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LABOR LAW — NATIONAL LABOR RELATIONS BOARD — REMAND WITHOUT DECISION AFTER ORDER TO ENFORCE IS FILED IN CIRCUIT COURT OF APPEALS — The National Labor Relations Board filed its petition in the circuit court of appeals January 7, 1938, seeking enforcement of its order against petitioner, Ford Motor Company. Petitioner filed its answer and asked that the order be set aside. On May 2, 1938, the board moved to withdraw its petition

without prejudice. On May 4, 1938, petitioner filed its petition asking the court to review and set aside the board's order. The board moved that the case be remanded to it for further proceedings. The court entered an order remanding the proceedings to the board for the purpose of setting aside its findings. The Supreme Court granted certiorari. *Held*, treating both of the motions as involving a single question of law, that the motion of the board was properly granted. *Ford Motor Company v. National Labor Relations Board*, 305 U. S. 364, 59 S. Ct. 301 (1939).

This case is interesting more because it is a part of the extended controversy between the Ford Motor Company and the National Labor Relations Board than for the importance of its doctrinal pronouncement. By the decision the board was given the opportunity to withdraw voluntarily the order it had filed in the circuit court for enforcement and to correct its procedure to conform to the requirements set out in the *Morgan* case,[1] decided after the filing of the order in the circuit court. Such a ruling avoided what would probably have been an unfavorable court decision as to the propriety of the board's proceedings.[2] While the board may be able to take advantage of the voluntary procedure allowed by this situation in other than similar situations, it is probable that the privilege will be definitely limited. The Court pointed out in the principal case that the board's request was for good reason and could not be considered merely dilatory or vexatious. In a situation where the procedure being used by an agency is made to appear of doubtful propriety by the rendering of a decision of the highest court, it seems desirable in the interest of a speedy determination of a pending cause to allow the agency to make voluntary correction of its procedure, unless of course such voluntary action is not permitted by the statute or works undue hardship on the other party. Such corrective action would seem to be permitted under the National Labor Relations Act. The section of the act dealing with judicial review of the board's orders is very similar to the corresponding section in the Federal Trade Commission Act.[3] Under the latter act it is common practice for courts to remand cases to the commission so that valid and essential findings may be made.[4] While ordinarily the remand is accompanied by an order of the court setting aside or disapproving all or a part of the commission's proceeding, in effect the same was done in the principal case, as the remand was conditioned upon the board's "setting aside its findings and order of December 22, 1937, and issuing proposed findings, and making its decision and order upon a reconsideration of the entire case." [5] The court sitting to review orders of the board is like a court sitting as an

[1] Morgan v. United States, 304 U. S. 1, 58 S. Ct. 773, 999 (1938), commented on in 36 MICH. L. REV. 597 (1939).

[2] No intermediate report to which petitioner might have excepted and argued was filed by the board. On January 26, 1939, after the principal decision, the board issued proposed findings and order.

[3] 38 Stat. L. 720 (1914), § 5, 15 U. S. C. (1934), § 45.

[4] Federal Trade Commission v. Curtis Publishing Co., 260 U. S. 568 at 583, 43 S. Ct. 210 (1922); Federal Trade Commission v. Royal Milling Co., 288 U. S. 212, 53 S. Ct. 335 (1933).

[5] Principal case, 305 U. S. 364 at 372.

equity court in an injunction proceeding[6] and may adopt such methods of relief as are permitted to such a court and are not forbidden by statute. It is common practice for an equity court to remand a cause for further proceedings.[7] The fact that the circuit court in the instant case did not in terms decide upon the validity of the board's proceeding, nor consider the other defenses of the petitioner, could not be said to prejudice the petitioner unduly; for, as has been pointed out, the remand was conditional, and the petitioner could not have insisted upon a determination of the rest of its defenses after the court had found sufficient grounds to remand the cause.[8] A different determination of the principal case, then, would appear to have been beneficial to the petitioner only in so far as a slight delay might have benefited it, and to the extent that any psychological advantage might have followed from a ruling that the procedure of the board was improper, although amendable.

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[6] L. B. Silver Co. v. Federal Trade Commission, (C. C. A. 6th, 1923) 292 F. 752; Butterick Co. v. Federal Trade Commission, (C. C. A. 2d, 1925) 4 F. (2d) 910.

[7] Railroad Commission v. Maxcy, 281 U. S. 82, 50 S. Ct. 228 (1929); Interstate Circuit, Inc. v. United States, 304 U. S. 55, 58 S. Ct. 768 (1938).

[8] Levy v. Arredondo, 12 Pet. (37 U. S.) 218 (1838); Villa v. Van Schaick, 299 U. S. 152, 57 S. Ct. 128 (1936).