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Labor Law - Labor-Management Relations Act - Strike During Life of Contract Under a Reopening Provision

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LABOR LAW — LABOR-MANAGEMENT RELATIONS ACT — STRIKE DURING LIFE OF CONTRACT UNDER A REOPENING PROVISION — A collective bargaining agreement between Lion Oil Company and the union provided that if either party should desire to amend, notice should be served on the other, but not before August 24, 1951. The contract could be terminated by giving sixty days notice to terminate if agreement could not be reached within the sixty days following notice to amend. The contract did not contain a no-strike clause. The union gave notice on August 24, 1951 of its desire to amend, and having reached no agreement, struck on April 30, 1952 without having served notice to terminate. Both parties agreed that the contract remained in force at this time. The Labor-Management Relations Act prohibits a strike after notice to terminate or modify "for a period of sixty days . . . or until the expiration date of such contract, whichever occurs later."[1] An NLRB order held that the strike was permissible.[2] This order was set aside by the court of appeals.[3] On certiorari

[1] 61 Stat. 143 (1947), 29 U.S.C. (1952) §158 (d) (4).
[2] 109 N.L.R.B. 680 (1954).
[3] Lion Oil Co. v. NLRB, (8th Cir. 1955) 221 F. (2d) 231.

to the United States Supreme Court, *held,* reversed.[4] The term "expiration date" as used in section 8 (d) (4) includes the earliest date during the life of the contract when modification may take effect, and since the union gave proper notice and did not strike within sixty days or before the date when modification could be effective, it was not guilty of an unfair labor practice. *NLRB v. Lion Oil Co.,* 352 U.S. 282 (1957).

The question raised by the principal case affects millions of workers employed under fixed term collective bargaining agreements to which Taft-Hartley applies: aside from the terms of the contract, can strike for economic purposes during its life be lawful?[5] Viewed in terms of its effect on the right to strike, the decision is probably not very important, since the right could still be protected, even under the view taken by the court of appeals, by making the contract more easily terminable.[6] A far more significant effect, however, may be anticipated in the decision's influence on negotiations for long term contracts, a matter of particular importance to the larger industrial concerns.[7] If the act prohibits all strikes for economic purposes during the life of the contract, then shorter term, or more readily terminable, contracts should be expected in the future. The act presents no problem where the contract does not contain an expiration date. Section 8 (d) (1) simply requires that notice be given sixty days before the desired modification or termination is to take effect, and section 8 (d) (4) continues the contract in effect for sixty days. If the contract contains an expiration date, however, then in order to effectuate a termination or modification, section 8 (d) (1) requires notice sixty days before the expiration date and section 8 (d) (4) forbids a strike for sixty days or until the expiration date, *whichever occurs later.*[8] Read literally, the act seems to preclude the right to strike at any time during the life of a fixed term contract,[9] while a strike would be permissible if there were no expiration

[4] Justices Frankfurter and Harlan concurred in the holding, but dissented as to the Court's determination of the related contract issue.

[5] The unfair labor practice question presents a problem in applying the act, independent of the breach of contract question. A strike may be unlawful under the act, though expressly allowed by the contract. Matter of United Packinghouse Workers of America, CIO, and Wilson, 89 N.L.R.B. 310 (1950). As to whether a breach of contract, *per se,* constitutes an unfair labor practice, see generally, comment, 1 SYRACUSE L. REV. 67 (1949); S. Rep. 105, 80th Cong., 1st sess., pp. 15, 18, 28 and part 2, p. 12 (1947).

[6] E.g., the 1954 contract between B. F. Goodrich and the Rubber Workers (CIO) provides that notice to reopen on wages may be given at any time and if agreement is not reached in 60 days, the contract automatically terminates. See BNA, LABOR RELATIONS REPORTER, Vol. 36, No. 1, (May 1955).

[7] BNA, LABOR RELATIONS REPORTER, Vol. 36, No. 1, (May 1955).

[8] 61 Stat. 142-143 (1947), 29 U.S.C. (1952) §158 (d) (1), (4): ". . . no party . . . shall terminate or modify such contract, unless the party desiring such termination or modification—(1) serves . . . notice . . . of the proposed termination or modification sixty days prior to the expiration date thereof, or . . . [if no expiration date] sixty days prior to the time it is proposed to make such termination or modification; . . . (4) continues in . . . effect, without . . . strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."

[9] S. Rep. 986, part 3, 80th Cong., 1st sess., p. 62 (1947).

date. The Eighth Circuit took the position that this language makes any strike before the expiration date unlawful,[10] and that expiration means termination of the contract.[11] That court reasoned that the statutory language is unambiguous, and if the result is undesirable, it is the responsibility of Congress to change the law.[12] The members of the NLRB, however, have placed various interpretations on subsection 8 (d) (4) to avoid this strict result. The Board first took the view that section 8 (d) was designed to prevent "quickie" strikes, and that Congress did not show an intent to outlaw strikes over the much longer periods that would be covered by a literal application of section 8 (d).[13] The majority then held that this purpose would be best effected by interpreting section 8 (d) to allow a strike at any time during the life of the contract on sixty days notice, even if served before the contract permitted reopening. Member Peterson sought to reconcile this interpretation with the language of section 8 (d) (4) by arguing that the phrase "whichever occurs later" was meant only to cover the situation where notice is served less than sixty days before the termination of the contract.[14] Member Murdock argued that all the provisions of section 8 (d) were meant to apply only around the end of a contract of fixed duration, and were not meant to regulate changes in the contract during its term, basing his argument on the frequent references in section 8 (d) to expiration and termination of the contract.[15] The views of Members Peterson and Murdock probably reflect the thinking of Congress when section 8 (d) was enacted, but this simply indicates that Congress was not then cognizant of the problem raised by the principal case.[16] If this is true, then the languge of section 8 (d) alone is an unsatisfactory guide to congressional intent when applied to the question in the principal case. In contrast to the Act of 1935,[17] the policy of the 1947 amendment is to confer rights and impose obligations both on

[10] Local No. 3, United Packinghouse Workers of America, CIO v. NLRB, (8th Cir. 1954) 210 F. (2d) 325.

[11] Lion Oil Co. v. NLRB, note 3 supra.

[12] But cf. NLRB v. Mastro Plastics Corp., (2d Cir. 1954) 214 F. (2d) 462; NLRB v. Wagner Iron Works, (7th Cir. 1955) 220 F. (2d) 126.

[13] Matter of United Packinghouse Workers of America, CIO, and Wilson, note 5 supra. But cf. S. Rep. 105, 80th Cong., 1st sess., p. 24 (1947).

[14] Lion Oil Company, note 2 supra.

[15] See separate opinions of Members Herzog and Murdock in Matter of United Packinghouse Workers of America, CIO, and Wilson, note 5 supra; and Murdock's dissent in Lion Oil Company, note 2 supra. But see Frankfurter's concurring opinion in the principal case.

[16] Senator Taft's statement, 93 CONG. REC. 3839 (1947), with its oft-quoted phrase, "If such notice is given, the bill provides for no waiting period except during the life of the contract itself," is illustrative. Cf. Murdock's dissent in Lion Oil Co., note 2 supra, and Local No. 3, United Packinghouse Workers of America, CIO v. NLRB, note 10 supra, where the quoted phrase was used to reach an opposite conclusion. Frankfurter's analysis (principal case at 299) seems more appropriate: ". . . Senator Taft's attention was directed solely to strikes at termination. . . ." For further indications of congressisonal purpose, see also, Senator Ball's speech, 93 CONG. REC. 5014 (1947); S. Rep. 105, 80th Cong., 1st sess., p. 24 (1947).

[17] 49 Stat. 449.

labor and on management.[18] Any construction of this act, therefore, which severely restricts the rights of one party should not be favored. The Supreme Court has recognized that the act is intended to promote collective bargaining, but also to protect the right of employees to enforce their demands by concerted action. The Court previously, in another context, rejected a literal reading of section 8 (d) for these policy reasons.[19] Specific provisions of the act in the light of these general policies support the Court's conclusion in the principal case as probably the best compromise between a literal reading of the act and its policy objectives. Legislative history indicates that Congress was unaware of the problem of contract reopenings when the act was passed, but it was soon recognized,[20] and both the committee's interpretation of the act as its stands[21] and subsequently proposed amendments[22] support the Court's interpretation. The ultimate effect of the decision should be to foster more stable industrial relations by permitting the use of long term contracts without the loss of the right to strike.

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[18] 61 Stat. 136 (1947), 29 U.S.C. (1952) §151.

[19] Mastro Plastics Corp. v. NLRB, 350 U.S. 270 (1956). See 55 MICH. L. REV. 296 (1956).

[20] S. Rep. 986, part 3, 80th Cong., 1st sess., p. 62 (1947).

[21] "The right of the union [to reopen] would be an empty one without the right to strike after a 60-day notice." S. Rep. 986, part 3, 80th Cong., 1st sess., p. 62 (1947). This suggests a further question, not decided by the principal case, i.e., whether a strike after 60 days' notice and during the life of the contract, but in the absence of, or not conforming to, a reopening provision, is an unfair labor practice. The Board's original interpretation would allow a strike on 60 days' notice regardless of the provisions of the contract, so far as the act is concerned, but the majority of the Board in the principal case confined the protection of the act to those cases where notice is in conformity with a reopening provision. The majority of the Board in the principal case laid particular emphasis on policy arguments in favor of enforcing the contract, which suggests the problem in note 5 supra. The Supreme Court did not discuss the problem, as it was not presented, but Frankfurter did and concluded that the strike must conform to the reopening provision.

[22] Senator Taft's amendment proposed in 1949, S. Rep. No. 99, part 2, 81st Cong., 1st sess., p. 42 (minority report).