

April 1960

## Labor Law—Injunctions of Strikes Affecting National Health and Safety

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### Recommended Citation

C. H. H. II, *Labor Law—Injunctions of Strikes Affecting National Health and Safety*, 62 W. Va. L. Rev. (1960). Available at: <https://researchrepository.wvu.edu/wvlr/vol62/iss3/14>

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ever, be directly nullified, it appears that strict application of G.C.M. 23623, *supra*, would exact hardship upon the small operator experiencing bona fide loss in this type of transaction, and that it would be detrimental to the policy adopted by Congress toward encouragement of the development and expansion of this vital industry.

The application of the "intent" theory, which gained tacit approval in the *Choate* case, *supra*, would seem to be the soundest approach in the determination of whether given deductions, occasioned by "sales" involving production payments, are to be permitted as valid economic losses, or to be disallowed as merely theoretical "losses."

C. H. H. II

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LABOR LAW—INJUNCTIONS OF STRIKES AFFECTING NATIONAL HEALTH AND SAFETY.—The United States sought and obtained in the District Court for the Western District of Pennsylvania an injunction under the National Emergency provisions of the Labor Management Relations Act (Taft-Hartley Act), §§ 206-210, 208, 29 U.S.C. 176-180, 178 (1947), against the continuation of an industry-wide strike in the basic steel industry. *United States v. United Steelworkers*, 178 F. Supp. 247 (W.D. Pa. 1959). The Court of Appeals affirmed. *United Steelworkers v. United States*, 271 F.2d 676 (3d Cir. 1959). On certiorari, the United States Supreme Court affirmed. *Held*, by eight justices in a per curiam decision which was amplified by a separate opinion filed later by Frankfurter and Harlan, JJ., that the judgement below was amply supported by the district court's finding that the strike's continuation imperiled the national safety and that the statute as applied was not violative of the constitutional limitation prohibiting courts from exercising powers of a legislative or executive nature. Douglas, J., dissented, stating: (1) that the case should be remanded to the district court for particularized findings as to how the steel strike imperiled the national health; and (2) that since equity traditionally exercises jurisdiction, it should not be held that the only way to remove the danger to national safety is to issue a blanket injunction in the absence of a showing that a partial reopening would not be sufficient. *United Steelworkers v. United States*, 80 Sup. Ct. 1 (Nov. 7, 1959), 80 Sup. Ct. 177 (Dec. 7, 1959).

The National Emergency provisions of the Labor Management Relations Act (hereinafter designated L.M.R.A.), §§ 206-210,

29 U.S.C. §§ 176-180 (1947), have been invoked fifteen times, including this dispute. The industries involved have been: atomic energy (three times), meatpacking, bituminous coal (three times), telephone, maritime longshoremen (three times), a single pipe manufacturing plant, and steel (twice). Not all of the above named disputes have reached the court system because the initiation of the proceeding under section 206, *supra*, precipitated an immediate settlement between the parties, presumably to avoid further government intervention. HANDLER & HAYS, LABOR LAW 558, 561 (3d ed. 1959).

The provisions of the L.M.R.A. treated in the principal case are summarized as follows. The President is authorized to appoint a board of inquiry which is required to report to him in regard to the dispute. Upon receiving the report of the board of inquiry, the President may direct the Attorney General to seek an injunction to terminate the work stoppage. When the injunction order is issued, the President is required to reconvene the board of inquiry, which then must report to the President at the end of a sixty day period regarding the status of the dispute. Within the succeeding fifteen days, the National Labor Relations Board is required to take a secret ballot among the employees involved, upon the question whether they wish to accept the employer's last offer. Results of the ballot must be certified to the Attorney General within five days thereafter. The Act accordingly contemplates an eighty day "cooling off" period. If the dispute is not terminated at the expiration of the period, the injunction order must be dissolved, the President is required to submit a final report of the matter to Congress, and the parties are theoretically free again to resort to tests of economic strength. See e.g. *United States v. United Steelworkers*, 202 F.2d 132 (2d Cir. 1953), affirming *United States v. American Locomotive Co.*, 109 F. Supp. 78 (1952); *United States v. United Mine Workers*, 89 F. Supp. 187 (D.D.C. 1950), *appeal dismissed and aff'd*, 190 F.2d 865 (D.C. Cir. 1950); *United States v. International Longshoremen's & Warehousemen's Union*, 78 F. Supp. 710 (N.D. Cal. 1948); *United States v. United Mineworkers*, 77 F. Supp. 563 (D.D.C. 1948), *aff'd*, 177 F.2d 29 (D.C. Cir.); *cert. denied* 338 U.S. 871 (1949).

Although the provisions of the Act have been invoked several times, they had not been considered by opinion by the Supreme Court until the principal case. Exemplified by the instant case,

there are apparent two main approaches to the Act and its review by the federal courts.

I. *The Constitutional Approach.* These issues were dispensed with easily by the Court and may be discussed in view of the previous adjudications of the lower federal courts since the enactment of the L.M.R.A., and from equity precedents in general.

The petitioner had assailed the district court's right to exercise jurisdiction granted by § 208 of the L.M.R.A. to enjoin strikes such as this as not being a "case" or "controversy", and thus not a grant of jurisdiction within the meaning of art. 3, § 2 of the Constitution. The courts, as noted in the concurring opinion of the principal case, have long had the power to issue injunctions to abate public nuisances at the suit of the government. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921). A strike or lockout endangering the public health or safety comes within the purview of a suit to abate a public nuisance. Challenges of statutory limitation on the right to strike and their validity has been upheld. *Dorchy v. Kansas*, 272 U.S. 306 (1926). Even apart from statute, the federal powers to invoke the injunctive process to halt strikes affecting the public at large exists. *In re Debs*, 158 U.S. 564 (1895).

A related ground of attack upon the question whether a strike or lockout presents a justiciable controversy when it is a peaceful one, received rather summary treatment in *United States v. International Longshoremen's Ass'n.*, 116 F. Supp. 262 (S.D. N.Y. 1953). The court held that jurisdiction under National Emergency to grant an injunction against interested parties to a dispute did not depend upon the existence of a justiciable controversy with respect to the parties sought to be enjoined, rather it is the fact that the public interest was invaded by the private parties which gives the court its jurisdiction.

In *United States v. International Longshoremen's & Warehousemen's Union*, *supra*, the National Emergency injunction was also attacked on the ground that it violated constitutional amendments relation to freedom of speech, due process of the law, and involuntary servitude. The district court held that such argument was not valid because the injunction was directed at the union as the offending party, and it only incidentally affected the individual worker. This view was elaborated upon and followed in an excellent opinion by Judge Keech in a later case affecting the

bituminous coal industry. *United States v. United Mine Workers*, 89 F. Supp. 187, *supra*.

II. *The Labor Relations Approach.* It is to be noted at this point that a consideration of the principal case in light of principles of labor law cannot proceed wholly within the bounds of judicial decision. This area of substantive law, being for the most part statutory and of relatively recent origin, is passed upon only incidentally by the courts. Considerations, though valid, will not be treated by the courts if they involve matters of policy or regulation which are properly within the scope of the executive or legislative branches of government. Policy arguments addressed to the wisdom of strike-injunctions recognized by the Court in the principal case, e.g. 80 Sup. Ct. 1, at 3, "the effect of a labor injunction on the collective bargaining processes . . . . availability of other remedies to the executive . . . ." were not deemed controlling in considering whether the lower courts were correct in the issuance and affirmance of the injunction.

Pursuant to the judiciary's blatant abuse of labor's rights in the early part of this century, which was vociferously documented by experts in the field, see generally FRANKFURTER & GREENE, *THE LABOR INJUNCTION* (1930), Congress passed remedial legislation. The Norris-LaGuardia Act, 29 U.S.C. § 100 (1932) inhibited the indiscriminate use and misapplication of injunctions and thus enhanced labor's economic bargaining power. The L.M.R.A., however, re-vested the federal district courts with power to grant injunctions in limited situations arising out of labor disputes by creating an exception to the Norris-LaGuardia Act. *United States v. United Steelworkers*, 202 F.2d 132 (2d Cir. 1953).

Upon proper finding before the district courts in their capacity as triers of fact, the courts are impressed with the mandatory duty to enjoin a strike or lockout affecting an entire industry or substantial part thereof, when such will, if permitted to continue, endanger the national health or safety. *United States v. International Longshoremen's Ass'n.*, 116 F. Supp. 255 (S.D. N.Y. 1953). It would appear from the above that the courts have dispelled anticipated fears that the Act would represent a swing back to the early days of issuance of injunctions which had aborted collective bargaining in the ordinary employer-employee relationship.

Another early reaction to the L.M.R.A. National Emergency provisions was that it could be construed as a basis to support the

seizure of an industry by the President because a dispute constituted a threat to the nation's welfare. Speculations of this nature were conclusively settled by the Court in *Youngstown Sheet & Tube v. Sawyer*, 243 U.S. 579 (1952) (Holding that seizure could not be justified without statutory authority and that the L.M.R.A. furnished none).

A criticism of the principal case voiced by Mr. Justice Douglas, and raised in those cases previously tried in regard to the Act, was that the district court should have some discretion as to the form of relief to be issued in the best interests of adjudicating each fact situation. Rehms, *Operation of the National Emergency Provisions of the L.M.R.A. of 1947*, 62 YALE L.J. 1047 (1952). Justices Frankfurter and Harlan, concurring in the instant case, distinguished the L.M.R.A., section 208 from section 205(a) of the Emergency Price Control Act of 1942 where the remedy of injunction was discretionary with the court since that act stated, "a permanent or temporary injunction, restraining order, or other order be granted." *Hecht Co. v. Bowles*, 321 U.S. 321 (1944); whereas, the specific words of the L.M.R.A. § 208 are mandatory upon the court if the facts found and evidence adduced presents a national emergency. From the preceding comparison of statutory construction, the Court inferred that authority to issue discretionary limited injunctions must come from the policy makers.

Coupled with specific criticism above, a general broadside of the following nature has been leveled at the National Emergency provisions by many writers. It is said that the public interest in regards disputes of national implication cannot be effectively served so long as private parties can further their singular interests by forcing Federal Government's recourse to the drastic emergency provisions. Experience has shown that these provisions, designed for timely settlement as well as the prevention of the crippling of the economy, and damage to defense production, are being used to advantage by either Labor or Management (depending upon the facts of the particular dispute) to gain their economic objective without bargaining, while at the same time delaying settlement for the eighty-day period. See e.g., HANDLER & HAYS, *supra*, at 561; Forkosch, *Equity Versus Taft-Hartley Injunctions*, 24 TEMP. L.Q. 277, 294 (1950-51). Consequently, it would appear that a preordained policy, codified into narrow legislative provisions, has impeded rather than facilitated timely and beneficial settlements of National Emergency disputes. The L.M.R.A. represents a

type of legislation which is anticipatory in nature wherein the parties affected fully realize the results that will follow when the provisions of the Act are invoked against them. This, as previously noted, has given a measure of protection and advantage to one of the private parties rather than the public. The district courts are then called upon, apparently not to adjudicate the rights of the parties and to grant appropriate relief, but merely to "rubber stamp" administrative determinations. To forestall such results in the future it is suggested that the L.M.R.A. be amended. Massachusetts has enacted a type of legislation of an *ad hoc* nature which appears to produce a more desirable settlement of disputes affecting the public interest.

The Massachusetts legislation places the power of discretionary action upon the parties in dispute in the executive branch of the government. The legislation grants the governor wide discretion in approach to settlement, even to the extreme of government seizure. Under this legislative approach the parties in dispute do not anticipate the full import of their actions. Consequently, the vague threat of active government intervention, without warning, has proved conducive to speedy settlement of injurious strikes or lockouts. For a full discussion of this legislative approach, authored by the late Sumner Slichter of Harvard, see Schultz, *The Massachusetts Choice-of-Procedures Approach to Emergency Disputes*, 10 IND. & LAB. REL. REV. 359 (1956-57).

Until such time as Congress shall legislate a different approach in regards National Emergency disputes and concomitant protections of both the public interest and that of free collective bargaining, the mandate, once requisite findings are made, is upon the judiciary *to act* as surely as it is upon the interests limited by the issuance of the injunction *to acquiesce*.

C. H. H. II

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OIL AND GAS—MINERAL ROYALTY DEED—IMPLIED CONDITION THAT TEMPORARY CESSATION OF PRODUCTION AFTER FIXED TERM DOES NOT TERMINATE RIGHT TO ROYALTIES.—Petitioners held a term royalty deed entitling them to mineral royalties for fifteen years and so long thereafter as minerals were produced in paying quantities. Paying production was continuous beyond the primary term, until two law suits between respondents and a certain lessee, plus concomitant mechanical failures, caused a cessation thereof for 174 days. Petitioners sued for a declaratory judgment that their