Buffalo Law Review

Volume 11 | Number 1 Article 118

10-1-1961

Workmen's Compensation—Unemployment Insurance Law Liberally Construed to Further Legislative Intent

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113 is for the time being merely to refuse the right to bring a FELA action to the more punctilious employer or claimant who by his conduct clearly shows that he has knowingly given up his federal remedy but who orally insists on having what advantage it might later present to him. As yet, a liberal waiver requirement will not refuse the ignorant or unsuspecting their right to bring an action under the FELA.

D. P. S.

UNEMPLOYMENT INSURANCE LAW LIBERALLY CONSTRUED TO FURTHER LEGISLATIVE INTENT

Four cases decided by the Court of Appeals on the same day present the judicial interpretation of certain important words in the New York Unemployment Insurance Law. Section 592, subdivision 1, provides for the suspension of benefits for a period of seven weeks after loss of employment due to strike, lockout or other "industrial controversy" in the "establishment" in which claimant has been employed. *Matter of Ferrara*[29] held that a controversy caused by an unauthorized walkout by National Airlines clerks at the Idlewild Airport office would not preclude payments to National clerks in Manhattan, although belonging to the same union. Payments were allowed to mechanics and cleaners of a different union employed at a hangar 2½ miles from the Idlewild office.

Three possible interpretations were presented for the Court's consideration. The Industrial Commissioner desired a construction of the word "establishment" broad enough to encompass employees "whose continuance at their jobs has become useless, or economically wasteful while the strike lasts, and 'because of' it." National Airlines argued that each metropolitan area constitutes a single establishment of necessity integrated to sell and provide air transportation. Claimants sought a narrow construction of the word to make each geographic location a separate "establishment." It was the claimants' view which prevailed.

The Court reasoned that since the Unemployment Insurance Law was remedial in nature, to protect workers unemployed through no fault of their own, it must be given a liberal interpretation. While benefits are suspended to those directly involved in a strike, to avoid state financing of such strike, this suspension must be narrowly construed "to effectuate the broad humanitarian objectives sought to be achieved. . . ." To relate the word to the broad functions or scattered locations commonplace in our industrial society would to a great extent defeat the statute's *raison d'être.* Also considered was the legislative resistance to attempts to broaden the meaning of "establishment" following the Appellate Division decision in *Matter of Machincki.*[30] There, a strike at Ford Motor Company's Michigan plant did not preclude immediate benefits to claimants in New York plants laid-off because of it. "Establishment" was determined from the standpoint of "place where the employee was last

29. 10 N.Y.2d 1, 217 N.Y.S.2d 11 (1961).
30. 277 App. Div. 634, 102 N.Y.S.2d 208 (3d Dep't 1951).

employed" rather than of the "efficient production of manufactured products."

Matter of Curatalo[31] directly followed the reasoning of *Ferrara*. Claimant was employed at the steel fabrication plant of a company which also did steel erecting on various sites in and around Rochester. A strike by the erectors of the company, members of a different local of the same union as the fabricators, caused claimant and twelve others to be laid off at the plant. There was no picket line at the plant but steel could not cross the lines at the sites. Plant production continued at a rate of seventy-five percent with only the thirteen laid off. At all times claimant was able and willing to work at the plant. The Court of Appeals concluded that the fabrication plant and construction sites constituted separate establishments so that claimant's benefits were not suspended.

The third related case decided on May 25 was *Matter of Wentworth*.[32] Claimants were carpenters and timbermen employed in making forms for concrete for a construction firm. A Teamsters' Union strike halted its supply of concrete from Colonial Sand and Gravel Company. The employer's own dump truck drivers, who hauled materials within the project, participated in the industry-wide strike. This latter participation, however, was held not to deprive claimants of benefits, for to the Court, the "effective action" was that taken by the Colonial drivers. Therefore, there was no "industrial controversy" within the establishment causing the layoff.

The above three decisions are clearly indicative of New York's highest court's intent to construe the Unemployment Insurance Law liberally. Where a matter of interpretation is presented, it will more often than not be resolved so as to extend the benefits to those willing and able to work. In this way, workers and their families will not be hurt by a situation beyond their control and the legislative rationale behind the Unemployment Insurance Law will be vindicated.

A similar question was presented to the Court by *Matter of Gilmartin*.[33] Flexicore Precoat, Inc., claimant's employer, was asked by the Lathers' Union to employ one of its members at a lathe in its plant. Upon refusal, the Union obtained the aid of the Teamsters' Union whose drivers working for a sister company, Ryan Concrete Company, refused to deliver concrete to Flexicore. While Flexicore and Ryan were clearly separate establishments, and the effective action was taken by Ryan drivers, the Court allowed a suspension of benefits. The Lathers' Union had made its demand on Flexicore and through the indirect pressure of the Teamsters had attempted to affect Flexicore. This was sufficient to show that there was an "industrial controversy" at the establishment in which Gilmartin worked. That the Teamsters' action was an illegal secondary boycott and not a "labor dispute" for the purpose of gaining an

31. 10 N.Y.2d 10, 217 N.Y.S.2d 18 (1961).
32. 10 N.Y.2d 13, 217 N.Y.S.2d 20 (1961).
33. 10 N.Y.2d 16, 217 N.Y.S.2d 22 (1961).

injunction under New York Civil Practice Act § 876-a was deemed irrelevant in interpreting the Unemployment Insurance Law. As noted above, the law will normally be construed to bring benefits to as many unemployed workers as possible. This was the apparent legislative intent. But it was also the legislative intent that state funds not be used to support strikes. The statute was meant to embody a "reconciliation of the purposes of unemployment insurance with the principle of government neutrality."[34] This is the other side of the scale that must be and has been properly balanced by the Court of Appeals.

R. V. B.

ZONING

REGULATION OF UNSAFE USE UPHELD

In *Town of Hempstead v. Goldblatt*[1] the Court of Appeals upheld an Appellate Division affirmance[2] of a judgment of Special Term[3] against defendants Goldblatt, and the Builders Sand & Gravel Corp. Over constitutional objections, an injunction was granted restraining defendants from operating their sand pit before complying with a new Town Ordinance ostensibly intended to regulate unsafe uses.

The Court of Appeals first recognized the presumption of constitutionality of the Ordinance and properly placed the burden on the defendants to overcome this presumption by proving the unreasonableness of its requirements. Defendants had been operating a sand pit since 1927, when the area was primarily rural. In 1945, a six foot chain link fence topped with barbed wire was erected around the 38 acre site in accordance with an ordinance passed by the town that year. Eleven years later, the town sought unsuccessfully to restrain defendants from dredging operation in a zoned area (practically all of defendants' excavation work is under water). There the trial court allowed the continuation of business because it was a prior non-conforming use in which defendants had a substantial investment.

Town Ordinance No. 16, in question here, was amended in 1958 to require, among other things, that defendants fill in all previous excavation (averaging 25 feet over 20 acres), discontinue excavation below ground water level, place a concrete footing under the 7000 lineal feet of fencing, and not dredge within 20 feet of any property line, as conditions to obtaining a permit and continuing operations. Defendant was denied permission to introduce evidence as to the market value of his property, but there was evidence available to the Court of Appeals that the business grossed about $200,000 per year, which sum was also

34. Supra note 29 at 8, 217 N.Y.S.2d at 15.

1. 9 N.Y.2d 101, 211 N.Y.S.2d 185 (1961).
2. 9 A.D.2d 936, 196 N.Y.S.2d 573 (2d Dep't 1959).
3. 19 Misc. 2d 176, 189 N.Y.S.2d 577 (1959).