Supp. 5 (2d Dept. 1937).

[12] Thompson v. Boekhout, 273 N. Y. 342, 117 N. E. 582 (1917).

[13] Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917).

[14] "What Is a Labor Dispute" N. Y. L. J., Jan. 10, 1938, vol. 99, no. 7, p. 4.

[15] See American Gas Station v Doe, 250 App. Div. 227, 293 N. Y. Supp. 1019 (2d Dept. 1937); *cf.* Rand Tea and Coffee Stores, Inc. v. Manganero, N. Y. L. J., Jan. 5, 1938, p. 5, col. 4.