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LABOR LAW

"LABOR DISPUTE" AND UNEMPLOYMENT COMPENSATION: A REPLY

This letter concerns the recent comment appearing in the Indiana Law Journal of February, 1942 entitled "Labor Dispute and Unemployment Compensation." To me this article is a fine example of the present day tendency found in many law schools and some courts to pervert sound legal reasoning into the legislative function of determining public policy.

Your criticism of the opinion in *Barnes v. Hall*, 285 Ky. 160, 146 S.W (2d) 929, *cert. denied* 100 U.S.L. Week 3119, resolves itself into a contention that the words "labor dispute" as used in the Unemployment Compensation Act (which deprives employees of compensation pending a labor dispute) should be given a different meaning from the same words used in the Norris-LaGuardia Act (which limits the granting of injunctive relief against employees in certain cases involving labor disputes). To me to give these words different meanings would make the court appear ridiculous. Obviously, an employee cannot have his cake under the Norris-LaGuardia Act or the National Labor Relations Act and still eat it under the Unemployment Compensation Act.

One would think that where the words "labor dispute" had been used by a legislative body in two prior acts (Norris-LaGuardia Act and N.L.R.A.) and given a definite meaning therein, that when the same words are placed in another act, without qualification, one could rely upon the assumption that the Legislature was using the words with a settled and fixed meaning. What right has the court to search for a "public policy" to upset the meaning of words used by the Legislature in such a case? These words were placed in the Unemployment Compensation Act by the Legislature for a purpose and the only way to get rid of them is for the Legislature to do so.

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[19] For an excellent discussion of the administration of justice to the highest bidder, see RODELL, WOE UNTO YOU LAWYERS (1939) 225 to 246.

[20] Barth v. Addie, 271 N. Y. 31, 2 N. E. (2d) 34 (1936) (court held that an employee could collect wages due under a collective agreement and that the union, acting in its own name, could intervene in behalf of the other employees and collect their back wages).

When courts and lawyers venture into the field of public policy in order to determine the law, they are venturing on to uncertain and dangerous ground. After all, one of the elementary principles of justice is that the law be certain in order that one may conform his conduct with some assurance of being right. No greater injustice can be done than to leave the meaning of a statute to the capriciousness of the man who happens to be on the bench and to his ideas of public policy.

Recently we have seen a great deal of law perverted and made uncertain by the tendency of courts to use "public policy" as a basis for determination of the law. In such cases we are no longer dealing in law but in politics, economics and philosophy. How far afield are we lawyers getting when we must seek the law in the type of citations which you used to support your comments in many instances? For example: Note 2. "Tiller, Labor Disputes and Collective Bargaining"; Note 10—"Report of Commission on Industrial Relations in Great Britain"; Note 19—"N.Y. Times, Apr. 3, 1939, p. 2, col. 2"; Note 20—"50 United Mine Workers Journal 18"; Note 21—"49 Mon. Lab. Rev. 693"; Note 24—"Personal correspondence with Thomas C. Billig, Assistant to General Counsel Federal Security Agency." I have always felt that the law should be more certain and definite than the variegated political, economic and philosophical opinions contained in the above type of publications.

It seems to be that in grading the papers of applicants for admission to the bar I find an increasing tendency to answer a question on the basis of the public policy involved. To me this appears to be a method of avoiding the more diifficult process of legal reasoning. What I have said about courts attempting to assume the role of the legislature and changing the law is applicable to the way the Supreme Court of the United States has nullified the Interstate Commerce Clause to the extent that today all commerce is in effect subject to regulation by congress and the word "interstate" serves no purpose in the clause. A constitutional amendment was the proper way to make this change, but apparently the Supreme Court felt that public policy warranted its making the change.

I am not in the habit of writing letters to editors or congressmen and it is not my intention that this letter be construed as an objection to the publishing of your comment; I merely oppose your reasoning. I do think, however, that the comment should bear the name of the person responsible for the editorial statements therein.

Norman F. Arterburn
of the Vincennes Bar.