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"LABOR DISPUTE" AND UNEMPLOYMENT COMPENSATION

Coal miners filed claims for benefits under the Kentucky Unemployment Compensation Act for a period when they did not work because of failure of mine operators and union representatives to agree on a new contract, the existing contract having expired. The Kentucky statute excluded from benefits those employees who left employment because of strike or other bona fide labor dispute. The trial court reversed the decision of the Commission and directed it to pay unemployment compensation. Held, reversed. A "labor dispute" existed within the meaning and intent of the statute.¹

As the term "labor dispute" in the Kentucky Unemployment Compensation Act was not defined, the court used the definition found in the Norris-LaGuardia Act. The term "labor dispute" includes any controversy concerning terms or conditions or employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.³ An almost identical definition is found in the National Labor Relations Act.⁴

The Labor Relations Acts were passed for the declared purpose of encouraging the "friendly adjustments of industrial disputes" and of eliminating "forms of industrial strife and unrest" which result from the refusal of employers to accept the procedure of collective bargaining, because of obstructing interstate commerce by impairing the flow of raw materials into the channel of commerce.⁵ Its theory is to give free opportunity for negotiation between employer and employee which is likely to promote industrial peace and bring about agreements which the act in itself did not attempt to compel.⁶ The public policy of the Norris-LaGuardia Act declared it is necessary

¹ Barnes v. Hall, 285 Ky. 160, 146 S.W. (2d) 929 (1940), *cert. denied*, 10 U.S.L. WEEK 3119. To the same effect see *Ex parte* Pesnell, 240 Ala. 457, 199 So. 726 (1941).

² "The entire subject is in its infancy. We may, however, hope for further clarification of the meaning of the term "labor dispute" in connection with unemployment insurance legislation. The increasing number of cases involving contested rights to unemployment insurance benefits have revealed remarkable generalities in present legislation and the need for more careful terminology in the light of the many novel situations." TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING (1940) §44, p. 107.

³ 47 STAT. 70, 29 U.S.C.A. §113 (c) (1932).

⁴ 49 STAT. 449 (1935), 29 U.S.C.A. §152 (9) (Supp. 1938)

⁵ *Id.* at §151.

⁶ NLRB v. Jones & Laughlin Steel Corp. 301 U.S. 1, 45 (1937); see Jefferey-De Witt Insulator Co. v. NLRB, 91 F (2d) 139 (C.C.A. 4th, 1937).

that the worker have full freedom of association, to negotiate the terms and conditions of his employment, and that he should be free from interference or coercion of employers of labor or through agents for the purpose of collective bargaining.⁷ More especially, the Act explicitly formulated the public policy of the United States in regard to the industrial conflict.⁸ The Kentucky Act was said to be enacted as a part of a national plan of unemployment compensation and social security.⁹ Yet if the term "labor dispute" is defined as is in the two preceding Acts by the Courts, the parties involved will be disqualified while conforming to the declared public policy. To deprive an indigent worker of unemployment compensation because he attempts to use the method¹⁰ of peaceful collective bargaining with his employer will in affect nullify both the National Labor Relations Act¹¹ and the Norris-LaGuardia Act. In allowing claims of the bituminous miners, Maryland and Minnesota admitted that the situation was embraced within the federal and state anti-injunction statutes, but held that the definition of "labor dispute" was not interchangeable. The individual and personal character of the Unemployment Compensation Law and the clear collective and group type of the other (Labor Relations Act) make the term "labor dispute" not interchangeable in the two connections.¹² Unemployment Compensation Insurance is in character a form of insurance¹³ for the unemployed worker, is remedial in nature and should be construed in his favor.¹⁴ It is a contradiction of purposes to fail to narrow the concept of a "dispute" so as to exclude peacefully conducting negotiations unaccompanied by picketing or boycotting.¹⁵ Furthermore, it should be noted that the definition of "labor dispute" in the Norris-La Guardia is specifically said to be "When used in this Chapter and for the purposes of this Chapter."¹⁶

⁷ 47 STAT. 70, 29 U.S.C.A. §102 (1932).

⁸ U.S. v. Hutchenson, 61 Sup. Ct. 453 (1941); Milk Wagon Drivers' Union v. Lohe Valley Farm Products, Inc., 61 Sup. Ct. 122 (1941).

⁹ Ky. Acts 1938, c. 50.

¹⁰ Strikes are the necessary concomitants of an effective bargaining process which will achieve and maintain adequate wages, hours, and working conditions. See REPORT OF COMMISSION OF INDUSTRIAL RELATIONS IN GREAT BRITAIN (submitted to Sec. of Labor, Aug. 25, 1938) ¶89 and Appendix E (strike statistics).

¹¹ 49 STAT. 457, §13 (1935), 29 U.S.C.A. 163 (Supp. 1938). Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike. See NLRB v. Remington Rand, 94 F. (2d) 862 (C.C.A. 2nd, 1938). This section expressly preserves the right to strike and that includes a strike for refusing to negotiate as well as any other cause.

¹² Fierst and Spector, *Unemployment Compensation in Labor Disputes* (1940) 49 YALE L. J. 461 *passim*.

¹³ Employee contributions of 1% in Kentucky, California, and New Jersey; 0.5% in Louisiana; 1.5% in Rhode Island.

¹⁴ Dep't of Industrial Relations v. Drummonds, 1 So. (2d) 395 (Ala. 1941).

¹⁵ Fierst and Spector, *supra* note 12, at 462 *et seq.*

¹⁶ 47 STAT. 70, 29 U. S. C. A. §113 (1932).

However, the term "labor dispute" is susceptible to a number of interpolations, depending upon the economic predilections of the courts.¹⁷ It has been held by some courts that payments of benefits to workers involved in a "labor dispute" would impair the neutrality of the unemployment compensation agency. Far greater weight, however, is likely to be attributed to the fact that, actuarial difficulties would present a serious obstacle to any effort to include unemployment caused by "labor disputes" among compensable risks.¹⁸ As 401,000 men scattered through fifteen states were idle from six to sixteen weeks no doubt such expenditures would be tremendous. However, with appeals still pending in many states, miners' claims have been allowed in six states and dis-allowed in nine.¹⁹

A Tennessee court held that for purposes of Unemployment Insurance Law, the employee-employer relationship had terminated with the contract on March 31, 1939, and no labor dispute could exist in absence of that relationship,²⁰ while in other states it was held workers had gone out on an "industrial strike" and were denied benefits.²¹ Cases on which the Kentucky Court heavily relies are not cases dealing with unemployment compensation, but with labor injunctions²² and decided several years before the Clayton Act was enacted²³ and before the national policy was declared by the Norris-La Guardia Act. Even though the Kentucky Act has been affirmed by the Social Security Board²⁴ it is difficult to reconcile the interests of the two acts, particularly with reference to a section of the Social Security Act which declares that compensation shall not be denied to any otherwise eligible individual for refusing to accept new work if the position offered is vacant due directly to a labor dispute.²⁵

It seems strange and especially ominous for organized labor that present unemployment insurance legislation should reach back for its standard to a time when all strikes were either illegal or subject to legal coercion at the suit of the employer.²⁶ In light of the declared public policy it seems that the court should have narrowed the concept of "labor dispute" so as to exclude peacefully conducting negotiations from the disqualifying clause of the Kentucky Unemployment Compensation Act and have allowed the miners' claims.

¹⁷ FRANKFURTER & GREENE, *THE LABOR DISPUTE* (1930) c. 4.

¹⁸ Pribrom, *Compensation for Unemployment During Industrial Disputes* (1940) 51 *MON. LAB. REV.* 1375 *et seq.*

¹⁹ *N. Y. Times*, April 3, 1939, p. 2, col. 2.

²⁰ 50 *UNITED MINE WORKERS J.* 18 (1939).

²¹ 49 *MON. LAB. REV.* 693 (1939).

²² *Iron Moulders' Union v. Allis Chalmers Co.*, 166 F. 45 (C. C. A. 7th, 1908).

²³ 38 *STAT.* 730, 15 *U.S.C.A.* §12 (1914), *Duplex Co. v. Deering*, 254 U. S. 443, 484 (1921).

²⁴ Personal correspondence with Thomas C. Billig, Assistant to the General Counsel, Federal Security Agency.

²⁵ 49 *STAT.* 640, 42 *U.S.C.A.* § 1103 (5) (1935).

²⁶ Schindler, *Collective Bargaining and Unemployment Insurance Legislation* (1938) 38 *COL. L. REV.* 858 *passim*.