Michigan Law Review

Volume 47 | Issue 2

1948

LABOR LAW--LABOR-MANAGEMENT RELATIONS ACT--UNION UNFAIR LABOR PRACTICES--STRIKE TO FORCE EMPLOYER TO AGREE TO UNION HIRING HALL

L. B. Lea S.Ed.
University of Michigan Law School

LABOR LAW—LABOR-MANAGEMENT RELATIONS ACT—UNION UNFAIR LABOR PRACTICES—STRIKE TO FORCE EMPLOYER TO AGREE TO UNION HIRING HALL—In negotiating collective bargaining contracts for 1948, respondents

(National Maritime Union and its officers) insisted, as a condition precedent to entering into any agreement, upon continuation of existing hiring hall provisions. After refusal of the employers to agree to such proposal, respondents called a strike. Upon filing of charges of union unfair labor practice with the N.L.R.B., *held*, respondents' activities constituted violations of sections 8(b)(2) and 8(b)(3), but not of section 8(b)(1)(A) of the National Labor Relations Act, as amended by the Labor-Management Relations Act.[1] Member Gray dissented from the 8(b)(1)(A) ruling. *In re National Maritime Union of America (C.I.O.)*, 78 N.L.R.B. No. 137, 22 L.R.R.M. 1289 (1948).

The principal case represents the board's first ruling under the 1947 act on the legality of the union hiring hall and of strike action to obtain it. The decision is of twofold legal significance: (1) it indicates that the board has attributed a restricted meaning to the term "restrain or coerce" as applied to union activity; and (2) it outlaws the N.M.U.'s union hiring hall. In interpreting the vague phrase "restrain or coerce" the board relied upon Congressional debates, which implied that 8(b)(1)(A) was aimed chiefly at preventing physical violence and intimidation, especially during organizational drives.[2] A peacefully conducted strike results only in economic pressure, which is not the sort of restraint or coercion covered by the statute. Thus, a strike might constitute an 8(b)(1)(A) violation because of its means, but not because of the legality of its object.[3] To this test is added the confusing qualification, ". . . so long as its objective is directly related to the interests of the strikers, and not directed primarily at compelling other employees to forego the rights which section 7 protects."[4] The net result seems to be: (1) that any physical violence or intimidation of employees during an organizational period is almost certain to be an 8(b)(1)(A) violation; and (2) that any activity, short of physical violence or intimidation, may violate 8(b)(1)(A) depending on whether its principal purpose is to force a particular employee, or group of employees, to surrender any "rights" guaranteed by section 7.[5] This is a narrower interpretation than that accorded to "interfere with, restrain, or coerce" in the corresponding section of the statute dealing with

[1] Sec. 7. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

Sec. 8(b). "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . . ; (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . . ; (3) to refuse to bargain collectively with an employer. . . ." P.L. 101, 80th Cong., 1st sess., c. 120 (1947).

[2] 93 CONG. REC. 4434-4438 (1947).

[3] The board's view of 8(b)(1)(A) should be compared with the legislative language of 8(b)(4), violations of which are determined solely by looking at the object of the strike.

[4] Principal case at 1300.

[5] In member Gray's opinion the strike here was aimed at a particular group of individuals, the group being all persons otherwise eligible for employment, even if

employer unfair labor practices.[6] For example, an employer's discrimination or refusal to bargain was considered per se a violation of section 8(1) of the N.L.R.A.[7] The principal case expressly rejects this line of reasoning as applied to union unfair labor practices. Consequently, decisions under the N.L.R.A. will be of limited value in construing 8(b)(1)(A). The board had no difficulty in finding the union guilty of the other two charges. After a searching factual inquiry, the members concluded that the hiring hall was sufficiently discriminatory in actual operation to fall within the L.M.R.A.'s closed shop ban.[8] Obviously, a strike to retain such a hiring hall was an "attempt to cause an employer to discriminate," and insistence on its continuance, as a condition precedent to bargaining, was tantamount to a "refusal to bargain." The board's willingness to make a thorough factual investigation augurs ill for many current union security practices and proposals in industries other than shipping. The principal case suggests that all types of union security provisions and preferential hiring clauses will be closely scrutinized to see if they result in discrimination in favor of union members. In making the search, the board will look at the substance, rather than the form, of the arrangements. The economic effects of the 8(b)(2) and 8(b)(3) rulings will be drastic, for the closed shop had brought peace and order to the shipping industry.[9] Unless the current wave of strikes in this field can be amicably settled under the L.M.R.A., the act will have failed in one of its major purposes.[10]

L. B. Lea, S.Ed.

not applicants for employment or currently employed by the companies involved. Cf. also Cox, "Some Aspects of the Labor-Management Relations Act, 1947," 61 HARV. L. REV. 1 (1947).

[6] L.M.R.A., § 8(a)(1); N.L.R.A., § 8(1), 49 Stat. L. 452 (1945).

[7] "... It is now settled that the specific unfair labor practices covered by the remaining subsections of section 8 of the N.L.R.A. are simply explicit definitions, for the most part, of practices comprehended within subsection (1)." 1 SMITH, CASES AND MATERIALS ON LABOR LAW 146 (1946).

[8] Respondents argued that the union was acting as an employment agency for the employer and that the hiring hall is the only feasible method of operating such a scheme. Senator Taft had expressly approved the use of union employment agencies. 93 CONG. REC. 3836 (1947). Here, however, the agency was operated in an obviously discriminatory fashion. In order to register for a job via a N.M.U. hiring hall, applicants had to be members of N.M.U. in good standing. Nonmembers received jobs only if there were no members available, and were replaced as soon as members became available.

[9] 52 TIME, No. 11 (Sept. 13, 1948) p. 24; Daykin, "The Status of the Maritime Workers Under the N.L.R.A.," 26 ORE. L. REV. 229 (1947).

[10] Toner, "The Closed Shop and the Taft-Hartley Act," 56 J. OF POL. ECON. 258 (1948), suggests that in many industries the act will not be able to abolish closed shop practices.