RECENT DECISIONS

Elections—Campaign Contributions—Bar Association Assistance in Election of Judges—Four candidates for the Supreme Bench in Baltimore sought a court order prohibiting the Bar Association of Baltimore from conducting a campaign by press and radio on behalf of the sitting judges whose terms were expiring. The petitioners claimed that since the bar association is a corporation, its election activity is illegal under a statute forbidding the contribution of any money, property, means or aid by a corporation to a political party or candidate for public office.[1] The lower court refused to issue the injunction. *Held,* affirmed. The words "means or aid" should be construed in connection with the preceding words "money" and "property" and thus be restricted to "means or aid" of a similar kind to those specifically mentioned. Since the bar association made no contribution of money or other property there is no violation of the statute. *Smith v. Higinbotham,* 48 A. (2d) 754 (Md., 1946).

The ultimate purpose of such legislation is to insure the purity of elections by limiting the amount of money spent in political campaigns. The unrestrained use of money by candidates and parties in elections results in the buying of votes, directly or indirectly.[2] Secondary reasons for such statutes are: to protect the minority stockholders whose money might thus be donated to contrary interests, to protect the corporations from political blackmail, and to keep the party in power from being obligated to generous donors.[3] In the light of such considerations, it would seem that a bar association should be directly affected by such a law, since non-profit corporations can be as effective as others in raising funds for campaign purposes;[4] and the judge elected through the efforts of a bar association might well be under an obligation to the members of such a corporation. There is, however, a mitigating factor inherent in the nature of a bar association. It is a canon of the legal profession that the bar must endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. In the many states which still retain the system of electing judges by popular vote, it is axiomatic that those who select the judges should possess information as to the qualifications of those eligible for choice. The practicing bar is the best source

1. MD. ANN. CODE (Flack, 1939) art. 33, § 225, as added by Md. Laws of 1945, c. 934, § 157. A majority of states have enacted similar statutes, *e. g.,* ALA. CODE (1940) tit. 10, § 93; DEL. REV. CODE (1935) § 1962; KY. STAT. ANN. (Baldwin, 1943) §§ 123.010, 123.020; MICH. STAT. ANN. (1936) §6.634; MISS. CODE (1942) § 2112; N. H. REV. LAWS (1942) c. 42, § 17; N. Y. LAWS (McKinney, 1944) tit. 39, § 671; OHIO CODE (Baldwin, 1940) § 4785-192; PA. STAT. ANN. (Purdon, 1936) tit. 25, § 3225 (b); W. VA. CODE (1943) § 188. For the construction and application of this type of provision consult annotation in 125 A. L. R. 1029. A few states confine their prohibitions to banking and utility corporations, *e. g.,* MONT. REV. CODE (1935) § 10790; N. J. S. A. (1940) § 19:34-45; ORE. COMP. LAWS ANN. (1940) § 81-2524.

2. United States v. United States Brewers Ass'n., 239 Fed. 163 (W. D. Pa. 1916); *see* La Belle v. Hennepin County Bar Ass'n., 206 Minn. 290, 295, 288 N. W. 788, 792 (1939); Emory, *A Corrupt Practices Act for Maryland* (1940) 4 MD. L. REV. 248, 249.

3. OVERACKER, MONEY IN ELECTIONS (1932) 194-196; REPORT OF THE SIXTH ANNUAL MEETING OF THE MARYLAND STATE BAR ASS'N. (1901) 44, 46. There is also the view that a corporation exists solely for the purpose of making money for its stockholders and that only such quasi-charitable expenditures as contribute to that end are within its powers. (1939) 52 HARV. L. REV. 538; *see* Emory, supra note 2, at 256.

4. Vannier *et al.* v. Anti-Saloon League of New York *et al.,* 238 N. Y. 457, 144 N. E. 679 (1924) (an anti-saloon league organized as a corporation); Matter of Woodbury, 174 App. Div. 569, 160 N. Y. Supp. 902 (1916) (association formed to defeat a constitutional amendment).

of this important information.[5] It is the practice in most of the cities of this country that the local bar association give the public the benefit of its knowledge of the contestants.[6] A literal construction of the statute in the present case would have resulted in depriving the voter of facts necessary for his intelligent use of the elective franchise, and would have served to strengthen the undesirable bond between the judiciary and "politics."[7] Aware of these results, the court chose to reaffirm its confidence in the integrity of bar associations.

Labor Law—Fair Labor Standards Act—Application to Maintenance Employees of Bank and Office Building—In a suit for overtime under the Fair Labor Standards Act,[1] by the maintenance and service workers of an office building, 50 per cent of whose rental space was occupied by a bank, which owned the building, it was *held* that banking firms are engaged in the production of goods for interstate commerce, and maintenance employees of the building housing the bank as principal tenant are entitled to the benefits of the act. *Bozant v. Bank of New York*, 156 F. (2d) 787 (C. C. A. 2d, 1946). The Supreme Court has ruled that if there is a production of goods within a building by the owner, the act applies to the owner's maintenance employees.[2] Applying this pattern, it follows that the court in this instance had only to determine that the bank did produce goods for interstate commerce within the building, in a proportion sufficient to color the activities of the employees, to find for the plaintiffs. The Wage and Hour Commission of the Department of Labor has consistently held that banks do produce goods for commerce, and as early as 1940 published directives so stating.[3] The Fair Labor Standards Act broadly defines the terms "production" and "goods";[4] and the courts have adopted a liberal interpretation, defining

5. *See* Smith, *What Aid Can the Bar Render in the Selection of Judges?* (1932) 18 A. B. A. J. 505. *But see* Harley, *Lawyers as Choosers of Judges* (1935) 19 J. AM. JUD. SOC. 116.

6. Smith, *supra* note 5, at 505.

7. In its opinion the court declared that it is the public policy of Maryland to keep partisanship out of the election of judges as far as possible; and to retain on the judiciary those judges who have demonstrated their integrity, wisdom and sound legal knowledge. This decision has been regarded as an affirmance of the controversial doctrine of retaining sitting judges. The Phila. Legal Intelligencer, Sept. 17, 1946, p. 1, col. 5.

1. 52 STAT. 1060 (1938), 29 U. S. C. §§ 201-19 (1940).

2. Kirschbaum v. Walling, 316 U. S. 517 (1942) was the landmark case in allowing maintenance employees of an office building to come under the act. The rule was subsequently modified by two more recent cases. In Borden v. Borrella, 325 U. S. 679 (1945) it was held that service employees come within the act on the ground that the executive and administrative employees in the office building were engaged in "production of goods for commerce." *But cf.* 10 East 40th Street Building v. Callus, 325 U. S. 578 (1945), where it was held (Murphy, Douglas, Black, and Rutledge, dissenting) maintenance employees could not recover although 41% of the tenants were engaged in interstate commerce, since the local corporation which owned and operated the building was not engaged in the production of goods. Good discussions pointing out the distinctions in these cases are found in (1946) 94 U. OF PA. L. REV. 255, and (1946) 55 YALE L. J. 420.

3. W. & H. RELEASE No. G-79, September 11, 1940, which stated, "Banks are engaged in interstate commerce and their employees are within the coverage of the act." See also, later release No. R-1756, March 16, 1942. Both these releases are cited in 2 C. C. H. Labor Law Service ¶ 23,560 (1946).

4. Section 203 (j) of the Act states: "produced means, produced, manufactured, mined, handled, or in any other manner worked on in any State, and for the purpose

"goods" to mean not only merchandise or wares, but to include subjects of commerce of any character;[5] likewise "production" need mean only the execution, endorsement, or validation of an incompleted document.[6] But the instant case marks the first time a circuit court of appeals has applied the doctrine to include a bank as a producer of interstate goods.[7] The court resolved the issue by a study of the bank's activities in the preparation and execution of commercial paper and said: "it by no means unduly strains 203 (j) to regard the preparation, execution, or other validation of such (. . . bills of exchange, negotiable notes and commercial paper) as the actual production of goods." The court having reached that conclusion applied the rules laid down by the Supreme Court and properly allowed recovery since the bank owns the building and occupied 50 per cent of it. This decision sustains the trend of constant expansion of the activities included in the coverage of the Fair Labor Standards Act. It will be of interest in the future to note what limit the courts will draw, in what now appears to be an ever increasing orbit of control.

Labor Law—War Labor Disputes Act—Unauthorized Stoppages—In what apparently was a "wild-cat" strike situation, a district court has held that the War Labor Disputes Act[1] did not apply to employees who ceased production during the thirty-day "cooling-off" period[2] fol-

of this chapter an employee shall be deemed to have been engaged in the production of goods, if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production, thereof, in any State." 52 STAT. 1061 (1938), 29 U. S. C. § 203 (j) (1940).

Section 203 (i) of the Act states: "goods means goods, . . . wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." 52 STAT. 1061 (1938), 29 U. S. C. § 203 (i) (1940).

5. Western Union Telegraph Co. v. Lenroot, 323 U. S. 490 (1944); Couch v. Ward, 205 Ark. 308, 168 S. W. (2d) 822 (1943).

6. Western Union Telgraph Co. v. Lenroot, 323 U. S. 490 (1944); Walton v. Southern Packing Corp., 320 U. S. 540 (1944); Armour & Co. v. Wantock, 323 U. S. 126 (1944).

7. There had been one district court case holding banks subject to the Act. In Lorenzetti v. American Trust Co., 45 F. Supp. 128 (D. C. Cal. 1942) the court said:

> "Under liberal construction of the Act, banks that financed the sale and purchase of goods to and from other States, sent and received drafts with bills of lading attached to and from points outside the State, sent checks to other States for collection, and acted as agencies for collection of checks from out of the state, together with other similar activities were constantly involved in interstate communication of a business nature so that they are held to be industries engaged in commerce within the meaning of the Act."

1. 57 STAT. 167 (1943), 50 U. S. C. § 1508 (Supp. 1946).

2. A number of other statutes, both federal and state, provide for "cooling-off" periods before the calling of strikes. Generally they provide for a 10- to 30-day waiting period after the requisite notice is given. Some limit the notice requirement to industries affected with a "public interest." Most statutes provide for criminal penalties for a breach of the notice requirement while others add civil damage suits. (In the Railway Labor Act, there is no penalty against the employees.) A few do not distinguish between "authorized" and "wild-cat" strikes. See 44 STAT. 577 (1926), 45 U. S. C. §§ 152, 156, 159, 160 (1941); COLO. STAT. ANN. (1935), c. 97, §§ 94, 97; Ga. Laws 1941, No. 293, §§ 3, 4, 6, 8; MICH. STAT. ANN. (Henderson, Supp. 1945) tit. 17, § 17.454; MINN. STAT. (1945) §§ 179.06, 179.11, 179.15; WIS. STAT. (1943) §§ 111.06, 111.11. In the few tests of these provisions they have been held constitutional. Burke v. Morphy, 109 F. (2d) 572 (C. C. A. 2d, 1940) (carrier in financial distress; receiver

lowing the giving of the strike notice by the union representing the employees. In an action for damages by an employer the complaint alleged that the defendants had ceased production during the cooling-off period and had refused to work thereafter and had incited other employees to refuse to continue production. Defendants moved to dismiss on the grounds that the complaint failed to state a cause of action. Motion sustained. *France Packing Co. v. Dailey* et al., 67 F. Supp. 841 (E. D. Pa. 1946). The court had to decide whether (a) the purpose of the act was to allow the employees to decide for themselves whether to permit interruptions in war production [3] or (b) was it to prevent interruptions in war production; [4] if the purpose of the act was (a), since these men did decide, why penalize them, but if it was (b), did Congress have the right to and did it prescribe a legal duty to "continue production"? The court answered that the statute gave the workers the right to express themselves rather than to act solely at the will of their representatives. Furthermore, the court stated, Congress could not have intended that, contrary to the Thirteenth Amendment, the individual be forced to work. This, the court pointed out, was apparent from the statute itself since the section which concerned government-operated plants [5] expressly negated this. All that the section does then, is to provide a *modus vivendi* for the duration of the cooling-off period so that if production is continued at all by either workers or employers, it will be on the basis of conditions existing previously. While there are few reported cases [6] on this section, the trend of decisions indicates that as far as the existence of a mandate to continue production is concerned, the court is correct in its decision. These cases indicate that recovery may be granted where there is an *authorized strike*

changed pay rates without notice. Court held Railway Labor Act constitutional in such cases.); People v. United Mine Workers, 70 Colo. 269, 201 Pac. 54 (1921) (miners enjoined from striking; held valid in mining as an "industry affected with a public interest").

3. War Labor Disputes Act § 8: ". . . and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime. . . ."

4. *Ibid.* Title: "An act relating to the . . . preventing strikes, lockouts and stoppages of production. . . ."

5. *Id.* § 6.

6. *Actions by employer against a union where no notice was given before strike was called:* James Gibbons Co. v. Brotherhood of Teamsters, etc. (AFL), Local No. 355, 14 LAB. REL. REP. 546 (1944), 15 LAB. REL. REP. 134, 346 (1944), 16 LAB. REL. REP. 38 (1945) (damages settled by parties after court ruling for employer); Trade Relations Committee of Wholesale Fruit Industry v. Teamsters Union, 16 LAB. REL. REP. 245 (1945) (suit for injunction and damages, temporary injunction granted); W. J. Dillner Transfer Co. v. International Brotherhood of Teamsters, etc., 4 F. R. D. 105 (W. D. Pa., 1944) (did not rule directly on applicability of section, but stated that bill of particulars need not be given since evidence would be matter of proof. This appears to indicate that action would lie.).

Actions by employer against employees where no notice was given before strike was called: McKinney Tool Co. v. Hoyt, 17 LAB. REL. REP. 760 (N. D. Ohio, 1945) (on motion of employees for bill of particulars, motion overruled; indicates that action will lie, although it is not definitive as to recovery).

Actions by employees against employer where a "lock-out" occurred during "cooling-off" period: Jaksec *et al.* v. Dravo Corporation, 65 F. Supp. 663 (W. D. Pa., 1946) (bill to enjoin "lock-out" dismissed on ground that plaintiff had a legal remedy; indicates recovery against employer in such situation for failing to continue production. Why not against employees?).

Actions by employer against union and employees where strike occurred long after end of cooling-off period: Underwood Mchy. Co. v. Union *et al.*, 3 C. C. H. L. L. Serv. ¶ 63,304 (D. C. D. Mass., 1946) (no recovery but case indicates that "strikes" are prohibited during 30-day period).

without the giving of notice, or, where notice is given, an *authorized* strike occurs during the cooling-off period. Since the court took the view here that there was no authorized strike, it appears that where a work-stoppage is caused by a group of employees ceasing work without authorization, no liability will be imposed on them. Thus the problem of penalties for "wild-cat" strikes [7] in war industries and industries affected with a "public interest" is still to be settled. Possibly it may be resolved by the legislature within the existing Constitutional framework or by the courts through a tenuous extension of the meaning of the term "employee" [8] to cover situations where the worker has not terminated this statutorily-protected status and interpretation of the section as mandatory.

7. The question arises as to how the courts are to determine when a strike as compared with mere individual cessation of work exists, and further, how are the courts going to be able to determine, in borderline cases, whether a strike is authorized or not?

8. Since the stoppage was in connection with a "current labor dispute" might it not be inferred that the defendants continued to maintain their status as "employees" under the provisions of the National Labor Relations Act, 49 STAT. 449 (1935), 29 U. S. C. § 152 (3) (1941)? If it be kept in mind that the term "employee" as interpreted by the courts in relation to the N. L. R. A. is not the traditional common-law concept based upon the doctrine of "respondeat superior" and indicia of control but is a status containing all those elements of the problem to remedy which Congress passed the N. L. R. A. (N. L. R. B. v. Hearst Publications, Inc., 322 U. S. 111 (1944)) does it not appear then that Congress has merely said in this statute (as it adopted the meaning of the term as used in the N. L. R. A.), "if you stop work and continue to maintain your protected status under the act you will be liable for damages to injured parties, but if you terminate your protected status, *i. e.*, 'quit,' or take other employment, you will not be liable?" Is it unjust to make these persons liable, in war industries at least, in a situation where the employer might be guilty of an unfair labor practice if he refused to take these workers back at the end of a "wild-cat" strike?

The Presidential Proclamation of the end of hostilities as of December 31, 1946, results in the termination of the Act on June 30, 1947. It is possible that Congress may in the near future enact new legislation providing for "cooling-off" periods in industries affected with a public interest and covering situations such as that of the principal case as well as that of authorized strikes. See The Phila. Legal Intelligencer, Jan. 2, 1947, p. 1, col. 5.