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LABOR LAW-APPLICABILITY OF THE LEA ACT TO ACTIVITIES OF THE AMERICAN FEDERATION OF MUSICIANS

W. J. Schrenk, Jr.
University of Michigan Law School

LABOR LAW—APPLICABILITY OF THE LEA ACT TO ACTIVITIES OF THE AMERICAN FEDERATION OF MUSICIANS—Defendant, acting as president of a local union of the American Federation of Musicians, requested a new contract with a broadcasting station licensed by the Federal Communications Commission, including a provision that the licensee hire three extra musicians, raising to six the total number of musicians employed. When negotiations regarding this provision failed, defendant withdrew from the licensee's services the three musicians (members of the A.F. of M.) already employed by it. An action was then brought to prosecute defendant under the amendment to the Federal Communications Act, popularly known as the Lea Act, which prohibits the use of threats or force to compel a licensed broadcasting station to use more employees than it needs.[1] After the Supreme Court upheld the constitutionality of the act,[2] the cause was remanded for trial by the district court on the question whether the defendant had been guilty of a violation. *Held*, verdict of acquittal

[1] 60 Stat. L. 89 (1946), 47 U.S.C.A. (Supp. 1947) § 506. The pertinent portions of the statute are: "(a) It shall be unlawful, by the use of express or implied threat of the use of force, violence, intimidation, or duress, or by the use of express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services."

[2] United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538 (1947).

directed. There was no evidence that defendant knew that the licensee had no need for the extra musicians, and this fact must be proved beyond a reasonable doubt. *United States v. Petrillo*, (D.C. Ill. 1948) 75 F. Supp. 176.

The Lea Act is singular in that the avowed purpose of its framers was to curb the practices of one man, the defendant here, and of the union which he controls.[3] Previous efforts to restrain these activities by prosecution under the Sherman Act had met with failure,[4] although some effective state action had been taken.[5] Although the court in the principal case concedes that the licensee needed only the three musicians which it then employed, it is stated that the defendant's demands were unaccompanied by the use of force. If this is taken to suggest that strike action is not "duress" within the meaning of the statute, it hardly seems a tenable position. If it means that the particular strike in question was of so little economic significance that it did not amount to "duress," the statement appears to be substantiated by the facts.[6] The decision places the greatest emphasis, however, upon the defendant's lack of knowledge that the licensee needed only three musicians. In other words, the court interprets the statute as requiring a specific intent to do the prohibited act,[7] the significance of which depends upon the meaning given to the needs of the licensee.[8] The decision may mean that if the defendant believed subjectively in the licensee's need for more employees, he did not possess the necessary intent. Some indication of this interpretation is given by the emphasis which the court places upon the fact that the defendant did not ask that men be paid for doing nothing, but rather

[3] Statement by Representative Lea in the N.Y. TIMES, Jan. 15, 1946, p. 3:6. Among these practices are the enforcement against broadcasting stations (among others) of "quotas" or "make-work" projects, and the employment of "stand-by" musicians, who receive gratuitous wages in order that the services of one member of their band or orchestra may be obtained. See, Hearings before the House Committee on Interstate and Foreign Commerce, 79th Cong., 1st sess. (1945), vol. 2. The Taft-Hartley Act, § 8(b)(6), 29 U.S.C.A. (Supp. 1947) § 158, covers some of the same ground as the Lea Act, by its provision that it is an unfair practice for a union to cause an employer to pay for services which are not performed.

[4] United States v. American Federation of Musicians, (D.C. Ill. 1942) 47 F. Supp. 304, aff'd., 318 U.S. 741, 63 S.Ct. 665 (1943). An injunction against a strike, allegedly a conspiracy to eliminate the manufacture of phonograph records, was denied under the authority of the Norris-LaGuardia and Clayton Acts.

[5] Opera on Tour, Inc. v. Weber, 285 N.Y. 348, 34 N.E. (2d) 349 (1941). The defendant there was Mr. Petrillo's predecessor as president of the A.F. of M.

[6] The licensee testified that the dispute caused it no inconvenience, and the work of the three striking musicians was handled by a switchboard operator and an office girl.

[7] On the other hand, statutes which denounce the doing of acts *mala prohibita*, with no express requirement of willful conduct, have been interpreted as dispensing with the necessity for showing a wrongful intent, or as creating an imputation of that intent from the doing of the act. Hargrove v. United States, (C.C.A. 5th, 1933) 67 F. (2d) 820; State v. Dowling, 92 Fla. 848, 110 S. 522 (1926); Boyd v. State, 217 Wis. 149, 258 N.W. 330 (1935).

[8] It is this troublesome interpretation of the licensee's needs which led the three dissenting members of the Supreme Court to hold the Lea Act invalid for indefiniteness. United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538 (1947).

that they be provided with services to perform. It seems unlikely, however, that it was the purpose of Congress to require an intent so difficult to establish as this.[9] A more reasonable interpretation would be to treat the licensee's needs as an objective fact, to be determined by the court. If this view is taken, the decision means simply that the union must have knowledge that extra personnel may not in fact be needed, and the crime would consist of attempting to compel the employment of men who the licensee says, and who the court may find in fact, are not needed. In the instant case the court found that the defendant did not even know of this objective fact, and it is possible that the case does not stand as authority for any greater requirement of scienter than that he must have that knowledge. Taking this view of the decision, a licensee would be able to avoid the results of this case by informing the union that it needs only a certain number of employees, offering proof, and subsequently establishing the fact.

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[9] Where the requirement of proof of intent makes enforcement difficult, statutes have been construed as dispensing with that requirement. United States v. Greenbaum, (C.C.A. 3d, 1943) 138 F. (2d) 437. Defendant's counsel hailed the decision as the death of the Lea Act, and said that it established ". . . that if in good faith the [A.F. of M.] union wants to request an employer to put on live musicians, and not have any stand-bys, and wants them to perform actual services, it is not a violation of the Lea Act." N.Y. TIMES, Jan. 15, 1948, p. 1:2.