Boston College Law Review

Volume 1 | Issue 2 Article 52

4-1-1960

Secured Financing

Paul V. Kenneally

clause, such is indicative of a refusal to recognize a union's right to full and joint participation with management. The Supreme Court has imposed a duty upon employers in some instances to produce information regarding financial ability to grant an increase in wages, where the employer has raised the issue of inability to pay. It is suggested that a refusal to furnish the information should be considered in the light of all the surrounding circumstances to determine its relevancy and weight. Refusal to supply the information should not be treated as a per se refusal to bargain in good faith.

Consideration is had of the duty to bargain imposed upon unions in 1947, and the various tactics used by them to force agreements through harassment and economic pressure. Court decisions which continually frown upon Board reasoning that tends to impose fair dealing standards on unions are subject to criticism as illustrative of which is a court decision which justifies partial strikes solely on the ground that total strikes are not prohibited as a means of applying economic pressure.

A discussion is had of recent cases in which the Supreme Court found violations of the duty to bargain, an impasse having been reached on non-statutory matters, unrelated to wages, hours, or conditions of employment. Problems are suggested when non-statutory requests are pressed to an impasse, especially where subjective good faith is present and there appears to be reasonable justification for the demand.

Despite the multitudinous decisions of the boards and courts many conflicts remain unresolved and the area of collective bargaining continues to be fluid.

BRUCE N. SACHAR
Case Editor

SECURED FINANCING

REGULATION OF FINANCE CHARGES IN RETAIL INSTALMENT SALES, by William D. Warren, 68 Yale L.J. 839 (April 1959)

An examination is made of the subject of finance charge control as a method of protection of credit buyers, with particular reference to the effect of usury statutes on credit sales, and an evaluation had of new legislation regulating finance charges in the field of retail instalment selling.

Courts have generally used one of three methods in the application of usury statutes to otherwise exempt instalment sales transactions. First, usury has been found to exist (1) if the buyer and finance company agree prior to the sale that the company will finance the transaction by purchasing the buyer's contract from the seller or (2) if the relationship between the financer and the dealer is particularly close or (3) if the dealer negotiates with the buyer in terms of a time price arrived at by adding financing and other charges to a cash price. Each approach is unsatisfactory. The relationship between buyer and financer or between financer and dealer

should be irrelevant to the issue of the presence of usury. Likewise, since a time price can be realistically computed only by calculating finance and insurance charges and adding them to the amount to be financed, to make this businesslike method of price determination usurious is absurd. The only answer to the problem lies in better legislation.

The principal function of state statutes limiting finance charges is to protect credit consumers against excessive gouging by dealers and finance companies. Legislatures have been hesitant to enact such statutes to encompass non-automobile credit transactions.

Professor Warren cautions the legislatures that dealer participation regulation constitutes a different type of economic control than is had by finance rate regulation. Whether such control is the answer to the problem of consumer protection cannot be clearly stated and it will be some time before it is clear whether such legislation is necessary.

PAUL V. KENNEALLY
Article and Book
Review Editor

TAXATION

JURISDICTION OVER OUT-OF-STATE VENDORS OPERATING THROUGH SOLICITORS, by Louis F. Del Duca, 64 Dick. L. Rev. 7 (October 1959)

Professor Del Duca has undertaken the monumental task of analyzing and departmentalizing a long line of Supreme Court cases dealing with the conflict between the Commerce Clause of the Federal Constitution and the attempts of the several states to derive revenue by taxation of various phases of commerce between the states.

This article will be found to be rewarding for all who undertake an excursion through its pages. For the practicing attorney it provides a well researched, brief, but accurate review of this vast maze of the law, a reading of which will enable him to better advise his clients, whether their problem be a foreign sales tax, use tax, or state net income tax. For the State Tax Commissioner the article points out the distinguishing differences between those tax statutes which have been struck down as violative of the Commerce Clause, and those which, while reaching the same result, have been upheld.

The article deals chiefly with the limitations imposed by the Commerce Clause on a state's ability to tax foreign vendors. The Constitution requires some local activity to occur within the taxing state in order to form a nexus for the tax. An analysis of the cases demonstrates both the quantitative and qualitative aspects of the local activity requisite for the type of tax sought to be imposed. This analysis also indicates to a vendor the manner in which his taxable status is affected according to the method he chooses for the