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At the time, the fourth circuit court defended the result thusly: "We believe this to be a wholesome rule, because it is clearly apparent that the business of life insurance, which is too important a part of our civilization in this latter-day world, could not be carried on were the insurance companies bound by every act or statement of a local agent; especially one whose duty is mainly that of soliciting or collecting. If it were otherwise, great injustice would follow, and a great loss be imposed upon holders of life insurance policies, because of the increased burden upon the companies that would result. While the courts are careful, in every way, to protect the interests of beneficiaries under insurance policies, yet there is a limit which should not be exceeded. The reasonableness of the respective contentions should be the yardstick with which to measure the justice of the matter."²³

Whether the North Carolina court will now interpret its decisions and dicta as the fourth circuit court of appeals did in the instant case, or will continue to enforce the insurance contract as written, remains to be seen. To the writer it seems that the policy announced by the court in the *Curtis* case is patently sound.

ROBERT M. HUTTAR

Labor Law—Right to Distribute Union Literature on Company Property

In *NLRB v. Babcock & Wilcox Co.*,¹ the Supreme Court of the United States reversed the National Labor Relations Board in three cases² and held that union organizers who are nonemployees do not have the right to distribute union literature on company property where there are other means of communicating with the workers available to the union and there has been no discrimination by the company.

The opinion handed down by Mr. Justice Reed for a unanimous Court said: "The Act requires only that the employer refrain from interference, discrimination, restraint or coercion in the employees' exercise of their own rights. It does not require that the employer permit the use of its facilities for organization when other means are readily available."³

The plants, in all three cases, were located within one mile of the

²³ 55 F. 2d 97, 99 (1932).

¹ 351 U. S. 105 (1956).

² *Babcock & Wilcox Co.*, 109 N. L. R. B. 485 (1954), *enforcement denied*, 222 F. 2d 316 (5th Cir. 1955), *aff'd*, 351 U. S. 105 (1956); *Ranco, Inc.*, 109 N. L. R. B. 998 (1954), *enforcement granted*, 222 F. 2d 543 (6th Cir. 1955), *rev'd sub nom.* *NLRB v. Babcock & Wilcox Co.*, 351 U. S. 105 (1956); *Seamprufe, Inc.*, 109 N. L. R. B. 24 (1954), *enforcement denied*, 222 F. 2d 858 (10th Cir. 1955), *aff'd sub nom.* *NLRB v. Babcock & Wilcox Co.*, 351 U. S. 105 (1956).

³ *NLRB v. Babcock & Wilcox Co.*, 351 U. S. 105, 113-14 (1956).

nearest town, where a substantial number of the employees lived, and all the workers of each plant lived within a radius of thirty miles from work. In each case the company had enforced a nondiscriminatory rule prohibiting nonemployees from distributing literature on the company property. The usual methods and channels of communication were open to the union, including mail, newspapers, radio and personal interviews.⁴

The Board found violations of section 8 (a) (1)⁵ of the National Labor Relations Act⁶ in that the employers had interfered with the employees in their exercise of rights under section 7⁷ of the act by not allowing the union organizers to distribute literature on the company owned parking lots. The Board concluded that the organizers could not readily distribute their literature away from the plant area, and ordered the employers to allow union organizers limited access to the parking lots.⁸

The Board based its decisions on its reasoning in *Le Tourneau Co.*⁹ In that case, two employees were suspended two days for distributing union literature on their own time on company owned property. This was in violation of a company rule of long standing against the distribution of literature by anyone, adopted prior to union organization activity. The Board decision, approved by the Supreme Court, clearly states the holding in that case: ". . . we are convinced and find, that the respondent in applying its 'no distribution' rule to the distribution of union literature by its employees on its parking lots has placed an unreasonable impediment on the freedom of communication essential to the exercise of its employees' right to self-organization. . . ."¹⁰ Neither the Board nor the Supreme Court attempted to answer the question raised in *NLRB v. Babcock & Wilcox Co.* In fact, counsel for the Board itself said in the brief submitted to the Court on the review of *Le Tourneau*: "The facts in the instant case do not present and the Board did not consider the question which would arise if union representatives who were not employed at the plant sought to distribute literature on the parking lots."¹¹ Yet, the Board in these three cases

⁴ *Id.* at 113.

⁵ 49 STAT. 452 (1935), as amended, 29 U. S. C. § 158 (a) (1) (1952): "It shall be an unfair labor practice for an employer . . . to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. . . ."

⁶ 49 STAT. 449 (1935), as amended, 29 U. S. C. §§ 151-68 (1952).

⁷ 49 STAT. 452 (1935), as amended, 29 U. S. C. § 157 (1952): "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing. . . ."

⁸ *Babcock & Wilcox Co.*, 109 N. L. R. B. 485, 486 (1954); *Ranco, Inc.*, 109 N. L. R. B. 998, 999 (1954); *Seamprufe, Inc.*, 109 N. L. R. B. 24, 25 (1954); see note 2 *supra* for full citations.

⁹ 54 N. L. R. B. 1253, *enforcement denied*, 143 F. 2d 67 (5th Cir. 1944), *rev'd sub nom.* *Republic Aviation Corp. v. NLRB*, 324 U. S. 793 (1945).

¹⁰ *Id.* at 1262.

¹¹ Brief for Appellant *Le Tourneau Co.*, p. 29, n. 17, *Republic Aviation Corp. v. NLRB*, 324 U. S. 793 (1945).

extended the principle of freedom of communication for self-organization to this situation, and refused to distinguish between employee and non-employee union organizers.

The Supreme Court, however, did recognize a distinction between organizational efforts of employees and nonemployees, saying: ". . . an employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution."¹²

Looking at the decision from the standpoint of actual union organizational techniques, some question may be raised as to the true value of the distinction between the two types of organizers. The courts have recognized that the place of work is "uniquely appropriate for the employees full freedom of association."¹³ In order for them to exercise their right of self-organization effectively, employees need outside aid.¹⁴ "Thus, practical considerations dictate that the right of self-organization include the right to have outside organizers carry out solicitation activities."¹⁵ The Supreme Court, however, did not consider this aspect of the situation controlling and apparently would look for circumstances more closely related to that of the isolated lumber camp,¹⁶ where the employees live as well as work on the company property, before it would regard the plant site as "uniquely appropriate" for nonemployee organizational activities.

In contrast with the practical aspects of the situation, the counter-argument most likely to arise would be that of the owner's "right to exclude from property."¹⁷ It is recognized of course that this right, inherent in ownership, must yield when it stands in the way of an equally important and valuable right of another.¹⁸ The problem is a weighing of opposing rights. However, this disregard of an employer's property rights seems only to be allowed¹⁹ where the union has encountered an

¹² NLRB v. Babcock & Wilcox Co., 351 U. S. 105, 112 (1956).

¹³ Republic Aviation Corp. v. NLRB, 324 U. S. 793, 801 n. 6 (1945); see Bonwit Teller, Inc. v. NLRB, 197 F. 2d 640, 645 (2d Cir. 1952), cert. denied, 345 U. S. 905 (1953): ". . . the place of work has been recognized to be the most effective place for the communication of information and opinion concerning unionization."

¹⁴ See Thomas v. Collins, 323 U. S. 516, 534 (1945).

¹⁵ Note, "Not as a Stranger": *Non-Employee Union Organizers Soliciting on Company Property*, 65 YALE L. J. 423, 427 (1956).

¹⁶ NLRB v. Lake Superior Lumber Corp., 167 F. 2d 147 (6th Cir. 1948).

¹⁷ NLRB v. Babcock & Wilcox Co., 351 U. S. 105, 112 (1956).

¹⁸ *Ibid.*; accord, Cities Serv. Oil Co., 122 F. 2d 149, 152 (2d Cir. 1941): "It is not every interference with property rights that is within the Fifth Amendment. . . . Inconvenience or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining."

¹⁹ See NLRB v. Stowe Spinning Co., 336 U. S. 226 (1949) (discrimination by the company against the union); NLRB v. Lake Superior Lumber Corp.,

"insuperable and unsurpassable hardship or difficulty in exercising some constitutional right."²⁰ The Court, unlike the Board, found no such countervailing hardship or difficulty here.

With this decision, the Supreme Court has more clearly defined the basic rule to be applied here. The employees' right to discuss self-organization among themselves, as set out in *Le Tourneau Co.*, has been reaffirmed.²¹ In a situation where the employees spend the greater part of their living as well as working time on the company property, the employer may not prohibit the entrance of the union on the property for organizational activity.²² Nor may the entry be prohibited where the company rule discriminates against the union.²³ But, as the Court ruled in the principal case, if the living quarters of the employees in town or country are within reasonable reach of the union, no nonemployee access to the company property has to be granted. Thus, the remaining question is the factual one of what combination of distances and proportions of employees will have to prevail before the employer is made to open his doors to nonemployee organizers.

HENRY H. ISAACSON

Labor Law—State Jurisdiction Over Picketing

While the extent of the jurisdiction of a state to enjoin peaceful picketing still remains uncertain,¹ the United States Supreme Court in a recent decision, *United Automobile Workers v. Wisconsin Employment Relations Board*,² made definite the power of a state to enjoin picketing or other employee activity which assumes the form of violence or coercion. The Court thus reaffirmed the reasoning in *Allen Bradley v. W.E.R.B.*³ that otherwise an ". . . intention of Congress to exclude the states from exerting their police power must be clearly manifested."⁴

If the *U. A. W.* case had involved an employer seeking to prevent violence and destruction of property, by securing an injunction from a state court acting under its traditional police power to preserve the general order by preventing violence and breaches of the peace, the decision

167 F. 2d 147 (6th Cir. 1948); cf. *NLRB v. Cities Serv. Oil Co.*, 122 F. 2d 149 (2d Cir. 1941)

²⁰ Brief for Appellee Babcock & Wilcox Co., p. 17, *NLRB v. Babcock & Wilcox Co.*, 351 U. S. 105 (1956).

²¹ *NLRB v. Babcock & Wilcox Co.*, 351 U. S. 105, 113 (1956) (dictum).

²² *NLRB v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (6th Cir. 1948); *Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258 (1941).

²³ *NLRB v. Stowe Spinning Co.*, 336 U. S. 226 (1949).

¹ See Isaacson, *Labor Relations Law: Federal versus State Jurisdiction*, 42 A. B. A. J. 415 (1956) for discussion of pre-emption problems arising from the Taft-Hartley amendments to the National Labor Relations Act.

² 351 U. S. 266 (1956).

³ 315 U. S. 740 (1942).

⁴ *Id.* at 749