Michigan Law Review

Volume 36 | Issue 5

1938

# LABOR LAW - RIGHTS AND DUTIES UNDER THE NATIONAL LABOR RELATIONS ACT- EFFECT OF NORRIS-LAGUARDIA ACT

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LABOR LAW — RIGHTS AND DUTIES UNDER THE NATIONAL LABOR RELATIONS ACT — EFFECT OF NORRIS-LAGUARDIA ACT — Defendants, members of a C.I.O. organization, petitioned for an election in plaintiff corporation's factory in order to determine the representatives of the employees for the purposes of collective bargaining. An employees' association, a union the members of which were restricted to employees of the corporation, received a majority of votes and was certified by the National Labor Relations Board as bargaining representative. Nevertheless, the C.I.O. union called a strike, demanding sole bargaining privileges and a closed shop. Picketing, violence and intimidation are alleged, as a result of which plaintiff's factory has had to shut down. *Held,* plaintiff is entitled to a restraining order. *Oberman & Co. v. United*

*Garment Workers of America*, (D. C. Mo. 1937) 21 F. Supp. 20.

To reach the result here obtained the court had to clear the hurdles of the Norris-LaGuardia Anti-Injunction Act [1] and section 13 of the NLRA.[2] As to the first obstacle, it was noted by the court that the NLRA was passed more than three years after the Norris-LaGuardia Act and was intended to supersede the latter act with respect to disputes over representation. Since the question of representation was the only one at issue and that had been settled by the National Labor Relations Board, there remained no dispute upon which the Norris-LaGuardia Act might operate. While section 10 (h) of the NLRA [3] would seem to relate only to the enforcement, modification or setting aside of an order of the Board in a circuit or district court, it was relied on also as indicating that the Norris-LaGuardia Act had no applicability. Section 13 of the NLRA was ignored throughout the opinion. A "right" to perform its duty to bargain with the certified majority representatives was found to be created by the NLRA, and this right might properly be protected by injunction. Several earlier cases have pointed at this result. In *Cupples Co. v. American Federation of Labor* [4] a company union to which seventy-five per cent of plaintiff corporation's employees belonged enjoyed an exclusive collective bargaining contract. Defendants, two A. F. of L. locals, filed charges of unfair labor practices with the National Labor Relations Board and petitioned for an investigation of the question of representation. A time for hearing was set, but defendants decided not to await the outcome of the investigation and struck. A picket line was established, and threats and intimidation were alleged. An injunction was denied the plaintiff on either of two approaches to the problem. First, assuming without deciding that the employer has a right to be free from the ravages of industrial warfare pending an investigation under the auspices of the Board, still the Norris-LaGuardia Act was not satisfied and therefore precluded injunction. On the other branch of the *Cupples* case the query was made whether the employer had a right as well as a duty to bargain collectively with the representatives of the majority only. The answer of the court was in the affirmative provided there had been proper certification of the majority group by the Board. The company union had never been certified (cf. the principal case), and thus the fact of certification seems to be an element necessary to plaintiff's case before an injunction will issue. Two earlier federal cases are in accord with the *Cupples* case on similar facts. In one [5] the enforcement of the right of the employer to bargain exclusively with the (as yet uncertified) majority representatives was held subject to the Norris-LaGuardia Act. In the other,

[1] 47 Stat. L. 70, §§ 1-15 (1932), 29 U. S. C., §§ 101-115 (1935).

[2] 49 Stat. L. 449, § 13 (1935), 29 U. S. C., § 163 (Supp. 1936): "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike." The whole act embraces 29 U. S. C., §§ 151-166 (Supp. 1936).

[3] 29 U. S. C., § 160 (h) (Supp. 1936): "When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by . . . [the Norris-LaGuardia Act]."

[4] (D. C. Mo. 1937) 20 F. Supp. 894.

[5] Grace Co. v. Williams, (D. C. Mo. 1937) 20 F. Supp. 263.

*Lund v. Woodenware Workers Union*,[6] the opinion inclines to the view that the right to strike is preserved to the minority (relying on section 13 of the NLRA) regardless of the duty of the employer to bargain collectively with the majority representatives. The principal case distinguishes the *Lund* case (certification in former but not in latter) and points to certain language in the latter opinion which indicates that the court would have deemed the case an entirely different one if the majority representatives had been certified.[7] The difference in result where a majority representative has or has not been certified by the National Labor Relations Board would seem to be sound. Where no certification has been obtained, although an organization may be acknowledged as representative of the majority, still there are questions as to appropriateness of unit and as to eligibility of the organization to be a representative which ought to be settled by the Board before a minority group should be restrained from striking or picketing.[8] When an organization is properly certified, then more reason appears for enjoining the minority. A case more extreme in cutting down the rights and privileges of labor than the principal case is a recent Maine decision [9] which goes so far as to say that there is no right to strike or picket so long as the labor organization has not availed itself of the procedure under the NLRA. The force of that decision is weakened by the fact that there a strike for a closed shop was involved, an illegal purpose in Maine. The decision is discountenanced in a National Labor Relations Board decision [10] which asserts that the NLRA was not intended to outlaw strikes until the procedures under it had been resorted to or exhausted. Reading section 8 (5) and section 9 (a) of the NLRA [11] together, one finds that the employer has a duty to bargain collectively with the labor organization which has been designated by a majority of the workers in an appropriate unit as the *exclusive*

[6] (D. C. Minn. 1937) 19 F. Supp. 607.

[7] Compare "Whether or not the court would be justified in taking jurisdiction after the National Labor Relations Board has assumed jurisdiction and has approved a contract entered into between the employer and the majority of the employees, the court does not now determine" with "The difficulty with the assumption of jurisdiction herein on the theory that plaintiff's case arises under the Wagner Act [NLRA] is due to the very apparent fact that the right that the plaintiff seeks to enforce is not created, either expressly or impliedly, by the federal statute in question, but by this proceeding he seeks to read into the act certain rights on behalf of the employer to proceed in a court of equity which Congress studiously refrained from giving to the employer. The courts cannot create a right that Congress did not see fit to grant. . . . Further, it should be noticed that there is no provision in the Wagner Act which makes it illegal for a minority to strike and to seek thereby to obtain sufficient strength so as to become the sole bargaining agency. . . ." Lund v. Woodenware Workers Union, (D. C. Minn. 1937) 19 F. Supp. 607 at 611.

[8] See Lund v. Woodenware Workers Union, (D. C. Minn. 1937) 19 F. Supp. 607 at 609, 610.

[9] Charles Cushman Co. v. William Mackesy, (Me. 1937) 195 A. 365. The decision indicates that a minority union would have no right to strike or picket.

[10] In re Charles Cushman Co., Somerset Shoe Co., etc., and United Shoe Workers of America, Cases Nos. R-161-172, Aug. 30, 1937, 1 Lab. Rel. Rep. 55 (Sept. 13, 1938). Section 13 [29 U. S. C., § 163 (Supp. 1936)], quoted in note 2, supports the view of the National Labor Relations Board.

[11] 29 U. S. C., §§ 158 (5) and 159 (a) (Supp. 1936).

*representative* of all the workers in that unit. One should suspect, then, that courts will tend to frown on the efforts of minority groups to compel the employer to breach his duty. Thus emerges the concept of the "right to perform one's duty" which has been elaborated upon above. The process of development of the rights and duties under the NLRA has but begun, and the twists and turns it may take may well surprise the advocates both of labor and of industry.

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