XI. Labor Law

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The Indiana state courts handed down a paucity of decisions during the survey period in the area of employer-employee relations.

A. Employment Discrimination

In *Indiana Civil Rights Commission v. Meridian Hills Country Club, Inc.*,[1] a charge of employment discrimination was filed against the defendant with the Indiana Civil Rights Commission. Defendant filed a motion to dismiss with the Commission on the ground that it was a not-for-profit corporation organized as an exclusive social club and, as a result, was not an "employer" under the Indiana Civil Rights Act.[2] The Commission overruled the motion and set the charge for a public hearing. The defendant then sought and received a permanent injunction from the Marion Circuit Court, prohibiting the Commission from proceeding further.

On appeal, the Commission argued that the trial court had prematurely assumed jurisdiction because the Commission had not entered a final order and therefore had not expressly asserted its jurisdiction, and the defendant had not exhausted its administrative remedies. The court of appeals agreed and reversed with instructions that the permanent injunction be dissolved, observing that had the Commission determined that the defendant was an "employer" and was guilty of discriminatory employment practices after an evidentiary hearing, defendant's proper course of action would have been to pursue judicial review of the Commission's asserted jurisdiction under the Indiana Administrative Adjudication Act.[3]

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[1]357 N.E.2d 5 (Ind. Ct. App. 1976).

[2]IND. CODE §§ 22-9-1-1 to -13 (1976). The Indiana Civil Rights Act provides in pertinent part:

> (h) The term 'employer' means the state, or any political or civil subdivision thereof, and any person employing six (6) or more persons within the state; except that the term 'employer' does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, not any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution, nor any exclusively social club, corporation or association that is not organized for profit.

Id. § 22-9-1-3(h).

[3]*Id.* § 4-22-1-14. *See also* Citizens Gas & Coke Util. v. Sloan, 136 Ind. App. 297, 196 N.E.2d 290 (1964) (administrative agency's jurisdiction may be judicially reviewed following any formal order expressly asserting jurisdiction over the subject matter).

This decision recognized that at the state level the proper place for resolution of an employment discrimination charge is with the Indiana Civil Rights Commission, the state's statutorily created civil rights agency.[4] Petitioners and respondents alike who fall within the purview of the Act must utilize that procedure, and state courts may not prematurely interfere with the process.

A new item of state legislation is also of interest in employment discrimination law. In federal civil rights actions under 42 U.S.C. §§ 1981, 1983, 1985,[5] and other related statutes, questions frequently arise as to the applicable statute of limitations, since the federal acts are silent on this issue. Federal courts have attempted to apply the statute of limitations for the state action found to be most analagous to the federal action at bar. This practice has produced a variety of different holdings[6] as different courts have applied state statutes of limitations governing tort or property actions,[7] contract actions,[8] and other types of actions[9] in deciding civil rights cases.

Although case law has not definitively determined the applicable statute of limitations for employment discrimination cases in Indiana,[10] the Indiana legislature recently resolved the question. In-

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[4]The stated purpose of the Indiana Civil Rights Act is to prevent discriminatory practices in the state. IND. CODE § 22-9-1-2 (1976). The Civil Rights Commission, which was established to aid in the enforcement and formulation of policies to effectuate the purposes of the Act, is empowered to receive complaints alleging discriminatory practices, to conduct complaint investigations, to hold fact finding hearings, to issue findings of fact following the hearings, and to order the cessation of unlawful discriminatory practices when appropriate. *Id.* § 22-9-1-6.

[5]42 U.S.C. §§ 1981, 1983, 1985 (1970).

[6]*See, e.g.*, Johnson v. Railway Exp. Agency, 421 U.S. 454 (1975).

[7]*See* Wilson v. Sharon Steel Corp., 549 F.2d 276 (3d Cir. 1977) (tortious interference with contract); Ingram v. Steven Robert Corp., 547 F.2d 1260 (5th Cir. 1977) (injury to person or rights); Marlowe v. Fisher Body, 489 F.2d 1057 (6th Cir. 1973) (injury to person); Smith v. Olinkraft, Inc., 404 F. Supp. 861 (W.D. La. 1975) (wrongful conduct); Ripp v. Dobbs House, Inc., 366 F. Supp. 205 (N.D. Ala. 1973) (injury to person or rights); Utley v. Marks, 4 Empl. Prac. Dec. 7552 (S.D. Ga. 1971) (injury to property right).

[8]*See* Green v. McDonnell Douglas Corp., 463 F.2d 337 (8th Cir. 1972); Allen v. Transit Local 788, 415 F. Supp. 662 (E.D. Mo. 1976); Dudley v. Textron, Inc., 386 F. Supp. 602 (E.D. Pa. 1975); Lewis v. Bloomsburg Mills, Inc., 8 Empl. Prac. Dec. 5325 (D.S.C. 1974); Broadnax v. Burlington Indus., Inc., 7 Empl. Prac. Dec. 7182 (M.D.N.C. 1972).

[9]Several cases have applied a statute of limitations covering liability that arises by statute. *See* Drake v. Southwestern Bell Tel. Co., 553 F.2d 1185 (8th Cir. 1977); Mason v. Owens-Illinois, Inc., 517 F.2d 520 (6th Cir. 1975); Minor v. Lakeview Hosp., 421 F. Supp. 485 (E.D. Wis. 1976); White v. Texaco, Inc., 6 Empl. Prac. Dec. 6258 (S.D.N.Y. 1973).

[10]In Hill v. Trustees of Indiana Univ., 537 F.2d 248 (7th Cir. 1976), Judge Kunzig stated in a concurring opinion that the Indiana statute for character injury, IND. CODE § 34-1-2-2 (1976), applied in a § 1983 action. 537 F.2d at 253-54. This is a two-year statute of limitations.

diana Code section 34-1-2-1.5[11] specifically states that all actions relating to the "terms, conditions, and privileges of employment except actions based upon a written contract" must be brought within two years of the occurrence.

B. Strikes and Injunctions

In Indiana, strikes by public employees are illegal.[12] In *Individual Members of the Mishawaka Fire Department v. City of Mishawaka*,[13] the Third District Court of Appeals had occasion to reaffirm this principle and to determine when a court may properly issue a preliminary injunction against a public employee strike.

The City of Mishawaka had engaged in negotiations with their firefighters over terms and conditions of employment. On August 17, 1974, the firemen went on strike after negotiations collapsed. On August 19, the city commenced suit and obtained a temporary restraining order against the strikers, which was followed by a temporary injunction prohibiting striking and picketing by the firefighters.

On appeal, the firemen argued that the lower court had erred in granting the injunction since at the time of issuance the strike had ended and the firemen were no longer threatening to strike. In upholding the granting of the injunction, the court of appeals noted the illegality of the strike and that while no strike was in progress or threatened at the time the injunction issued, the plaintiffs had already demonstrated the reality of their willingness to strike.[14] Thus, the court ruled that even though no strike was in progress, the prohibitory injunction was properly granted under the trial

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[11]IND. CODE § 34-1-2-1.5 (Supp. 1977).

[12]Anderson Teachers Local 519 v. School City of Anderson, 252 Ind. 558, 251 N.E.2d 15 (1969), *cert. denied*, 399 U.S. 928 (1970). The Indiana statute permitting organization of public employees for collective bargaining purposes, IND. CODE §§ 22-6-4-1 to -13 (1976) (declared unconstitutional 1976), which contained a provision outlawing strikes by public employees, *id.* § 22-6-4-6, was declared unconstitutional and nonseverable by the Indiana Supreme Court shortly after the end of the survey period. Indiana Educ. Employment Relations Bd. v. Benton Community School Corp., 365 N.E.2d 752 (Ind. 1977). *See also* Archer, *Labor Law, 1976 Survey of Recent Developments in Indiana Law*, 10 IND. L. REV. 257, 257 (1976); Suntrup, *Enabling Legislation for Collective Action by Public Employees and the Veto of Indiana House Bill 1053*, 9 IND. L. REV. 994, 1006 (1976).

[13]355 N.E.2d 447 (Ind. Ct. App. 1976).

[14]The firemen entered into a work stoppage twice during the period in question. The first was on August 17 when contract negotiations broke down. On August 19, the mayor told the firefighters that if they returned to work by 7 p.m. they would not be disciplined nor would an injunction be sought. The firefighters returned to work. Subsequently, the parties reached a tentative agreement; however, the city council deadlocked over approval and the firefighters walked off the job again, only to return to work a short time later.

court's broad power to determine temporary relief pending disposition of a dispute on its merits.[15]

Plaintiffs also claimed estoppel because the mayor had stated that if they returned to work no injunction would be sought by the city. However, the court quickly disposed of this argument by noting that the purpose of the equitable doctrine of estoppel would be contradicted if the principle could be applied to protect individuals whose only claim of prejudice was interference with the commission of an illegal strike.[16]

City of Mishawaka also illustrates the inapplicability of the Indiana Anti-Injunction Statute[17] to public employees and the judiciary's refusal to weigh a public employer's conduct in deciding the equitable issue of injunctive relief.[18]

C. Unemployment Compensation

There were two cases of significance decided during the survey period that considered entitlements to unemployment benefits; each turned upon statutory construction. In a case of first impression, *Gray v. Dobbs House, Inc.*[19] elaborated upon the phrase in the Indiana Employment Security Act that denies unemployment benefits to individuals who have voluntarily left their employment without "good cause in connection with the work."[20] In *Gray*, the claimant accepted employment with the defendant but subsequently quit because of transportation problems and parental obligations. She then filed for unemployment compensation. The Employment Security Board found that while those two reasons made her continued employment with appellee impractical, they did not constitute "good cause in connection with the work."

On appeal, the Second District Court of Appeals stated that to qualify for benefits, a claimant's reasons for leaving employment must be objectively related to the employment. Purely personal and subjective reasons are not encompassed within the phrase "good

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[15]355 N.E.2d at 449. *See also* Elder v. City of Jeffersonville, 329 N.E.2d 654 (Ind. Ct. App. 1975).

[16]355 N.E.2d at 449-50.

[17]IND. CODE § 22-6-1-1 to -12 (1976).

[18]*See* discussion of Elder v. City of Jeffersonville, 329 N.E.2d 654 (Ind. Ct. App. 1975), and the contrast between applicability of the Anti-Injunction Statute in the private and public sectors in Archer, *supra* note 12, at 262.

[19]357 N.E.2d 900 (Ind. Ct. App. 1976).

[20]IND. CODE § 22-4-15-1 (Supp. 1977) states in pertinent part:

> [A]n individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of ten (10) weeks.

cause."[21] Thus, the court ruled that parental obligation lacked the same necessary objective nexus to employment as did transportation difficulties, since transportation is solely an employee's responsibility.[22] The claimant argued that one who "capitulates" to domestic, financial, or transportation pressures terminates his employment involuntarily and such termination is patently for "good cause." While the court recognized the rationality of this argument, it ruled that benefits could not be conferred on such a basis because of the clarity of the statutory language requiring that the "good cause" be in connection with employment.[23]

Although the claimant in *Gray* had sympathies on her side, as well as some logical arguments and foreign precedent,[24] the decision is statutorily correct and clearly in line with the purpose of unemployment compensation. Any other ruling by the court would have improperly expanded the concept of "good cause in connection with the work" and made benefits available to any person who decided to quit his employment for almost any reason. Such a result would tax an already burdened unemployment compensation system.

The second decision, also one of first impression in the area of unemployment compensation, was *Bowen v. Review Board of the Indiana Employment Security Division*[25] in which Indiana Code section 22-4-15-3(e)[26] was judicially examined for the first time. In *Bowen*, plaintiff was a production and maintenance employee who was represented by a labor union. The collective bargaining agreement between the employer and union expired on December 21, 1974. On December 23, the employer placed the plaintiff on "indefinite"

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[21]357 N.E.2d at 903 (citing Geckler v. Review Bd., 244 Ind. 473, 193 N.E.2d 357 (1963)).

[22]*Id.*

[23]*Id.* at 905.

[24]In Bateman v. Howard Johnson Co., 292 So.2d 228 (La. 1974), it was held that under certain circumstances transportation problems could be considered "good cause in connection with the employment." *Id.* at 230.

Under IND. CODE § 22-4-15-2 (1976), a claimant otherwise eligible for unemployment benefits and not disqualified by reason of *id.* § 22-4-15-1, loses eligibility when "he fails without *good cause*, either to apply for available suitable work . . ., or to accept suitable work when found for and offered to him . . . ." *Id.* § 22-4-15-2 (emphasis added). "This provision [§ 22-4-15-2] does not render one disqualified merely because he rejects an offered job, the hours of which are incompatible with his parental obligation." Gray v. Dobbs House, Inc., 357 N.E.2d 900, 904 (1976) (dicta). Claimant argued that with respect to the "good cause" requirement, § 22-4-15-1 and § 22-4-15-2 were equivalent and that the legislature could not have intended the ironical and inconsistent results which would follow by not equating the standards. Nonetheless, while recognizing that the distinction it was drawing could lead to "harsh consequences," the *Gray* court effectuated what it believed to be the "plain import" of those provisions, which demonstrated distinctions disallowing an equation of the two "good will" standards. 357 N.E.2d at 904-05.

[25]362 N.E.2d 1178 (Ind. Ct. App. 1977).

[26]IND. CODE § 22-4-15-3(e) (1976).

layoff. On December 30, plaintiff received a notification directing him to return to work on January 6, 1975. However, on January 3, plaintiff's union went on strike and plaintiff refused to return to work. Thereafter, plaintiff unsuccessfully applied for unemployment benefits pursuant to section 22-4-15-3(e), which provides that a person is not ineligible for benefits solely because of his refusal to accept recall during a labor dispute if his last separation from the employer occurred prior to the labor dispute and was for an indefinite period of time.[27]

In a brief opinion, the Second District Court of Appeals reversed the denial of benefits, finding that the statutory language was unambiguous and therefore needed no judicial interpretation. The court concluded that the claimant met the conditions of the statute because his last separation, on December 23, was prior to the commencement of the strike and no date had been set for his return. The Review Board argued that since plaintiff had been recalled to work three days after the strike began, his separation was no longer for an "indefinite time." The court rejected this argument, observing that the point of reference for that phrase was the employee's "last separation," not his receipt of notice to return to work.

On its facts, the result in *Bowen* appears inequitable because, by statute, striking employees are not entitled to collect unemployment benefits, since they are considered to be voluntarily unemployed.[28] Arguably, the same rationale should apply to an individual who is on layoff but recalled prior to a strike, since after the recall his decision to strike and not return to work is just as voluntary as if he had never been on layoff in the first place. The court concluded that permitting collection of benefits under these facts was a conscious extra benefit granted by the legislature. *Bowen's* lesson for employers is not to lay off an employee without setting a tentative date for recall if a strike is imminent; if necessary, this date may be extended as the deadline approaches.

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[27]Section 22-4-15-3(e) provides in full:

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for waiting period or benefit rights under this section solely by reason of his failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.

[28]IND. CODE § 22-4-15-3(a) states:

An individual shall be ineligible for waiting period or benefit rights: for any week with respect to which an employee of the division, designated by the director and hereinafter referred to as the deputy, finds that his total or partial or part-total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed.