Michigan Law Review

Volume 41 | Issue 1

1942

LABOR LAW - COLLECTIVE BARGAINING AND GOOD FAITH UNDER THE NATIONAL LABOR RELATIONS ACT

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LABOR LAW — COLLECTIVE BARGAINING AND GOOD FAITH UNDER THE NATIONAL LABOR RELATIONS ACT — The National Labor Relations Board brought contempt proceedings against the defendant company for its refusal to comply with a consent decree ordering the defendant to bargain with the union selected as the sole representative of its employees. Negotiations between the defendant and the union were carried on, but no written agreement was reached, and it was charged that the defendant company acted in bad faith in its failure

to agree to certain provisions of the proposed contract. *Held*, that the defendant's refusal to enter into a written contract respecting working conditions already existing was bad faith and amounted to a refusal to bargain collectively. *National Labor Relations Board v. Knoxville Publishing Co.*, (C. C. A. 6th, 1942) 124 F. (2d) 875.

The National Labor Relations Act expressly designates an employer's refusal to bargain collectively as an unfair labor practice.[1] To give this proscription force, certain requisites have been read into the act with respect to the conduct and result of the negotiations between employer and union. It is not sufficient that the employer make a formal pretense of collective bargaining, but it is required that the employer enter the bargaining arena[2] in good faith, with an open mind and a sincere desire to reach an agreement in a spirit of amity and co-operation.[3] When such an agreement is reached, it is now settled that the employer is bound to enter into a written contract with the union, at least if such an instrument is requested.[4] It is a logical and necessary sequence to this rule to hold that a refusal to embody in the written contract the existing terms as to wages, hours and working conditions of the employees is bad faith and the equivalent of a refusal to bargain collectively.[5] There was in the principal case

[1] 49 Stat. L. 452, § 8 (5) (1935), 29 U. S. C. (1940), § 158 (5).

[2] The right to bargain collectively is given to the employee by 49 Stat. L. 452, § 7 (1935), 29 U. S. C. (1940), § 157. See National Labor Relations Board v. Reed & Prince Mfg. Co., (C. C. A. 1st, 1941) 118 F. (2d) 874.

[3] National Labor Relations Board v. George P. Pilling & Son Co., (C. C. A. 3d, 1941) 119 F. (2d) 32 (where it was held that the refusal to submit a counter-proposal when invited may support a want of good faith and refusal to bargain on the part of the employer); National Labor Relations Board v. Express Publishing Co., (C. C. A. 5th, 1940) 111 F. (2d) 588 at 589, where the court said, ". . . technically it was not bound to make a counter proposal, but it was required to meet its employees with an open mind"; National Labor Relations Board v. Griswold Mfg. Co., (C. C. A. 3d, 1939) 106 F. (2d) 713; National Labor Relations Board v. Somerset Shoe Co., (C. C. A. 1st, 1940) 111 F. (2d) 681; and National Labor Relations Board v. Highland Park Mfg. Co., (C. C. A. 4th, 1940) 110 F. (2d) 632.

[4] H. J. Heinz Co. v. National Labor Relations Board, 311 U. S. 514, 61 S. Ct. 320 (1941). Before this case the matter was in doubt because of a conflict in the circuit courts. It was first decided that it was not necessary to embody the agreement in a written contract. Fort Wayne Corrugated Paper Co. v. National Labor Relations Board, (C. C. A. 7th, 1940) 111 F. (2d) 869; Inland Steel Co. v. National Labor Relations Board, (C. C. A. 7th, 1940) 109 F. (2d) 9. A contrary result was reached in five other circuit courts. Art Metals Construction Co. v. National Labor Relations Board, (C. C. A. 2d, 1940) 110 F. (2d) 148; Bethlehem Shipbuilding Corp. v. National Labor Relations Board, (C. C. A. 1st, 1940) 114 F. (2d) 930; National Labor Relations Board v. Highland Park Mfg. Co., (C. C. A. 4th, 1940) 110 F. (2d) 632; Wilson & Co. v. National Labor Relations Board, (C. C. A. 8th, 1940) 115 F. (2d) 759; Continental Oil Co. v. National Labor Relations Board, (C. C. A. 10th, 1940) 113 F. (2d) 473. See 39 MICH. L. REV. 670 (1941); 89 UNIV. PA. L. REV. 678 (1941); 25 MINN. L. REV. 651 (1941).

[5] See principal case, 124 F. (2d) 875 at 883: "This is but an application of the principle upon which the case of H. J. Heinz Co. v. National Labor Relations Board [311 U. S. 514, 61 S. Ct. 320 (1941)] was decided. The bargaining agent for the employees demanding no more as to wages, hours and other conditions than what the

complete agreement as to the existing conditions between the employer and the union, and it seems as strong a case for requiring submission to a written contract as that in which an oral agreement respecting changed conditions is agreed upon. The court critically examined the changes proposed by the union, but since the act imposes no duty on the parties to agree upon proposed changes,[6] a finding of bad faith could not be predicated on the employer's refusal to accede to such changes. Since there was no dispute as to the authority of the union as the exclusive bargaining agent of the employees,[7] and since contempt proceedings instituted by the board itself are the appropriate method of enforcing collective bargaining,[8] the correctness of the decision with regard to existing conditions cannot be denied. It is another step forward in defining the duty to bargain and seems to be the only result consistent with the purpose and aims of the statute[9] which could have been reached.

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employer has already granted and proposes to grant, the parties to the bargaining conference are in agreement, and being in agreement the employer who, by his refusal to honor the agreement with his signature, impairs the bargaining process and so can hardly be thought to have bargained in good faith."

[6] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 at 45, 57 S. Ct. 615 (1935). See also National Labor Relations Board v. Bell Oil & Gas Co., (C. C. A. 5th, 1937) 91 F. (2d) 509; Black Diamond S. S. Corp. v. National Labor Relations Board, (C. C. A. 2d, 1938) 94 F. (2d) 875; Appalachian Electric Power Co. v. National Labor Relations Board, (C. C. A. 4th, 1938) 93 F. (2d) 985; and Globe Cotton Mills v. National Labor Relations Board, (C. C. A. 5th, 1939) 103 F. (2d) 91.

[7] Principal case, 124 F. (2d) 875 at 879.

[8] Amalgamated Utility Workers v. Consolidated Edison Co. of New York, 309 U. S. 261, 60 S. Ct. 561 (1940).

[9] The preamble to the act states: "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 49 Stat. L. 449, § 1 (1935), 29 U. S. C. (1940), § 151.