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Article 13

Labor Law - Right to Compel Redelivery of Union Shop Card

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It appears likely that the Illinois courts will soon be called upon to decide whether or not a wife may sue her estranged husband in the tort action of rape.[21] The action is being brought on the authority of our present decision. It seems inconceivable that the Illinois courts will sustain any such action. Our present decision cannot be cited as a precedent authorizing the courts to completely disregard all marital privileges.

However, it must be concluded that our present decision has opened the way in Illinois to a new body of tort law which will certainly bring many more interspousal disputes into the courts, especially where the parties are divorced at the time of bringing suit as in the present case.

LABOR LAW–RIGHT TO COMPEL REDELIVERY OF UNION SHOP CARD

Plaintiff, a local barbers' union, sought to compel the redelivery of a union shop card which had been supplied to the defendant, a barber shop proprietor. The shop card identified defendant's place of business as a "union shop" and it had been accepted by the defendant as union property subject to recall for violation of union rules. Defendant was not only an employer of other barbers, but he also worked as a barber in his own shop. The union brought this suit to recover the shop card on the grounds that the defendant refused to join the union and pay dues as a "non-active member," such refusal being in violation of union rules.[1] The Supreme Judicial Court of Massachusetts dismissed the suit and refused to compel return of the card. *Di Leo v. Daneault*, 109 N.E. 2d 824 (Mass., 1953).

The *Di Leo* case represents the latest interpretation of a provision recently added to the constitution of the International Barbers' Union.[2] The constitutional provision requires that proprietors working "with the tools of the trade," join the union as "non-active" or "proprietor" members. Such a "non-active" membership would require the proprietor

[21] Chicago Daily Sun-Times § 1, p. 3, col. 3 (Feb. 11, 1953).

[1] For decisions holding that an attempt to unionize employers is a lawful and proper labor objective see: Cafeteria Employees Union v. Angelos, 320 U.S. 293 (1943); Saveall v. Demers, 322 Mass. 70, 76 N.E. 2d 12 (1947); Coons v. Journeymen Barbers, Etc., 222 Minn. 100, 23 N.W. 2d 345 (1946); Naprawa v. Chicago Flat Janitors' Union, 315 Ill. App. 328, 43 N.E. 2d 198 (1942); Swing v. A.F. of L., 298 Ill. App. 63, 18 N.E. 2d 258 (1938).

Contra: Dinoffria v. International Brotherhood of Teamsters and Chauffeurs, 331 Ill. App. 129, 72 N.E. 2d 635 (1947); Ellingsen v. Milk Wagon Drivers' Union, 377 Ill. 76, 35 N.E. 2d 349 (1941); Meadowmoor Dairies v. Milk Wagon Drivers' Union, 371 Ill. 377, 21 N.E. 2d 308 (1939); Carlson v. Carpenter Contractors' Ass'n., 305 Ill. 331, 137 N.E. 222 (1922); Doremus v. Hennessy, 176 Ill. 608, 52 N.E. 924 (1898); Rest., Torts § 814 (1939).

[2] The Journeymen Barbers, Hairdressers and Cosmetologists' International Union of America. This constitutional provision became effective Jan. 1, 1948.

to pay dues and assessments, but would not entitle him to vote or hold office in the union. The penalty for a shopowner's refusal to join is the removal of the shop card and consequential striking and picketing by his union employees in accordance with the union's express laws. It is intended by the union that the threat of such a penalty will act to persuade the employer union member to pay his dues.

The court, although recognizing the union's rights in the shop card, placed emphasis on the reasons why the union desired possession of the cards. It stated that the main concern of the union was the effect it anticipated from the withdrawal of the card. The court concluded that the union's object of compelling financial support through the coercive power of an equity decree was contrary to the public policy of the state, and thus unlawful. In arriving at its decision, the court thought it unnecessary to even consider the fact that the union membership was without full privileges.[3]

On prior occasions, where the courts have been called upon to consider the identical provision of the union's constitution, they have employed the unlawful purpose doctrine as applied in the *Di Leo* case to enjoin the union from removing the card from the shop.[4] Thus in the case of *Riviello v. Journeymen Barbers*,[5] in addition to applying the unlawful purpose doctrine, the court held that to coerce an employer to accept "sterile" and "inactive" membership with rights inferior to the employee members would also be an unlawful labor objective. It should be noted that the court in the *Riviello* case, contrary to the *Di Leo* case, placed emphasis on the fact that the union membership offered was without full privileges. However, as in the *Di Leo* case, the court was primarily concerned with the illegal result of the union conduct.

This approach was also adopted in *Wisconsin Employ. Rel. Bd. v. Journeymen Barbers, Etc.*,[6] where the court relied upon equitable principles in holding that it would enjoin the union from coercing the employer to join. The court had before it a constitutional provision identical to that of the *Di Leo* case. It held that the union was committing unfair labor practices in attempting to force a proprietor to become a member of and contribute to the financial support of the union by the payment of initiation fees and dues.

[3] Simon v. Journeymen Barbers, Etc., 21 N.J. Super. 65, 90 A. 2d 753 (1952).

[4] Riviello v. Journeymen Barbers, Etc., 240 P. 2d 361 (Cal. 1952); Foutts v. Journeymen Barbers, Etc., 155 Ohio St. 573, 99 N.E. 2d 782 (1951); Rainwater v. Trimble, 207 Ga. 306, 61 S.E. 2d 420 (1950); Wisconsin Employ. Rel. Bd. v. Journeymen Barbers, Etc., 256 Wis. 77, 39 N.W. 2d 725 (1949).

[5] 240 P. 2d 361 (Cal., 1952). The court made it clear that if the employers were guaranteed full and equal rights of membership with the other members of the union, the objective of the union's conduct would be lawful. See also James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 329 (1945).

[6] 256 Wis. 77, 39 N.W. 2d 725 (1949).

However, in a recent Ohio decision, the court, rather than viewing the union's conduct as a means to a labor objective, the lawfulness of which was to be determined by its purpose,[7] treated the removal as a discontinuance of the union's recommendation of approval to the public.[8] The court concluded that equity will not enjoin the removal of a union shop card where the party displaying the card has no contractual right to continue its display, and is no longer either recommended or approved by the union.

The dissenting opinion of the same case[9] applied the equitable unlawful purpose doctrine, reasoning, as in the later *Di Leo* case, not in terms of an agreement or property rights, but in the light of the important anticipated results. The dissent argued that the proprietor should not be branded as non-union and be put out of business because of his unwillingness to pay tribute to the union which will not admit him as an active and bona fide member.

The decision of the *Foutts* case finds support in *Rainwater v. Trimble*,[10] which also refused to examine the significance of the removal of the shop card in the light of the unlawful purpose doctrine. Instead, the court stated that the original agreement permitting removal was "plain and unambiguous, . . . which should be binding unless it is in contravention of some rule of law."[11] Finding no applicable law or statute, the court denied an injunction against removal of the shop card.

It is well to note that such union conduct as exemplified in the above cases is opposed to the policy of the Taft-Hartley Labor Relations Act,[12] which prohibits labor organizations from engaging in concerted activities, the purpose of which is to force or require any employer or self employed person to join any labor or employer organization. One should be mindful, however, that this act applies only to businesses engaged in interstate commerce.

It seems clear that the labor unions have come to use the shop card as a coercive tool. It serves as the union's manifestation of approval of a labor

[7] Foutts v. Journeymen Barbers, Etc., 155 Ohio St. 573, 99 N.E. 2d 782 (1951); Crosby v. Rath, 136 Ohio St. 352, 25 N.E. 2d 934 (1940); Rest., Torts § 775 (1937).

[8] Foutts v. Journeymen Barbers, Etc., 155 Ohio St. 573, 99 N.E. 2d 782 (1951).

[9] Ibid., at 582, 787. "The real issue in this case does not involve the mere right to remove a so-called shop card which is the physical property of the . . . union. The real issue involves that which is symbolized by the removal of the shop card." At 588, 790, the dissent continued, "The excuse given for such cause of action is . . . the unwillingness . . . to pay tribute by way of dues to an organization in which he is denied anything but nominal or sterile membership. Authorities need not be cited that extortion is illegal. That a court of equity should intervene to prevent such course of action is manifest."

[10] 207 Ga. 306, 61 S.E. 2d 420 (1950).

[11] Ibid., at 307, 421.

[12] Labor-Management Relations Act, 1947, 61 Stat. 136 (1947), 29 U.S.C.A. § 141 (Supp., 1947).

employer to the sympathetic public; its purpose is analogous to the union label affixed to union produced goods. Therefore, it is well to note, that similar to the ruling in the *Di Leo* case, the union label can not be withheld from an employer to accomplish an unlawful labor objective, even though it be conceded that the union has a property right in the label.[13] Moreover, the withdrawal of the shop card is an indication of the union's disapproval of an employer, similar to the disapproval achieved by picketing. Peaceful picketing, analogous to the union label and shop card situation, has also been conditioned upon a lawful labor objective.[14]

The Supreme Judicial Court of Massachusetts in the present case seems to have handled the conduct of the Barbers' Union more satisfactorily than any previous decision. The case seems to indicate a future disposal of such cases on truly equitable grounds. Although acknowledging the union's contract and property rights in the card, the court still insisted on restricting this union's withdrawal of its shop cards to instances in which the objective to be accomplished by such withdrawal would be lawful. The reasoning of the court is fully applicable to the analogous rules governing union labels and picketing. The courts have come to a realization of the great strength and influence of labor unions, and have insisted as in the present case that labor shall not bring about the ruination of employers who refuse to submit to arbitrary rules having little bearing on the functions of organized labor.

PROPERTY–SIGNATURE CARD SIGNED BY BOTH PARTIES NECESSARY TO CREATE JOINT TENANCY IN BANK ACCOUNT

Plaintiff brought an action against the executors of her husband's will to recover money deposited in a bank on the ground that it was a joint account and that she had survivorship rights. The evidence showed that the now deceased husband opened the account in his name alone. No changes were made in the form of the account until shortly before his death, at which time he directed the assistant cashier to write the name of the plaintiff after his name. At the deceased's direction, the cashier wrote above both names: "Payable to either of them or survivor with full survivorship rights." No signature card or other agreement was signed at that time or subsequently by either the deceased or the plaintiff. The Illinois Supreme Court held that the plaintiff was not entitled to the deposit by right of survivorship due to her failure to comply with the Illinois Joint Rights and Obligations Statute,[1] which requires both

[13] Connors v. Connolly, 86 Conn. 641, 86 Atl. 600 (1913). Contra: Saulsberry v. Coopers' International Union, 147 Ky. 170, 143 S.W. 1018 (1912).

[14] Teamsters' Union v. Hanke, 339 U.S. 470 (1950); Dorchy v. Kansas, 272 U.S. 306 (1926); Outdoor Sports Corp. v. A.F. of L., 6 N.J.L. 217, 78 A. 2d 69 (1951); Brennan v. United Hatters, 73 N.J.L. 729, 65 Atl. 165 (1906).

[1] Ill. Rev. Stat. (1951) c. 76, § 2.