1977

David Westly and the International Brotherhood of Police officers v. Board of City Commissioners of Salt Lake City Corporation : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

DAVID WESTLY AND THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS,

Plaintiff-Appellants,

vs.

BOARD OF CITY COMMISSIONERS OF SALT LAKE CITY CORPORATION,

Defendant-Respondent,

Case No. 14842

BRIEF OF APPELLANT

Appeal from the judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, Honorable Jay E. Banks, Judge, presiding.

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STATEMENT OF THE NATURE OF THE CASE

This is a civil action filed in the Third Judicial District Court in and for Salt Lake County, State of Utah, in which the plaintiffs sought a declaratory judgment and injunction against Salt Lake City Corporation on the basis of the plaintiffs' rights under Utah Code Annotated 34-19-1 (1953).

DISPOSITION IN LOWER COURT

The trial judge, the Honorable Jay E. Banks of the Third District Court in and for Salt Lake County

granted the respondent's Motion to Dismiss with prejudice the complaint for failure to state a cause of action on October 21, 1976.

RELIEF SOUGHT ON APPEAL

The Appellants- petitioners, seek to have the trial court's order dismissing the complaint with prejudice reversed and the case remanded to the Third District Court.

STATEMENT OF THE FACTS

The appellant, Dave Westly, is a police officer employed by Salt Lake City Corporation and president of appellant, labor union, Local 470 of the International Brotherhood of Police Officers. (R2)

On June 30, 1976, the defendant, Board of Salt Lake City Commissioners, passed Bill No. 116 of 1976 an ordinance amending Subsection (a) of Section 25-4-6 of the Revised Ordinances of Salt Lake City in which the Respondent implemented a 5% across-the-board salary increase for all city employees. (R2)

Prior to June 30, 1976, appellant, Local 470, by and through its agent, Thomas Jensen, had communicated the local's desire to initiate the procedure established in the past by the parties of meeting and discussing the

the issue of yearly changes in wages, salaries and benefits. (R6) On or about June 3, 1976, the Local tendered to representatives of the respondent proposals of the Local relative to wages, salary and fringe benefits for the fiscal year 1976. (R6)

The respondent did not respond in any manner to the Local's proposal and neither the Board nor any of its Agents make any official effort to meet with, discuss, or to negotiate with the Local 470, until two (2) days prior to the date of the statutory deadline for the adoption of the budget of Salt Lake City Corporation. (R6)

At the meeting on June 30, 1976, in which the salary schedule ordinance was enacted, Thomas Jensen, as representative of the International Brotherhood of Police Officers, Local 470, communicated to the Board the Local's intention to reject and waive as a concerted activity the 5% salary increase passed by the Board. (R3)

On July 1, 1976, the members of the Local voted in a meeting to express their dissatisfaction as a group by refusing the 5% salary increase in reliance on the Board's approval of the waiver in the June 30, 1976 meeting. (R3)

Forms for implementing the waivers were accepted by agents of the Local at 12:30 P.M. on July 2, 1976 which were drafted by the agents of the respondent. (R4,9)

When received by the appellant the waiver forms had no requirement that they would have to be witnessed by a member of the Salt Lake City Auditor's Office. (R4) The forms were distributed to members of the Local who immediately began to execute the waiver forms. (R4)

Subsequently, at the end of the day on July 2, 1976, the respondent issued an Order that any waiver must be witnessed by a member of the Auditor's Office. (R4) Prior to this time, no indication was given to the appellant Local, concerning this requirement.

On July 9, 1976, the appellant, Dave Westly, as president of the appellant,Local, tendered to Ted Perry, Payroll Director and Lynn J. Marsh, Personnel Director, and Lawrence A. Jones, Auditor, as agents of Salt Lake City Corporation waiver forms signed by members of the Local, but not witnessed by a member of the Auditor's Office. (R4) The respondent agents refused to accept the signed waiver forms. (R5)

On July 6, 1976, the Respondent Board ordered that the appellant, Dave Westly, could no longer conduct any Union business during the time in which the employee was also employed by Salt Lake City Corporation. (R5) Previous to this unilateral change, the appellant was allowed to spend up to four hours of each workweek engaged in "Local" activity. (R5)

The appellants-petitioners filed this action

in the Third Judicial District Court in and for Salt Lake County to enjoin any further violations by the respondent of the appellants' rights to act in a concerted activity for the benefit of the membership of the Local and the appellants' rights to designate representatives and to organize for their benefit, as their rights are expressed and protected by Utah Code Annotated 34-19-1 (1953).

I.

THE MEMBERS OF LOCAL 470 AS PUBLIC EMPLOYEES ARE PROTECTED UNDER UTAH CODE ANNOTATED 34-19-1 (1953) FROM ACTS OF THE RESPONDENT WHICH INTERFERE WITH THEIR BASIC RIGHTS TO DESIGNATE REPRESENTATIVES AND THEIR RIGHTS OF ASSOCIATION AND SELF-ORGANIZATION.

Utah Code Annotated 34-19-1 (1953) states:

> "Declaration of policy--In the interpretation and application of this chapter, the public policy of this State is declared as follows:
> (1) It shall not be unlawful for employees to organize themselves into or carry on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the conditions of members or carrying out the legitimate purposes of such organizations as freely as they could do if acting singly.
> (2) The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully

carrying out the legitimate object thereof; nor shall such organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.

(3) Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor and thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary that the individual employee have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or their (sic) mutual aid or protection."

The trial court dismissed the appellants' complaint, finding that the above quoted section "was not intended and in fact does not vest any rights of collective bargaining in the petitioners." (R22)

The appellants submit that the above quoted section, commonly known as the little Norris-LaGuardia Act grants to the members of the appellants,Local, basic rights of self-organization and association and protects the ability to engage in certain concerted activity to

advance their lawful purposes free from illegal interference, restraint and coercion by employees.

While this section may not necessarily include a grant of full scale"collective bargaining" as that term is understood in the private sector, Section 34-19-1 does extend to all employees of the State of Utah certain enumerated rights and privileges. See for example, State Board of Regents v. United Packing-house Food Workers, 175 N. W. 2d 110 (Iowa 1970) as to the difference between the definition of the term collective bargaining in the private versus the public sector.

In the case of Krystad v. Lau, 400 P. 2d 72 (Wash. 1965), the Supreme Court of Washington held the little Norris-LaGuardia Act of that State granted to employees an affirmative, substantive right to be free from interference, coercion or restraint by employers in their participation in Labor Unions and was not merely a statement of policy. In this case, the Court extensively discussed the legislative history of the little Norris-LaGuardia Act.

Prior to the Supreme Court of Washington's holding in Krystad, that state had never adopted any comprehensive labor-management relations statute to deal with labor relations problems in private industry, which were not covered by the jurisdiction of the federal

labor law. The Court found that a "no man's land" existed between federal jurisdiction on the one side and the state's commonlaw jurisdiction on the other which left certain employees unprotected.

The Washington Court voted that the little Norris-LaGuardia Act had changed the common law under which Unions were not only unlawful but were held to be essentially a criminal conspiracy where employees had neither the right to organize or join.

The Court was then faced with the issue of whether the little Norris-LaGuardia Act should be deemed purely an anti-injunctive statute, or whether it reached further in purpose and confered a substantive right. The Court answered this question in the affirmative, finding that the statute had secondary purposes other than limiting the Court's power to issue injunctions.

The Court found that the language of the Act when read in light of the assertive declaration of the Act, implied the conclusion that the language of the Act granted a substantive right to employees to be free from coercion, interference or restraint.

In the appellants' case, other than the rights of the members of the Local protected by the First Amendment to the United States Constitution, Board of Education of Scottsdale v. Scottsdale Education Association,

17 Ariz. App. 504, 498 P. 2d 578 (1972), public employees in the State of Utah are not afforded any significant protection in relation to their interests of self-organization. A situation exists in the State of Utah similar to that presented to the Washington Supreme Court in Krystad v. Lau; that is a "no man's land" exists as to the status of public employees between the comprehensive labor system in private sector of the economy on the one hand, and the vague and indefinite common law concerning public employees on the other. If this Court does not include the appellants within the basic organizational rights contained in Section 34-19-1, the appellants, as well as other public employees, in the State will be deprived of any significant protection of their rights to engage in concerted activities to advance their legitimate interests.

In the present case, the appellants were deprived of their rights under Utah Code Annotated 34-19-1 (1953) by the respondent's refusal to conduct any meaningful negotiation with the appellant, Local's, representative. The course of conduct followed by the respondent interfered with, restrained and coerced the appellants' right to designate representatives and to organize for the purpose of collective bargaining and their mutual aid and protection.

The appellants should have a remedy for the

arbitrary, unilateral action of the respondent in ordering that the appellant, Dave Westly, could no longer conduct union business during the time he was employed by the respondent.

Also, the members of appellant, Uion, were deprived of their ability to organize in concerted activity, through the means of the waiver of the pay increase which was granted without any intentional obstruction by the respondent.

In light of the fact that the appellant, Local's, members could not employ the concerted activity of a strike, the symbolic waiver of the pay increase was at the the only viable means to advance their interests in mutual aid and protection.

THEREFORE, the appellants submit that the trial Court's order dismissing the cause of action with prejudice should be reversed and the case remanded to the trial court for further proceedings.

Respectfully submitted this day of April, 1977.

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