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Labor Law - State Court and Reinstatement - Cooper v. Nutley Printing Co., 36 N.J. 189, 175 A.2d 639 (1961)

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Until the time when such a Uniform Act can be put into the legislative enactments of all the states,[32] we will have to be satisfied with the time consuming process of having the Supreme Court[33] determine the situs of the specific property in question as well as the merits of the individual claims presented.

[32] To see just how far a state has gone in attempting to escheat funds, see State v. Sperry & Hutchinson Co., 56 N.J. Super. 589, 153 A.2d 691 (1959). This involved the State of New Jersey seeking to escheat *estimated* dollar amounts of unredeemed S&H trading stamps.

[33] Mr. Justice Stewart dissented in the Western Union case, stating that only New York, the state of the Company's domicile, could escheat the funds in question. It would seem that the better view, however, according to the Uniform Act, would be to have the funds escheat to the state of the last known residence of the owner of such property.

LABOR LAW–STATE COURT AND REINSTATEMENT

Plaintiffs Cooper, Ritter and Williams were discharged from their employment with the defendant, Nutley Sun Printing Company, allegedly because of their membership in Local 103 of the Typographical Union, also a plaintiff to this action. The remaining six plaintiffs, also employees of defendant, were ordered to have nothing to do with Local 103 and to refrain from joining it. One of the plaintiff employees was threatened with bodily harm if he engaged in any union strike against defendant. In response to these threats, plaintiffs declared a strike and began to picket defendant's place of business. A complaint was filed with the National Labor Relations Board alleging that defendant was guilty of unfair labor practices. The Board declined to assert jurisdiction over the case because the effect of defendant's business on interstate commerce was not sufficient enough to warrant the Board's intervention.[1] Plaintiffs then

1) Non retail enterprises: $50,000 outflow or inflow directly or indirectly in interstate commerce.
2) Office Buildings: Gross revenue of $100,000 of which $25,000 or more is derived from organizations that meet any of the standards.
3) Retail Concerns: $500,000 gross volume of business.
4) Instrumentalities, links and channels of interstate commerce: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce.
5) Public Utilities: $250,000 gross volume, or meet non-rail standards.
6) Transit systems: $250,000 gross volume except taxicabs, as to which the retail tests shall apply.

[1] The NLRB ruled that the amount of business conducted by Nutley Sun Printing Company did not come within the standards which the Board had established as of 1958. Any case which did meet the financial standards was outside the jurisdiction of the NLRB. The standards of the Board as reported in NLRB, 23d Ann. Rep. 8 (1958) are as follows:

brought this action in the Superior Court, Chancery Division of New Jersey, alleging that defendant had violated their rights of organization and collective bargaining through representatives of their own choosing as guaranteed by the New Jersey Constitution.[2] The employees prayed for reinstatement to their jobs with full back pay and seniority rights. The lower court ruled that it had no jurisdiction to grant the relief and gave judgment for defendant. On appeal, the Supreme Court of New Jersey reversed the decision and remanded the case for trial.[3]

New Jersey had no statute authorizing the remedy of reinstatement, nor did any statute create a state labor board to hear cases involving labor disputes. The reasoning of the Court was to the effect that the constitutional provision guaranteeing the rights of organization and collective bargaining was self implementing, and thus no additional legislation was needed to provide a basis for the remedy of reinstatement. The Court felt that if the conduct of defendant amounted to a denial of plaintiff's constitutional rights, then the inherent equitable powers of the Court could be called upon to provide any relief necessary to remedy the wrong. *Cooper v. Nutley Sun Printing Co.*, 36 N.J. 189, 175 A.2d 639 (1961).

To fully understand the significance of this decision, it is necessary to note the traditional common law and recent statutory remedies available to an employee who had been wrongfully discharged by his employer. At common law, an employer could discharge an employee for any reason, and the only remedy available to the employee was an action for damages for breach of contract if there was a contract of employment

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7) Newspapers and communication systems: $100,000 gross volume for radio, television, telegraph and telephone; $200,000 gross volume for newspapers.
8) National defense: Substantial impact on national defense.
9) Business in the Territories and District of Columbia: Above standards apply in Territories; all businesses in District of Columbia are subject to jurisdiction regardless of interstate volume.
10) Associations: Regarded as a single employer.

Direct outflow refers to goods shipped or services furnished by the employer outside the state. Indirect outflow includes sales within the State to users meeting any standard except solely an indirect inflow or indirect outflow standard. Direct inflow refers to goods or services furnished directly to the employer from outside the State in which the employer is located.

Indirect inflow refers to the purchase of goods or services which originated outside the employer's State but which he purchased from a seller within the State. Direct and indirect outflow may be combined, and direct and indirect inflow may also be combined to meet the $50,000 requirement. However outflow and inflow may not be combined.

[2] N. J. CONST., art. I, § 19.

[3] The lower court simply held that it had no jurisdiction to grant the requested relief and made no determination of the facts. The Supreme Court remanded the case for trial and ruled that the lower court could order reinstatement if it found that, upon the facts, plaintiffs were entitled to the relief.

which was not terminable at will.[4] Reinstatement as a remedy for a wrongfully discharged employee found its origin in the National Labor Relations Act. The Act established that discharge for union activities was an unfair labor practice,[5] and it further provided that an employee who had been discharged for his union membership could be reinstated to his job by order of the Board.[6]

The constitutionality of the National Labor Relations Act and the remedy of reinstatement was established by the United States Supreme Court in *NLRB v. Jones & Laughlin Steel Corp.*[7] In that case, an affiliate of the Iron, Steel and Tin Workers Union alleged that Jones and Laughlin Steel had committed unfair labor practices by discharging several of their employees because of their affiliation with the plaintiff union. The National Labor Relations Board ordered that the discharged employees be reinstated to their jobs with full back pay. Jones and Laughlin contended, on appeal, that the order of the Board amounted to a money judgment and contravened the Seventh Amendment of the United States Constitution which provides: "In Suit, at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ."[8] The Supreme Court ruled that the Seventh Amendment did not apply, and a jury trial was not necessary because a suit for reinstatement was unknown at common law, it was purely a statutory remedy and thus the contention under the Seventh Amendment was without merit.

Thus the Supreme Court established that the remedy of reinstatement is purely one of statutory origin. A natural corollary of this decision is that 1) without a statute which provides the remedy of reinstatement for wrongful discharge, and 2) without a statute specifying that discharge for union activities is wrongful, the courts must apply the traditional common law remedies. The employee could not seek reinstatement, for there was no such remedy at common law.

Legislation at the state level on the subject of labor relations and the remedy of reinstatement was slow to develop due to the decision of the United States Supreme Court in *Guss v. Utah Labor Relations Board.*[9] In that case a union filed charges with the NLRB accusing an employer of unfair labor practices. The Board refused to take jurisdiction because

[4] Christy v. Petrus, 295 S.W.2d 122, 365 Mo. 1187 (1956); Schlenk v. Lehigh Valley R.R. 62 A.2d 380, 1 N.J. 131 (1948); Harper v. Southern Coal & Coke Co., 73 F.2d 792 (5th Cir. 1934); Hanger v. Fitzsimmons, 273 Fed. 348 (1921); Warden v. Hinds, 163 Fed. 201 (1908); Boyer v. Western Union Tel. Co., 124 Fed. 246 (1903).

[5] 29 U.S.C. § 158 (a) (3) (1958).

[6] 29 U.S.C. § 160 (c) (1958).

[7] 301 U.S. 1 (1937).

[8] U.S. CONST., AMEND. VII.

[9] 353 U.S. 1 (1957).

the employer's business was predominantly local in character. The union then proceeded to file charges with the Utah Labor Relations Board which asserted jurisdiction and afforded the requested relief. The United States Supreme Court granted certiorari and set the order of the state board aside. The Court declared that Congress had vested the NLRB with exclusive jurisdiction in the area of labor disputes in interstate commerce. State power to act in that area had been completely displaced except where the NLRB had formally ceded jurisdiction to the state pursuant to Section 10 (a) of the National Labor Relations Act.[10] Since the Board had made no such agreement in the *Guss* case, the Court concluded that the Utah Labor Relations Board was without jurisdiction. States were thus precluded from exercising jurisdiction over any labor dispute which involved interstate commerce unless the case involved a proper subject for the exercise of the state police power, such as a labor dispute clothed with violence.[11]

Since the NLRB could not, with its existing facilities, handle the volume of cases brought before it, necessity urged that the Board decline jurisdiction of the cases whose effect on interstate commerce was minimal. Thus a "no-man's land"[12] was created; an area where the Board would not, and states could not assert jurisdiction over cases involving labor disputes in interstate commerce.

Congress attempted to rectify this situation with the Landrum-Griffin amendment to the National Labor Relations Act.[13] This amendment provides: "Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory . . . from assuming and asserting jurisdiction over labor disputes over which the Board declines to assert . . . jurisdiction." States could now decide those cases which the Board declined to hear, and the states were free to apply state law to those cases ceded to them.

Even though states could decide labor cases involving interstate commerce if the Board declined jurisdiction, there was still no basis for the remedy of reinstatement without a state statute providing for it, since

[10] 29 U.S.C. § 160 (a) (1958). That section provides: "That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

[11] San Diego Unions v. Garmon, 359 U.S. 236 (1959).

[12] Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957).

[13] 29 U.S.C.A. § 164 (c) (2) (1959).

the remedy is statutory in origin. In the *Nutley* case, the New Jersey Court admitted that New Jersey statutes covering the subject of reinstatement were non-existent. The Court stated that "the court in the present case needs no legislative implementation to afford an appropriate remedy to redress a violation of those rights."[14] The rights referred to in the opinion were the rights of organization and collective bargaining provided in the New Jersey Constitution.[15] The Court declared that the constitutional provision guaranteeing those rights was self implementing. The provision was not only a bar to legislative or judicial infringement, but it also protected the employees against the acts of private individuals which tended to abridge the employee's constitutional rights. If the effect and intent of the discharges in the *Nutley* case was to interfere with employees' rights to free choice of their bargaining agent, then a wrong had been committed, and the Court felt that it could use its broad equitable powers to rectify that wrong with reinstatement or any other suitable relief. The Court was of the opinion that the legislature could no more allow a violation of the employees' constitutional rights through its silence than it could through legislative enactment.

It is interesting to note that other states with similar constitutional provisions guaranteeing the right of organization and collective bargaining have held that such provisions are not self implementing and do require additional legislation before affirmative duties, such as reinstating a wrongfully discharged employee, can be imposed. The Missouri Constitution, for example, provides: "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing."[16] *Quinn v. Buchanan*[17] is the case which decided that the constitutional provision was not self implementing. In that case the defendant was engaged in the business of processing and selling meat products, but he was not engaged in interstate commerce. He employed five driver-salesmen who organized and chose Local 833 of the International Brotherhood of Teamsters as their bargaining agent. Defendant's sales manager told two of the driver-salesmen that anyone who signed a card authorizing Local 833 to bargain for them would be discharged, and furthermore, defendant refused to meet with the bargaining agent of Local 833. Plaintiffs, three of the drivers, were discharged and defendant continued to refuse to bargain. Plaintiffs sued for damages and reinstatement, alleging that defendant's conduct violated their rights under the Missouri Constitution. The Missouri Supreme Court allowed the claim for damages but refused to allow the order for reinstatement.

[14] Cooper v. Nutley Sun Printing Co., 36 N.J. 189, 175 A.2d 639, 643 (1961).

[15] N.J. CONST., art. I, § 19.

[16] Mo. CONST., art I, § 29.

[17] 298 S.W.2d 413 (Mo. 1957).

The reasoning of the Court was to the effect that the constitutional provision was only self implementing to the extent that the government could not remove or infringe upon the rights guaranteed by it. The Court added that the provision of the Constitution did not provide methods or remedies for its enforcement, and therefore such relief was purely within the province of the legislature. The constitutional provision was not deemed to be a labor relations act. It was, in the eyes of the Court, simply a declaration of fundamental rights and did not, in and of itself, provide for any required, affirmative duties concerning its enforcement. To require the defendant in the *Quinn* case to reinstate the discharged employees would amount to the imposition of an affirmative duty upon the employer, and the Court felt that such an affirmative duty could only be imposed by an act of the legislature.

The New York Constitution provides: "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."[18] Yet the New York Supreme Court, Special Term, held that the constitutional provision was not self implementing in *Quill v. Eisenhower*.[19] That case involved a suit by the president of the Transport Workers Union of America to compel Columbia University to bargain collectively with the union. The contention of the union was that the constitutional provision guaranteeing the right of collective bargaining imposed an affirmative duty upon the university to bargain with the union, and refusal to do so amounted to a violation of the employees' constitutional rights. The New York Court refused to uphold the union's contention and declared that the constitutional provision was only intended to protect employees from legislation or acts of individuals which interfered with their organization and choice of collective bargaining representatives. The Court was of the opinion that to force Columbia University to bargain with the union would amount to the imposition of an affirmative duty upon the university, and no such duty could be imposed by the constitutional provision. It was not self implementing to that extent, and affirmative duties could only be imposed through legislative enactment. In the words of the Court, "The constitutional provision was shaped as a shield; the union seeks to use it as a sword."[20]

The previous phrase is extremely noteworthy from the standpoint of the *Nutley* decision, for the New Jersey Court has used its constitutional provision as a sword. The positive duty of reinstating an employee has been imposed upon the employer without legislative enactment. The

[18] N.Y. CONST., art I, § 17.

[19] 113 N.Y.S.2d 887, 5 Misc.2d 431 (1952).

[20] Quill v. Eisenhower, 113 N.Y.S.2d 887, 889, 5 Misc.2d 431, 433 (1952).

decisions of *Quinn v. Buchanan*[21] and *Quill v. Eisenhower*[22] present persuasive authority to the effect that a constitutional provision guaranteeing employees the right of organization and collective bargaining is not self implementing to the extent that affirmative duties can be imposed upon the employer without legislative enactment. The New Jersey Court, in the *Nutley* case, has ruled completely contra to this view.

New Jersey is by no means bound by the decisions of Missouri and New York. The Court is undoubtedly free to interpret its Constitution as it sees fit. As a matter of fact, the *Nutley* decision is not the first instance wherein the New Jersey Court decided that it could use its inherent equitable powers to remedy an invasion of the constitutional rights of organization and collective bargaining without statutory implementation. This reasoning was applied in *Independent Dairy Workers Union of Highstown v. Milk Drivers & Dairy Employees Local No. 680.*[23] In that case the plaintiff union was formed by the employees of Decker's Dairy. The union held an election[24] to prove that it was the majority choice of Decker's employees, and a collective bargaining agreement was entered into between the plaintiff union and Decker's Dairy. Defendant, Local 680, demanded that it be accepted as the bargaining agent for Decker's employees and picketed Decker's plant even after the agreement was reached with the plaintiff union. Plaintiff sued to enjoin the picketing and defendant moved to dismiss the complaint, claiming that no basis existed for the relief.

The Court granted the injunction and the basis of the decision was that the picketing endangered the rights of organization and collective bargaining granted by the New Jersey Constitution and thus could be enjoined. The Court felt that the object of the picketing was to undermine the constitutional rights of the employees. This constituted a wrong for which the Court was empowered to afford a remedy.

The *Highstown* case did not impose any affirmative duties upon the defendant union, but it does exemplify the view of the Court that for every invasion of rights guaranteed by the Constitution, the Court can use its inherent, equitable powers to provide an appropriate remedy. This view is very strongly manifested in the *Nutley* decision. In the words of the Court, "if the trial court finds the individual plaintiffs' constitutional rights have been infringed upon, it can exercise its vast equitable powers and grant the relief which the circumstances dictate. . . .

[21] 298 S.W. 413 (1957).

[22] 113 N.Y.S.2d 887, 5 Misc.2d 431 (1952).

[23] 23 N.J. 85, 127 A.2d 869 (1956).

[24] New Jersey had no statute authorizing such an election. It was held at the suggestion of Decker's Dairy since Decker would not bargain with the union until it offered proof that it was the choice of the majority of the employees.

A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence–either of primary right or of remedy merely . . . the court has the broadest equitable power to grant the appropriate relief."[25]

Thus the *Nutley* case, although not without foundation in New Jersey case law, is still a unique approach to labor relations law at the state level, and poses many interesting questions. If a court of Equity can rely upon a constitutional provision guaranteeing the rights of organization and collective bargaining, and its inherent equitable powers to provide an adequate remedy for any wrong, can it also order an election and certify a particular union as the authorized bargaining agent? Congress had to pass the National Labor Relations Act and establish the NLRB before the complex problems presented by certification elections could be met. If failure to certify a union can be deemed a wrong, then according to the reasoning of the Court in the *Nutley* case, the Equity court can provide an adequate remedy, such as a certification election. The *Highstown* case gives a good indication of how far the New Jersey Court can go in exercising the functions of a labor relations board. There the Court enjoined one union from picketing a plant after another union had been accepted as the bargaining agent by the employer on the basis of a privately held employee election. It would be a short step for the Court to order an election and certify the union itself.

Many states have constitutional provisions similar to the one relied upon by the New Jersey Court. It will be interesting to note the extent to which the New Jersey view will be adopted regarding those provisions.

[25] Cooper v. Nutley Sun Printing Co., 36 N.J. 189, 190, 175 A.2d 643, 644 (1961).

TORTS–AFFIRMATIVE DUTY–THE EMERGENCY ROOM IN A PRIVATE HOSPITAL

In attempting to obtain additional medical assistance because their doctor's treatment had been ineffective to ease their four month old son's high fever, insomnia, and diarrhea, Mr. and Mrs. Darius M. Manlove took their baby to the emergency room of Wilmington General Hospital and related his condition to the nurse on duty. The nurse explained to the parents that the hospital could not give treatment because the child was already under the care of a doctor, and there was a danger the medications would conflict. The nurse did not examine the baby but did make an unsuccessful attempt to reach the attending doctor. The Manloves returned home with the child who died about three hours later. The