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Public Welfare - Striker's Right to Public Assistance

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Durkin v. Lewitz[45] that Illinois has "firmly and decisively fixed upon the landlord the duty to use reasonable care with respect to the premises used in common . . ."[46] which includes the removal of snow and ice.[47]

Thus, New York has modified the Massachusetts rule and Ohio and Illinois no longer follow it. In 1954, the Illinois court observed that the authorities appeared to be about equally divided.[48] Since 1954, there is apparently a growing majority following the Connecticut rule, and

> most of the courts not bound by earlier decisions which have, in recent years, passed upon the question, have held that the landlord's general duty to exercise reasonable care to keep the parts of the premises retained on the landlord's control for the common use of his tenants in reasonably safe condition for the contemplated use may, in a proper situation, include the duty of removing natural accumulations of ice and snow from the common ways or structures.[49]

In the case at bar, the Supreme Court of Appeals of Virginia, has clearly adopted the Connecticut rule on the basis of the sounder rationale on which the rule rests. This is the same logical foundation on which preceding cases have formed a growing majority. *Langhorne Road Apartments, Inc.* is an important decision in this emerging majority holding the landlord liable for injuries due to the snow and ice on the common premises.

Bruce Samlan

[45] *Supra* note 3.

[46] *Id.* at 484, 123 N.E.2d at 156.

[47] *Ibid.*

[48] Durkin v. Lewitz, *supra* note 3.

[49] Sidle v. Humphrey, *supra* note 3, at _____, 220 N.E.2d at 683.

PUBLIC WELFARE–STRIKER'S RIGHT TO PUBLIC ASSISTANCE

The plaintiffs instituted a taxpayer's action to enjoin the use of public funds for the payment of public assistance to strikers and their families. The trial court found for the defendants and refused issuance of an injunction. On appeal, the Appellate Court of Illinois affirmed and held that strikers and their families are eligible for aid under the Illinois Public Assistance Code.[1] The court held strikers, whose need for aid arises solely and initially from participation in a strike arising out of a labor dispute,

[1] ILL. REV. STAT. ch. 23, § 401 (1965): "The alleviation and prevention of poverty and substandard economic conditions existing in some segments of the State is an essential governmental objective. Persons who for unavoidable causes are unable to maintain a decent and healthful standard of living, or whose families are unable to provide them a reasonable subsistence, shall be eligible to receive aid in meeting their minimum subsistence requirements . . . through a grant of general assistance under this Article if such persons: . . . (d) do not refuse suitable employment or training for self-support work, as hereinafter in this section provided."

to be persons who met the aid eligibility requirements of the Code[2] in as much as they were unable to maintain a decent and healthful standard of living for unavoidable causes and did not refuse suitable employment or training for self-support work. *Strat-O-Seal Mfg. Co. v. Scott*, 72 Ill. App. 2d 480, 218 N.E.2d 227 (1966).

The question of payment of public assistance to strikers and their families where need arises solely from participation in a labor strike is one of first impression in the Illinois courts. This note will probe the legislative intent underlying the Public Assistance Code and the Unemployment Compensation Act,[3] policy statements made by Illinois Attorney Generals,[4] and the legislature's acquiescence to the current administrative interpretation of the Public Assistance Code. An understanding of the impact and effect of this decision on organized labor, strikers, and their families then will be possible.

Before the institution of this proceeding, the present Illinois Public Assistance Code had been in its same form for thirteen years. During this period the administrators of the relief funds have regularly granted relief to strikers and their families, and this policy never has been judicially challenged. Even under the prior public aid legislation[5] in effect in 1904, the case of *City of Spring Valley v. County of Bureau*[6] represents the only other case in Illinois history concerning the payment of public assistance to strikers. In that case, the county board had attempted to exclude strikers from the relief roles, and the court, relying on the reasoning in an English case[7] that was factually similar, condemned the county board for acting beyond the legislative prescription.

> It is not the purpose of the statute to permit the county board to discriminate between different classes or persons of different occupations. [If] the county may by a rule of its own making, exempt itself from liability on the ground that the party had gone on a strike or refused work when he could have obtained it, or other like pretext, then, in effect, the statute is nullified by the action of the board, and exceptions and provisos engrafted on it where none existed as the law was made.[8]

In like effect, the court in *Strat-O-Seal* found no basis in the present statute for distinguishing between strikers and other persons entitled to public aid. However, the plaintiffs in the instant case urged court application of the public policy expressed in the striker exclusion clause of

[2] *Ibid.* [3] ILL. REV. STAT. ch. 48, § 300 (1965).

[4] Opinion of the Attorney General, May 5, 1950 (unpublished opinion on file in *De Paul Law Review*); 1962 OPS. ATT'Y GEN. 189 (1962).

[5] ILL. REV. STAT. ch. 107, § 24 (1903). [6] 115 Ill. App. 545 (1904).

[7] Attorney General v. Merthyr Tydfil Union, 23 ENG. RUL. CAS. 14 (1900).

[8] *Supra* note 6, at 548–49.

the Unemployment Compensation Act.[9] That policy specifically excludes strikers from receiving benefits of unemployment compensation[10] while the Public Assistance Code is silent on the question of need resulting from participation in a labor strike.[11]

In support of their theory, the plaintiffs contended that any other interpretation of the Public Assistance Code would result in state abandonment of its policy of neutrality in labor disputes.[12] It was further argued that the legislature would be financing strikes out of public funds.[13] Furthermore, they challenged the general statement of policy in the Public Assistance Code of maintaining "a decent and heathful standard of living" for the recipient and his family,[14] and also contended that an individual who went on strike was voluntarily unemployed and therefore should not be eligible for state compensation.[15]

In addition to these arguments, the court was faced with the difficult problem of interpreting the language of the Public Assistance Code. The legislature had failed to exercise its power of reasonably defining the terms of the statute.[16] As a result, the burden of interpreting such phrases as "unavoidable causes," "decent and healthful standard of living," "reason-

[9] ILL. REV. STAT. ch. 48, § 434 (1965): "An individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed. . . ."

[10] See generally as to labor dispute disqualification for unemployment compensation: Shadur, *Unemployment Benefits and the "Labor Dispute" Disqualification,* 17 U. CHI. L. REV. 294 (1950). See also 31 CHI-KENT L. REV. 376 (1953); 56 NW. U.L. REV. 662 (1961).

[11] Brief for Appellee, p. 17, Strat-O-Seal Mfg. Co. v. Scott, 72 Ill. App. 2d 480, 218 N.E.2d 227 (1966).

[12] Brief for Appellant, Strat-O-Seal Mfg. Co. v. Scott, *supra* note 11, citing Buchholtz v. Cummins, 6 Ill. 2d 382, 386, 128 N.E.2d 900, 902 (1955): "By this provision the Illinois Legislature adopted the policy that the State shall not, by payment of unemployment compensation, assist one party to a labor dispute, regardless of fault; and that the State in cases of industrial strife ought not take sides and place blame. This provision was designed to maintain neutrality of the State in labor disputes."

[13] Local Union No. 11 v. Gordon, 396 Ill. 293, 71 N.E.2d 637 (1947). The case affirms state legislative policy of refusing to finance labor strikes out of public funds.

[14] ILL. REV. STAT. ch. 23, § 101 (1965): "The maintenance of the family unit shall be a principal consideration in the administration of this Code, and all public assistance poilcies shall be formulated and administered with the purpose of strengthening the family unit."

[15] American Steel Foundries v. Gordon, 404 Ill. 174, 88 N.E.2d 465 (1949).

[16] Modern Dairy Co. Inc. v. Dept. of Revenue, 413 Ill. 55, 66, 108 N.E.2d 8, 14 (1952): "The legislature has the power to make any reasonable definition of the terms in a statute, and such definitions, for the purpose of the act, will be sustained." See also Bohn v. State Employees' Retirement Sys., 404 Ill. 117, 88 N.E.2d 29 (1949); Krebs v. Thompson, 387 Ill. 471, 56 N.E.2d 761 (1944); Smith v. Murphy, 384 Ill. 34, 50 N.E.2d 844 (1943).

able subsistence," and "refuse suitable employment"[17] was placed upon the courts and agencies to be resolved on an individual basis.

When a legislature enacts a statute it enacts certain words, and nothing else. It knows that these words will come up for interpretation by the courts and administrative agencies, because it knows that they will have to apply its words to particular occasions. The only intention of the legislature is that the courts and agencies shall interpret its words in the immediate presence of the particular occasion. However wise a legislature may be, however foresighted, even prophetical, it is dealing exclusively with what may happen. The courts and agencies are at grips with what did happen and with what is happening.[18]

In preparing an analysis of these vague areas of the statute, the court rejected the plaintiffs' arguments and stated that to apply the labor dispute disqualification of the Unemployment Compensation Act[19] to the Public Assistance Code would be to impose economic sanctions not specifically required by the statute. Such an interpretation would end state neutrality in that the strong arm of the state would be employed to strangle otherwise authorized activity.

The court emphasized that adoption of the plaintiffs' line of reasoning would "create a blanket classification when the Code itself conveys the thought that the propriety of assistance rests on individual need and individual performance."[20] Thus the court distinguished between the policies underlying the Public Assistance Code and the Unemployment Compensation Act. For support of its conclusion, the court turned to the legislature and the Attorney General of Illinois for opinions on this precise question. The present construction of the Public Assistance Code evolved after the court acknowledged legislative acquiescence to administrative interpretation and examined a published and unpublished opinion of the Attorney General of Illinois.

The unpublished opinion of May 5, 1950, expressed the view that a labor strike was an "unavoidable cause" within the statute and stated:

It is my opinion that subject to the approval of the Illinois Public Aid Commission, if otherwise eligible a person 'in need' due to 'unavoidable causes' is entitled to receive Public Assistance, even though he may be out of employment because of a strike.[21]

[17] *Supra* note 1.

[18] Curtis, *A Better Theory of Legal Interpretation,* in JURISPRUDENCE IN ACTION, 131, 143 (1953).

[19] Mohler v. Dept. of Labor, 409 Ill. 79, 97 N.E.2d 762 (1951); Walgreen Co. v. Murphy, 386 Ill. 32, 53 N.E.2d 390 (1944); Caterpillar Tractor Co. v. Durkin, 380 Ill. 11, 42 N.E.2d 541 (1942); Kemp v. Div. No. 241, 255 Ill. 213, 99 N.E. 389 (1912). These cases generally support the proposition that the Legislature intended that only persons involuntarily unemployed should receive compensation, and one who strikes becomes voluntarily unemployed and does not fall within that class.

[20] Strat-O-Seal Mfg. Co. v. Scott, 72 Ill. App. 2d 480, 486, 218 N.E.2d 227, 230 (1966).

[21] Opinion of the Attorney General, *supra* note 4.

The published opinion, dated January 19, 1962, was used by the court to note that children of strikers were not precluded from receiving public assistance,[22] and the opinion reads in part as follows:

> The Illinois Public Aid Commission also has this authority under Paragraph 607 of the Illinois Public Assistance Code, and nothing in the statutory sections discussed herein precludes the payment of Aid to Dependent Children to the children of persons engaged in a labor strike, where the other tests of eligibility are met.[23]

The court in the *Strat-O-Seal* case accorded considerable weight to these opinions of the Attorney Generals.[24] The court, citing *City of Champaign v. Hill*,[25] recognized that these opinions were not supported by any authority. Nevertheless, the court acknowledged them as the legal opinions of the chief law officer of the State of Illinois on the precise question before the court. The Illinois courts in cases of first impression are afforded greater latitude in reaching a just result,[26] and consequently these opinions received significant recognition.

Furthermore, the statute has remained unaltered through successive sessions of the General Assembly indicating legislative acquiescence in the current administrative interpretation.[27] The court felt that the administrative construction correctly reflected the intent of the legislators since the legislature failed to amend the statute.

The legislation covering public assistance in some of the other north-

[22] ILL. REV. STAT. ch. 23, § 605.3 (1965).

[23] 1962 OPS. ATT'Y GEN. 189, 192 (1962).

[24] The Illinois courts recognize that while the opinion of the Attorney General may not be binding on the court, it is persuasive. See Long v. Long, 15 Ill. App. 2d 276, 145 N.E.2d 509 (1957); Rogers Park Post No. 108 American Legion v. Benza, 8 Ill. 2d 286, 134 N.E.2d 292 (1956).

[25] 29 Ill. App. 2d 429, 444, 173 N.E.2d 839, 846 (1961). The City of Champaign brought an action for a declaratory judgment construing the statute authorizing payment to municipalities of fines collected for violation of the Uniform Act Regulating Traffic. The opinion of the Attorney General on this precise question was accorded considerable weight by the court.

[26] Rule v. Rule, 313 Ill. App. 108, 110, 39 N.E.2d 379, 380 (1942). Although not relied upon by the court, the *Rule* case stated that "this being a case of first impression, we feel at liberty to adopt the rule which, in our judgment, best conforms to the principles of equity and which tend [*sic*] to the furtherance of justice."

[27] Spiegel v. Lyons, 1 Ill. 2d 409, 414, 115 N.E.2d 894, 898 (1953). The court cited this case in support of the proposition that the legislature's failure to amend the statute in light of its administrative interpretation amounted to legislative acquiescence. See also The County of Winnebago v. The Industrial Comm'n, 34 Ill. 2d 332, 215 N.E.2d 258 (1966); Rockford Memorial Hosp. Assn v. Whaples, 25 Ill. App. 2d 79, 165 N.E.2d 523 (1960); Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959); Bell v. South Cook County Mosquito Abatement Dist., 3 Ill. 2d 353, 121 N.E.2d 473 (1954); Consumers Co. v. Industrial Comm'n, 364 Ill. 145, 4 N.E.2d 34 (1936).

eastern states[28] also gives administrative authorities great latitude and discretion in the dispensing of public funds. Most of these statutes also are silent on the question of need arising solely and initially from a labor strike. Because public policy underlying statutory enactment is individually determined in each state,[29] it is difficult to speculate what effect, if any, the current interpretation of the Illinois Public Assistance Code will have in these other jurisdictions. Each state court will have to weigh the similarities and differences between its statute and the Illinois Public Assistance Code.

However, in Illinois, the impact of the *Strat-O-Seal Manufacturing v. Scott* decision is clear. The appellate court judicially has sanctioned the administrative policy of allowing strikers, who are otherwise eligible for public assistance, to receive public aid when their need arises solely by reason of a labor strike. This decision, in addition to financially involving the state in labor disputes,[30] gives strikers a substantive, unchallengeable right to such aid. Organized labor now can assure its members that they will be able to maintain a level of subsistence during periods of labor strikes. This right only can be impaired by a legislative amendment to the Public Assistance Code.

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[28] N.Y. SOCIAL WELFARE LAW ANN. art. 5, tit. 1, § 131 (Thompson 1966); OHIO REV. CODE ch. 5113, § 5113.04 (1954); PA. STAT. ANN. tit. 62, § 2508.1 (Cum. Supp. 1965).

[29] Franklin Fire Ins. Co. v. Moll, 115 Ind. App. 289, 58 N.E.2d 947 (1945).

[30] *Supra* note 13.

TORTS–NEGLIGENCE–FAILURE TO USE SEAT BELTS HELD NOT TO CONSTITUTE A DEFENSE

The plaintiff brought an action against the driver of the automobile in which she was riding for injuries sustained by her when it collided with another automobile. The defendant asserted the defense that the plaintiff was contributorily negligent because of her failure to fasten the seat belt which was provided for her. After granting the plaintiff's motion to strike the defendant's defense, the jury awarded damages to the plaintiff. The District Court of Appeals of Florida affirmed the trial court by holding that a defendant cannot offer to the jury evidence of the plaintiff's failure to use a seat belt as constituting a defense to gross negligence on the part of the defendant driver. *Brown v. Kendrick*, 192 So.2d 49 (Fla. 1966).

Brown v. Kendrick is the first appellate court case in which the defense arising out of a plaintiff's failure to use a seat belt has been decided. The purpose of this note will be to trace the treatment of the problems springing from a plaintiff's failure to use a seat belt and the effect that this higher