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"Labor Dispute" and Unemployment Compensation

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to contract away their judgment on corporate matters and then permit a group having enough influence to control the directors to do that very thing, possibly against their better judgment. Although the plaintiff is left without remedy, public policy should discourage the formation of any such contracts by refusing to enforce them.

LABOR LAW
"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.

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 of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. An almost identical definition is found in the National Labor Relations Act.

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. 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. The public policy of the Norris-LaGuardia Act declared it is necessary

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1 Barnes v. Hall, 285 Ky. 160, 146 S.W. (2d) 929 (1940), cert. demed, 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).


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. More especially, the Act
explicitly formulated the public policy of the United States in regard
to the industrial conflict. The Kentucky Act was said to be enacted
as a part of a national plan of unemployment compensation and
social security. 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 de-
prive an indigent worker of unemployment compensation because he
attempts to use the method of peaceful collective bargaining with
his employer will in affect nullify both the National Labor Relations
Act and the Norris-LaGuardia Act. In allowing claims of the
bituminous miners, Maryland and Minnesota admitted that the sit-
uation was embraced within the federal and state anti-injunction stat-
utes, but held that the definition of "labor dispute" was not inter-
changeable. The individual and personal character of the Unem-
ployment 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. Unemployment Compensa-
tion Insurance is in character a form of insurance for the unem-
ployed worker, is remedial in nature and should be construed in his
favor. It is a contradiction of purposes to fail to narrow the con-
cept of a "dispute" so as to exclude peacefully conducting negotiations
unaccompanied by picketing or boycotting. 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."

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) ¶§9 and Appendix E (strike statistics).
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. Rem-
ington 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 Dept of Industrial Relations v. Drummonds, 1 So. (2d) 395 (Ala.
1941).
15 Fierst and Spector, supra note 12, at 462 et seq.
However, the term "labor dispute" is susceptible to a number of interpolations, depending upon the economic predilections of the courts. 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. 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.

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, while in other states it was held workers had gone out on an "industrial strike" and were denied benefits. Cases on which the Kentucky Court heavily relies are not cases dealing with unemployment compensation, but with labor injunctions and decided several years before the Clayton Act was enacted 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 Board 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.

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. 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.

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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.
20 50 UNITED MINE WORKERS J. 18 (1939).
21 49 MON. LAB. REV. 693 (1939).
24 Personal correspondence with Thomas C. Billig, Assistant to the General Counsel, Federal Security Agency.