Michigan Law Review

Volume 24 | Issue 1

1925

CONSTITUTIONAL LAW-DUE PROCESS-COMPULSORY ARBITRATION UNDER KANSAS INDUSTRIAL RELATIONS ACT

CONSTITUTIONAL LAW—DUE PROCESS—COMPULSORY ARBITRATION UNDER KANSAS INDUSTRIAL RELATIONS ACT.—Another interesting chapter has been written in the legal history of the Kansas Court of Industrial Relations, that most interesting attempt to substitute judicial methods for the present condition of strife in the field of industrial dispute, and to recognize the rights of the public as an interested third party in such disputes. In *Wolff Packing Co. v. Court of Industrial Relations,* U. S. Sup. Ct., Oct. Term, 1924, Nos. 207 and 299, 45 S. Ct. Rep. 441, the Supreme Court of the United States has decided that the Industrial Relations Act, c. 29, LAWS 1920 (KANSAS), SPECIAL SESSION, in so far as it attempts to regulate the rate of wages and hours and conditions of labor as an incident of the compulsory settlement of industrial disputes, is unconstitutional.

The proceeding was an original mandamus in the state supreme court to compel the Wolff Packing Company, conducting a small slaughtering and meat packing establishment, to put into effect in its plant the award of the Kansas Industrial Relations "Court" or commission, respecting rate of wages and conditions of labor. The supreme court of Kansas awarded the writ as to all except a few non-essential paragraphs covering matters of which sufficient notice had not been given. *Court of Ind. Relations v. Wolff Pack. Co.,* 109 Kan. 629, 201 Pac. 418; 111 Kan. 501, 207 Pac. 806. On appeal, the United States Supreme Court decided that "the Industrial Court Act, in so far as it permits fixing of wages in plaintiff in error's packing house, is in conflict with the Fourteenth Amendment and deprives it of its property and liberty of contract without due process of law." 262 U. S. 522, 43 S. Ct. 630. That decision was based primarily on the ground that the act, in effect, gave power to the courts to compel the continuity of operation of the industries covered by it, and that such power was altogether exceptional, and could be exercised, if at all, only in relation to an industry "affected with a public interest". See note, 22 MICH. L. REV. 135. The supreme court of Kansas, in pursuance of this mandate, struck from its writ the provisions in regard to wages, but awarded a peremptory writ of mandamus to compel obedience to the paragraphs fixing hours of labor, including the clauses relating to overtime, holding that these provisions were separable, and did not come within the decision of the court above. 114 Kan. 304, 219 Pac. 259; 227 Pac. 249. Appeal was had by the company on the ground that the provisions of the Fourteenth Amendment were applicable to the regulation of hours of labor, under the circumstances, equally with the fixing of wages. The United States Supreme Court, applying the reasoning of its former decision, pointed out that: "The authority given to the agency to fix wages or hours of labor is not general, nor is it to be exerted independently of the system of compulsory settlement * * * No distinction is made between wages and hours of labor; both are put on the same plane. * * * but neither is to be fixed save in the compulsory adjustment of an endangering controversy to the end that business shall go on." Such a method of compulsory settlement, as the court had pointed out in its former decision, practically compels continuity of operation in the industry in question. "It will constrain them not merely to respect the terms if they continue in business, but will constrain them to continue business on those terms." "Such a system infringes the liberty of contract and rights

of property guaranteed by the due process of law clause of the Fourteenth Amendment."

The decision operates to take away the power of the Court of Industrial Relations to enforce its awards by judicial methods. There is left power to investigate industrial disputes somewhat in the nature of that exercised by the Federal Railway Labor Board, and the power to enjoin strikes to prevent the interruption of operation in essential industries. It would seem hardly probable that the latter will survive. The right to strike is well recognized at the present day, and power to enjoin it was here given only in connection with a comprehensive plan of settlement of industrial disputes. A court which able that the latter will survive. The right to strike is well recognized at the present day, and power to enjoin it was here given only in connection with a comprehensive plan of settlement of industrial disputes. A court which cannot furnish the substitutional remedy provided in the power of enforced award will hardly take from the employee his right to strike. The statement in the prior Supreme Court decision in the *Wolff* case, quoted in the present case, is interesting in this relation: "It involves more drastic exercise of control to impose limitations of continuity growing out of the public character of the business upon the employee than upon the employer." See, however, *State v. Howat,* 116 Kan. 412, 227 Pac. 752, expressing an opposite tendency.

The case is interesting in marking out the limits of the application of judicial methods to the settlement of labor disputes. The power to investigate and to make recommendations has already been indicated. The constitutionality of such procedure seems well established. *Penna. R. R. Co. v. U. S. Railway Labor Board,* 261 U. S. 72, 43 S. Ct. 278. See also *Penna. R. System v. Penna. R. R.* U. S. Sup. Ct. Adv. Op. No. 10, p. 385. The further power to enjoin action by employer and employee pending such investigation is given to the Colorado Industrial Commission, and has been sustained in *People v. United Mine Workers,* 70 Colo. 269, 201 Pac. 54, though that decision may be subject to some modification in the light of the present case. Such, in effect, seems to be the residuum left to the Kansas Court of Industrial Relations, except as the doctrine of *Wilson v. New,* 243 U. S. 332, 37 S. Ct. 298, which upholds the fixing of hours and basic wage rates in the railroad industry under the Adamson Law, indicates the power of enforced award in emergency situations where the industry involved is of a public nature. See discussion in 38 HARV. L. REV. 753. It would seem that the sweeping language of the present decision, quoting from the previous *Wolff* case, that "the power of the legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct and is assumed when the business is entered upon" must be subject to some modification if intended to apply only to the industries at present classified as public utilities. The fuel and in some instances the food industries have become of such importance that under some emergency conditions their continued operation might be so necessary to the public welfare that the state should be able to enforce it under the police power. It is conceivable that the conditions which gave rise to the Industrial Relations Act, so ably pictured in *State v. Howat,* 109 Kan. 376, 198 Pac. 686, or an emergency situation such as that argued for by Justice Burch in his dissent to *Wolff*

Packing Co. v. Court etc. 111 Kan. 501, might be a proper field for judicial action. See *State v. United Mine Workers, supra;* 31 YALE L. JOUR. 75; also discussion of the police power in *Munn v. Illinois,* 94 U. S. 113; *German Alliance Ins. Co. v. Lewis,* 233 U. S. 389; 34 S. Ct. 612; *Adkins v. Children's Hospital,* 261 U. S. 525; *Michaelson v. U. S.* 266 U. S. 42.

It is evident from the present case, however, that the power of the state through the courts to regulate industrial disputes is limited except in the field of public utilities, and that we have not as yet reached a stage where judicial methods can in a large measure take the place of the present industrial warfare in the general field of the essential industries. Apparently the time for law has not come. We must wait for evolution through the social processes to bring those industries outside the field of public utilities which truly affect the public welfare and interest within the limits which the Supreme Court has set for the operation of the courts in the adjustment and settlement of industrial disputes. See Holmes, COLLECTED LEGAL PAPERS, 294.

J. T. D.