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LABOR LAW-LABOR-MANAGEMENT RELATIONS ACT-EMERGENCY STRIKE PROVISIONS

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LABOR LAW—LABOR-MANAGEMENT RELATIONS ACT—EMERGENCY STRIKE PROVISIONS—Suit by the United States, under authority of the National Emergency provisions of Title II of the Labor-Management Relations Act,[1] to enjoin a strike in a single plant engaged in the manufacture of pipe *used* in the construction of atomic energy plants. The district court granted an injunction,[2] and the labor organizations adversely affected thereby appealed. *Held*, affirmed. The threatened strike would have affected a substantial part of the atomic weapon industry and would have imperiled the national safety. *United States v. United Steelworkers of America, C.I.O.*, (2d Cir. 1953) 202 F. (2d) 132.

The principal case involves the use of the emergency strike provisions for the tenth time since the passage of the Taft-Hartley Act in 1947.[3] In each of the other instances the dispute was clearly nation-wide or industry-wide, and this is the first time that the "cooling-off" injunction has been used in a strike which was local and did not substantially affect the industry in which the strike took place.[4] The court rejected the union's contention that only nation-wide or industry-wide strikes were subject to the emergency injunction and based its holding on the legislative history of these provisions and the policy of the Labor-Management Relations Act as expressed by Congress in section 1(b).[5] It is at

[1] 61 Stat. L. 155-156, §§206-210 (1947), 29 U.S.C. (Supp. V, 1952) §§176-180. Section 208 provides:

"(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof . . . and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate."

[2] United States v. American Locomotive Co., (D.C. Ill. 1952) 109 F. Supp. 78.

[3] For a discussion of the other instances when the emergency strike provisions were used, see WITNEY, GOVERNMENT AND COLLECTIVE BARGAINING 503-504 (1951); Warren, "National Emergency Provisions," 4 LAB. L.J. 130 (1953); Fleming, "Taft-Hartley Law To Date," 1949 WIS. L. REV. 61 at 95.

[4] At page 134 of the principal case, the court states, ". . . the threatened strike would not have affected all, or a substantial part of that [prefabricated pipe] industry."

[5] "It is the purpose and policy of this Act, in order to promote the full flow of commerce . . . to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." 61 Stat. L. 136 (1947). Query whether this was intended to expand the scope of the emergency strike provisions?

least doubtful whether the legislative history indicates an intention on the part of Congress to apply the drastic remedy of injunction in cases of local strikes. The House bill would have made an injunction available whenever the President found ". . . that a labor dispute has resulted in, or imminently threatens to result in, the cessation or substantial curtailment of interstate or foreign commerce. . . ."[6] The broad wording of the House bill was rejected in favor of the present provisions which are substantially like the Senate bill,[7] except that the Senate bill applied only when an *entire* industry would be affected and not when a *substantial part* of an industry would be affected. Little attention was given to the possibility of the use of the injunction in local strikes during the debates,[8] and discussion, pro and con, seemed to be based on the assumption that only nation-wide or industry-wide stoppages could be enjoined. [9] The major point of contention was the method to be employed in dealing with national emergencies,[10] rather than what would constitute a national emergency. However, the court felt that even though Congress was primarily concerned with nation-wide and industry-wide strikes, it did not intend to limit the revival of the injunction to those cases exclusively.[11] In reaching this conclusion the court found an implied intention which is not at all apparent.

[6] H.R. 3020, §203, 80th Cong., 1st sess. (1947).

[7] S. 1126, §208, 80th Cong., 1st sess. (1947).

[8] H. Min. Rep. No. 245, 80th Cong., 1st sess., p. 102 (1947) attacked the wording of H.R. 3020, §203 and claimed that "substantial curtailment" of interstate commerce is ". . . not defined, and could conceivably be broadened to a point of being all-inclusive. There is no rule, or yardstick, provided for the President to guide him in his determination as to whether or not a 'substantial curtailment' of interstate or foreign commerce has occurred or is about to occur. Neither is there any guide to determine whether this 'substantial curtailment' refers to any particular plant, or any particular group of plants or industry as a whole." The only other discussion of the use of the emergency strike provisions in local strikes was in a speech by Senator Pepper, in which he attacked the addition of the words "or a substantial part thereof" to the Senate bill in the final draft. Senator Pepper felt that these words made the provisions applicable in strikes of less than industry-wide scope. 93 CONG. REC. 6520 (1947).

[9] Typical of the comments on the scope of the emergency strike provisions, was that by Representative Robison when he said, "It does permit the Federal Government to issue an injunction in cases where there is or [is] about to be a stoppage of work in an industry which threatens the public health and security of the Nation. It must be in a *Nation-wide* dispute and it must be clearly shown to the court that the public health and security of the Nation are threatened." Emphasis added. 93 CONG. REC. 7491 (1947). See also 93 CONG. REC. 3524-3525, 4281, 4902, 4985, 5006, 7536, A3043 (1947).

[10] For a discussion of the history of injunctions in labor disputes, and three methods of dealing with emergency disputes (seizure, compulsory arbitration, and cooling-off periods), see Teller, "The Taft-Hartley Act and 'Government By Injunction,'" 35 VA. L. REV. 50 (1949). See also WITNEY, GOVERNMENT AND COLLECTIVE BARGAINING 512-515 (1951), where it is suggested that there be an injunction and a seizure with confiscation of profits in order to coerce labor and management into a settlement by "free collective bargaining."

[11] Principal case at 137. For a criticism of the lack of any definition of a national emergency in the Taft-Hartley Act, see Sigal, "National Emergency Strikes and the Public Interest," 27 N.C. L. REV. 213 at 217 (1949), and for a discussion of the principal case, Warren, "National-Emergency Provisions," 4 LAB. L.J. 130 at 133 (1953).

The instant case is exceptional in that the atomic energy industry was involved,[12] and it does not necessarily follow that hereafter all local emergencies are within the provisions of the Taft-Hartley Act. However, it must be recognized that the language of sections 206-210 provide no criteria for the President or the courts to use in determining when a national emergency exists or is threatened,[13] and this case may provide a basis for the use of the act in connection with public utility stoppages when state emergency strike laws are not applicable because of the supersedence of federal law.[14]

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[12] For a discussion of the applicability of the emergency strike provisions in the atomic energy industry, see Smith, "The Effect of the Public Interest on the Right to Strike and to Bargain Collectively," 27 N.C. L. REV. 204 (1949).

[13] The factors to be considered in determining whether a national emergency exists are discussed in WITNEY, GOVERNMENT AND COLLECTIVE BARGAINING 501 (1951).

[14] See Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Div. 998 v. Wisconsin Employment Relations Board, 340 U.S. 383, 71 S.Ct. 359 (1951), in which the Court ruled that Congress intended to make collective bargaining available in all situations except where it expressly provided to the contrary, and that the state compulsory arbitration statute for public utility strikes was therefore unconstitutional. The Court indicated, however, that since the Wisconsin statute applied to all public utility strikes whether or not an emergency existed, the result may be otherwise with a state *emergency* strike law. For a survey of state emergency strike legislation, see Willcox and Landis, "Government Seizures in Labor Disputes," 34 CORN. L.Q. 155 (1948); Updegraff, "Compulsory Settlement of Public Utility Disputes," 36 IOWA L. REV. 61 (1950).