1972 WL 714
United States District Court; S.D. Texas, Brownsville Division.

Francisco Medrano et al., Plaintiffs
v.
A. Y. Allee et al., Defendants.

No. 67-B-36
|
December 4, 1972

Memorandum and Order

***1** On June 26, 1972, this Court entered its opinion in this case holding that the Plaintiffs were entitled to certain declaratory and injunctive relief. 347 F. Supp. 605. In accordance with that opinion the Plaintiffs have submitted a proposed final decree. The Defendants through the Attorney General have submitted their objections and an alternate decree. The Plaintiffs have responded with a memorandum and a revised proposed final decree. The Defendants' objections will be considered in their numerical order.

The Defendants have made no objections to paragraphs 1 through 7 of the proposed final decree.

Defendants' Objection No. 1. Defendants object to paragraph 8 as repetitious in that it goes into evidentiary matters which are inappropriate to a final decree. The Plaintiffs respond that the language to which the Defendants object is appropriate in that it shows that the statutes were used as part of the illegal conduct and that this fully satisfied the requirements of *Younger v. Harris*, 401 U. S. 37 (1971).

This objection will be overruled.

Defendants' Objection No. 2. The Defendants object to paragraph 9 of the proposed final decree in that as proposed the paragraph does not reflect the Court's opinion which held the entirety of section 1 of article 5154d unconstitutional. Plaintiffs respond that subdivision 2 of section 1 is not included because in Plaintiffs' opinion the record does not show any arrest under this specific subdivision.

The objection will be sustained and the paragraph expanded to include subdivision 2 of section 1. The record contained many instances of arrests for "mass picketing." The arrest on May 31, 1967 (p. 13 of the opinion, 347 F. Supp. 616) is an example of such an arrest. It is clear from a reading of *Sabine Area B. T. C. v. Temple Associates, Inc.*, [66 LC P 52,594] 468 S. W. 2d 501 (Tex. Civ. App.–Beaumont, 1971, no writ), that a charge of "mass picketing" presents both subdivisions to the Texas trial court. Thus both subdivisions were properly before this Court. The Court notes that the constitutionality of the definitions of "picket" and "picketing" were not challenged in this suit, that no argument was presented on these points, and the Court does not pass on their validity.

Defendants' Objection No. 3. The Defendants object to paragraph 10 of the proposed final decree in that it is incomplete on the theory that the Court held unconstitutional the entirety of sections 1 and 2, article 5154f. The Plaintiffs respond that the Court dealt specifically only with those sections and subparagraphs set out in the Plaintiffs' proposed final decree. The Plaintiffs point out that the Defendants made no use of paragraph e(3) of section 2 of article 5154f, and that this is why that particular provision has not been included in the proposed final decree.

The Defendants' objection will be overruled. The Court's opinion did not deal with paragraphs a, c, f or g of section 2. These are definitions of the terms, "labor union," "picket," "employer," and "employee."

***2** Paragraph h of section 2 should be added to the decree as being a part of the statute declared unconstitutional, since the Court did deal with the term "labor dispute" at 347 F. Supp. 627. There is no evidence in the record showing any use by the Defendants of paragraph e(3) of section 2 and there is no reason to include that provision within the decree.

Defendants' Objection No. 4. Defendants object that the language of paragraph 11 of Plaintiffs' proposed final decree is unclear. The Plaintiffs concede this point and would reword the decree to conform to the proposal of the Defendants.

The objection will be sustained.

Defendants' Objection No. 5. The Defendants object to paragraph 12 of the proposed final decree on the theory that it is incomplete in that the Court held unconstitutional the entirety of Article 474 of the Texas Penal Code.

The Plaintiffs respond that the proposed paragraph deals with the article only as it was used against the Plaintiffs and omits language concerning going "into" a private house and language concerning exposure of the person to someone under the age of sixteen or rudely displaying a pistol or deadly weapon, because no arrests were made concerning such conduct.

The Defendants' objection will be overruled since these issues were not in the case.

Defendants' Objection No. 6. In Objection No. 6 the Defendants would consolidate into one paragraph, paragraphs 9 through 14 of Plaintiffs' proposed final decree. The Plaintiffs disagree.

The objection will be overruled. Specificity is more important here than brevity.

Defendants' Objection No. 7. In Objection No. 7 the Defendants request an alteration of the Court's opinion before the entry of judgment in light of Defendants' objections 2, 3 and 5 to paragraphs 9, 10 and 12 of Plaintiffs' proposed decree.

The Court's ruling on objections 2, 3 and 5 dispose of this objection and it will be overruled.

Defendants' Objection No. 8. This objection goes to language in paragraph 12 which the Defendants believe to be an unnecessary repetition of evidentiary facts. The Defendants object to the second sentence of paragraph 12 and the first half of the third sentence. The Plaintiffs respond that the language is appropriate and lends clarity to the decree.

Defendants' objection will be overruled.

Defendants' Objection No. 9. The Defendants object to the wording of paragraph 15 of the Plaintiffs' proposed final decree, based upon Defendants' objections 2, 3 and 5.

The Court's rulings on objections 2, 3 and 5 dispose of this objection and this objection will be overruled.

Defendants' Objection No. 10. The Defendants are of the opinion that paragraph 16A unnecessarily restricts law enforcement officers in the performance of their duties. The Plaintiffs are willing to add the words "without adequate cause" at the end of paragraph 16A, but do not wish to add the words, "conducted in a peaceful, lawful, and proper manner," proposed by the Defendants because this would create a selective enforcement loophole.

***3** The Plaintiffs' proposed addition will be accepted and the Defendants' objection overruled.

Defendants' Objection No. 11. The Defendants object to paragraph 16B in that it unreasonably restricts law enforcement officers and Defendants propose to add the words, "conducted in a peaceful, lawful, and proper manner"; the Plaintiffs make the same response made to Objection No. 10.

Defendants' objection will be overruled.

Defendants' Objection No. 12. Defendants object to the use of the second "or" in paragraph 16C, as this creates an ambiguity. The Plaintiffs have submitted a modification which eliminates the ambiguity.

Plaintiffs' modification will be accepted and the objection overruled.

Defendants' Objection No. 13. Defendants object to paragraph 16D as repetitious of paragraph 15. The Plaintiffs believe that this is necessary because of the repeated arrests and dispersal of persons in creating actual obstructions.

Defendants' objection will be sustained.

Defendants' Objection No. 14. Defendants object to paragraph 16E as uncalled for since the activity which this paragraph would enjoin is already unlawful. The Plaintiffs believe that this is necessary since the record shows several beatings.

Defendants' objection will be sustained.

Defendants' Objection No. 15. Defendants object to paragraph 16F as repetitious of the injunctive language in paragraph 16B. The Plaintiffs believe that this language is necessary to prevent the practice of using the arrest of one person to justify the arrest of bystanders.

Defendants' objection will be overruled. Paragraph 16F will be renumbered 16D in the Final Judgment.

Therefore, it is Ordered that Defendants' Objections 1, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 15 are Overruled; and that Defendants' Objections 2, 4, 13 and 14 are Sustained.

The Defendant Rochester by a letter that was received by the Court on November 22, 1972, objects to that part of the Memorandum and Proposed Judgment that finds that Rochester acted in concert with the other defendants.

The objection is without merit and is overruled.

A Final Judgment will enter accordingly. Clerk will enter this Memorandum and Order and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

Final Judgment

1. This Final Judgment is rendered for and on behalf of Plaintiffs, United Farm Workers Organizing Committee, AFL-CIO, and also Francisco Medrano, Kathy Baker, David Lopez, Gilbert Padilla, Magdaleno Dimas, and Benjamin Rodriguez, individually and as representatives of the class described in Paragraph 2 of this Final Judgment.

2. This Final Judgment is also rendered for and in behalf of the class of persons represented by Plaintiffs, to-wit, the members of Plaintiff United Farm Workers Organizing Committee, AFL-CIO, and all other persons who because of their sympathy for or voluntary support of the aims of said Plaintiff union have engaged in, are engaging in, or may hereafter engage in peaceful picketing, peaceful assembly, or other organizational activities of or in support of said Plaintiff union or who may engage in concert of action with one or more of Plaintiffs for the solicitation of agricultural workers or others to join or make common cause with them in matters pertaining to the work and labor of agricultural workers. The Court hereby finds that the Plaintiffs named in Paragraph 1 of the Final Judgment are appropriate representatives of the class of persons herein described and this is a proper class action.

***4** 3. The Plaintiffs named and the persons described in Paragraphs 1 and 2 of this Final Judgment are hereafter referred to herein by the term "Plaintiffs and the persons they represent."

4. This Final Judgment is rendered against and is directed to the named Defendants A. Y. Allee, as Captain, and S. H. Denson, Jack Van Cleve, Jerome Preiss, and T. H. Dawson, as Privates, of the Texas Ranger Force which exists as a division of the Department of Public Safety as provided by Article 4413(11) of Vernon's Annotated Civil Statutes of Texas. This Final Judgment is also directed to the successors in office of the said named peace officers, to the agents and employees of such officers, and to all persons or peace officers acting in concert with them to whom knowledge of this Final Judgment shall come.

5. This Final Judgment is also rendered against and directed to Defendants Dr. Rene Solis as Sheriff of Starr County, Texas, Raul Pena and Roberto Pena as Deputy Sheriffs of Starr County, Texas, to their successors in office, to their agents and employees, and to all persons and peace officers acting in concert with them to whom knowledge of this judgment shall come.

6. This Final Judgment is also rendered against Defendant Jim Rochester as a specially commissioned peace officer and against Defendant B. S. Lopez as Justice of the Peace.

7. The Defendants named and the persons described in Paragraphs 4, 5 and 6 of this Final Judgment are hereafter referred to herein by the term "Defendants, their successors, agents and employees, and persons acting in concert."

8. On the basis of evidence credited by the Court and Findings of Fact in the Court's Opinion of June 26, 1972, the Court finds that Defendants, acting in concert, have engaged in a continuing course of conduct intended to deprive Plaintiffs of their constitutional rights, and have utilized certain specific statutes of the State of Texas as their authority repeatedly to arrest, jail, file charges, threaten to arrest, and disperse Plaintiffs and their sympathizers while the latter were engaged in constitutionally protected activities. Accordingly, the Court hereby renders Declaratory Judgment under 28 U. S. C. Section 2201 as to the following specifically challenged statutes.

[*Picketing Laws*]

9. The Court declares and adjudges that Section 1 of Article 5154d of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, is null and void. The said portion of the statute reads as follows:
"Section 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"'Mass picketing,' as that term is used herein, shall mean any form of picketing in which:

"1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or

pickets.

"2. Pickets constitute or form any character of obstacle to the free ingress to and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions."

***5** 10. The Court declares and adjudges that Sections 1 and 2 of Article 5154f of Vernon's Civil Statutes of the State of Texas, to the extent quoted below, are null and void. The said portions of the statute read as follows:
"Section 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

"Section 2. * * *

"b. 'Secondary strike' shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

"d. The term 'secondary picketing' shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

"e. The term 'secondary boycott' shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation for whom they are not employees, by

"(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or

"(2) Picketing such person, firm or corporation; or

"(4) Instigating or formenting a strike against such person, firm or corporation; or

"(5) Interfering with or attempting to prevent the free flow of commerce; or

"(6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute."

"h. The term 'labor dispute' is limited to and means a controversy between an employer and the majority of his employees concerning wages, hours or conditions of employment; provided that if any of the employees are members of a labor union, the controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act."

11. The Court declares and adjudges that Article 784 of the Texas Penal Code is constitutional.

[*Cursing and Unlawful Assembly*]

12. The Court declares and adjudges that Article 474 of the Texas Penal Code was null and void to the extent that it prohibited loud and vociferous language, and to the extent that it prohibited conduct in a manner calculated to disturb the person or persons present at the scene of the conduct. The void portion was the purported authority repeatedly used by Defendants unconstitutionally to arrest or threaten to arrest Plaintiffs and their sympathizers or to order or suggest that they disperse. The portion of said statute which is here declared to be null and void and to have caused the unconstitutional denial of the rights of Plaintiffs and their sympathizers is as follows:

> ***6** "Whoever shall go into or near any public place, or . . . near any private house, and shall use loud and vociferous, or obscene, vulgar or indecent language or swear or curse, or yell or shriek . . . in a manner calculated to disturb the person or persons present at such place or house, shall be punished by a fine not exceeding Two Hundred Dollars ($200)."

Article 474 of the Texas Penal Code was amended during the pendency of this suit by Acts 1969, 61st Leg., p. 1510,

ch. 454, Section 1, effective June 10, 1969. The said amendment of Article 474 of the Texas Penal Code did not exist at the times of the events in this case, and the judgment of this Court does not adjudge the constitutionality of said amendment.

13. The Court declares and adjudges that Article 482 of the Texas Penal Code is null and void. The said statute reads as follows:

> "Any person who shall in the presence of hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars."

[*Injunctions*]

14. The Court declares and adjudges that Article 439 of the Texas Penal Code is null and void. The said statute reads as follows:

> "An 'unlawful assembly' is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof."

15. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert, are permanently enjoined and restrained from enforcing that part of Article 5154d of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 9 of this Final Judgment, and that part of Article 5154f of Vernon's Civil Statutes of the State of Texas which is quoted in paragraph 10 of this Final Judgment, and that portion of Article 474 of the Texas Penal Code which is quoted in paragraph 12 of this Final Judgment, and Article 482 of the Texas Penal Code, and Article 439 of the Texas Penal Code, against Plaintiffs and the persons they represent or any of them, by arresting, imprisoning, filing criminal charges, threatening to arrest, or ordering or advising or suggesting that they disperse under authority of any portion of such statutes as designated herein.

16. It is further ordered, adjudged and decreed by the Court that Defendants, their successors, agents and employees, and persons acting in concert with them, are permanently enjoined and restrained from any of the following acts or conduct directed toward or applied to Plaintiffs and the persons they represent, to-wit:

A. Using in any manner Defendants' authority as peace officers for the purpose of preventing or discouraging peaceful organizational activities without adequate cause.

B. Interfering by stopping, dispersing, arresting, or imprisoning any person, or by any other means, with picketing, assembling, solicitation, or organizational effort without adequate cause.

***7** C. Arresting any person without warrant or without probable cause which probable cause is accompanied by intention to present appropriate written complaint to a court of competent jurisdiction.

D. Stopping, dispersing, arresting or imprisoning any person without adequate cause because of the arrest of some other person.

E. As used in this Paragraph 16, Subparagraphs A, B and D above, the term "adequate cause" shall mean (1) actual obstruction of a public or private passway, road, street, or entrance which actually causes unreasonable interference with ingress, egress, or flow of traffic; or (2) force or violence, or the threat of force or violence, actually committed by any person by his own conduct or by actually aiding, abetting, or participating in such conduct by another person; or (3) probable cause which may cause a Defendant to bllieve in good faith that one or more particular persons did violate a criminal law of the State of Texas other than those specific laws herein declared unconstitutional, or a municipal ordinance.

Clerk will enter this Final Judgment and provide counsel with true copies.

Done at Brownsville, Texas, this 4th day of December, 1972.

All Citations

Not Reported in F.Supp., 1972 WL 714, 86 L.R.R.M. (BNA) 2303, 74 Lab.Cas. P 10,159