LABOR LAW - NATIONAL LABOR RELATIONS ACT - NECESSITY OF A WRITTEN CONTRACT TO MEET REQUIREMENT OF GOOD FAITH COLLECTIVE BARGAINING

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Labor Law — National Labor Relations Act — Necessity of a Written Contract to Meet Requirement of Good Faith Collective Bargaining — Having found that the petitioner, by refusing to sign an agreement reached with the union, was refusing to bargain collectively, the National Labor Relations Board ordered it to bargain by signing a written agreement. The Circuit Court of Appeals for the Sixth Circuit directed enforcement of the board's order. On certiorari to that court, held that the board's order should be enforced. H. J. Heinz Co. v. National Labor Relations Board, (U. S. 1941) 61 S. Ct. 320, affirming (C. C. A. 6th, 1940) 110 F. (2d) 843.

The willingness to enter into a written agreement as a requisite to good
faith collective bargaining has been consistently upheld by the National Labor Relations Board. Accordingly, the board has held the following excuses insufficient to justify an expressed refusal to sign any agreement reached: no requirement in the statute; no decision by the Supreme Court requiring signing; good faith negotiation of all other questions to an impasse; unfavorable business conditions; failure of the union to post bonds; fear of retaliation by a rival union; fear of competitors; refusal of the union to accept a "with-members-only" bargaining clause rather than exclusive bargaining rights; refusal of the union to agree on additional terms suggested by the employer; and irresponsibility of the union. The board's rulings are based on the theory that good faith collective bargaining under ordinary circumstances requires that the employer be willing to sign the final agreement if any is reached. The board in theory would apparently permit employers to advance reasons excusing them from signing, but in the light of the above list of discarded reasons, this would seem a doubtful privilege. Before the present decision was reached by the Supreme Court, seven circuit courts had upheld the labor

1 Typical cases are: In re Wilson Co., 19 N. L. R. B., No. 99, 5 L. R. R. 688 (1940); In re Gulf Public Service Co., 18 N. L. R. B., No. 74, 5 L. R. R. 715 (1939).
5 In re Pittsburgh Metallurgical Co., 20 N. L. R. B., No. 103, 6 L. R. R. 166 (1940).
8 Id.
9 Id.
board's rulings, while one, the seventh circuit, had reversed. The minority court, with a new panel of judges, retreated somewhat from its original position. While still maintaining that the act itself does not require a written agreement, this court asserted that the board might reasonably find that a refusal to sign was a refusal to bargain in good faith. The position of the seventh circuit is supported by the arguments that there is nothing in the act requiring signing, the term "collective bargaining" does not include it, and since nothing necessitates signing, neither the board nor the courts can read in such a stipulation. It is also a well-established principle of construction that if the words of a statute are not ambiguous, they should be taken literally. The Supreme Court has found that the act requires no agreement at all. The Circuit Court of Appeals for the Seventh Circuit concluded from this that all the material elements of the contract may be negotiated, which would give the employer the right to bargain with the union as to whether the final agreement, if any, should be oral or written. The decision in the principal case upholds the circuit courts which construed the act according to its broader purpose. The circuit courts based their enforcing decrees either on the theory of an absolute duty to sign as a requisite of good faith bargaining, or on the belief that the board could issue such orders.


Judge Major wrote the Inland decision in which Evans and Sparks, JJ., concurred. The Corrugated decision, infra, note 17, was written by Judge Evans with Judges Treanor and Kerner concurring.

While under no statutory obligation to reduce its agreement to writing, the significance of employer's action in this respect may have a bearing on another issue. The refusal is indicative, not only of a hostile mental attitude, but is also repugnant to the spirit of the Act, the heart of which is embodied in the right of the employees to negotiate with their employer, collectively." Fort Wayne Corrugated Paper Co. v. N. L. R. B., (C. C. A. 7th, 1940) 111 F. (2d) 869 at 872.


Webster's New International Dictionary, 2d ed. (1934), defines "collective bargaining" as, "Negotiation for the settlement of the terms (for example, as to wages) of a labor contract between an employer, or a group of employers, on one side, and an organized body of workers on the other."


under its affirmative powers. The Supreme Court wisely combined the two positions by finding an absolute duty to sign to demonstrate good faith, and concluding that any breach of that duty could be corrected by an order to sign permitted by the affirmative powers given the board. The major purpose of the act is to insure industrial peace by erasing inequality of bargaining power and encouraging practices fundamental to the friendly adjustments of industrial disputes. Requiring that terms agreed upon be placed in writing would seem to aid in fulfilling that purpose. The writing and signing of agreements reached gives the unions a practical, concrete "selling point," while failure to do so tends to decrease union prestige and increase the feeling of insecurity among employees. A written agreement establishes a clear and indisputable record of the terms agreed upon and thus lessens arguments as to what the terms actually were. It provides an adequate basis for handling the large quantity of technical questions involved in grievances and disputes as a body of interpretations is built upon numerous permanently recorded contracts. It also constitutes a basis for future negotiations when either party might desire salutary changes to overcome defects or meet changing conditions.

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25 N. L. R. B. v. Sunshine Mining Co., (C. C. A. 9th, 1940) 110 F. (2d) 780; H. J. Heinz Co. v. N. L. R. B., (C. C. A. 6th, 1940) 110 F. (2d) 843 at 849, stating: "We are of the opinion that the sense of insecurity engendered [by the refusal to sign] required the Board to exercise the power conferred in § 10 (c)." It will be noticed that this case covered both theories. The court compared the power to force the writing of the agreement to the power to force employers to post notices, which is not specifically given in the act but permitted by N. L. R. B. v. Pennsylvania Greyhound Lines, 303 U. S. 261, 58 S. Ct. 571 (1937).

26 "Petitioner's refusal to sign was a refusal to bargain collectively and an unfair labor practice defined by § 8 (5). The Board's order requiring petitioner to sign . . . is authorized by § 10 (c)." Principal case, 61 S. Ct. 320 at 326.
