Michigan Law Review

Volume 58 | Issue 4

1960

Labor Law - Labor-Management Relations Act - Constitutionality of the Emergency Strike Provisions

James N. Adler
University of Michigan Law School

LABOR LAW—LABOR-MANAGEMENT RELATIONS ACT—CONSTITUTIONALITY OF THE EMERGENCY STRIKE PROVISIONS—In an effort to settle a nationwide steel strike the President invoked the "national emergency" provisions of the Taft-Hartley Act.[1] Having made the requisite finding that the strike would "imperil the national health or safety,"[2] he appointed a board of inquiry to investigate the dispute. Upon receipt of the board's report the President directed the Attorney General to seek an injunction against the strike.[3] Basing its determination largely upon the strike's hindrance of the national defense program, the district court found the strike would "imperil the national health or safety" and granted the injunction.[4] The court of appeals, affirming,[5] rejected the union's contentions that the proceedings did not present a case or controversy[6] and that the act attempted an unconstitutional delegation of legislative or executive functions to the courts.[7] On certiorari to the United States Supreme Court, *held,* affirmed, one judge dissenting.[8] The statute does not make an unconstitutional delegation of non-judicial functions, but entrusts the courts with a case or controversy capable of judicial determination. *United Steelworkers of America v. United States,* 361 U.S. 39 (1959).

Initially, the Supreme Court found that the strike threatened "national safety" by causing delay in the defense program, and that the scope of the injunction was proper because defendants failed to prove the feasibility of an injunction limited to a selective reopening of mills supplying specific

[1] 61 Stat. 136 at 155 (1947), 29 U.S.C. (1958) §§176-180.

[2] Id., §176.

[3] Id., §178 (a). This section 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 engaged in . . . commerce . . . among the several States . . . or engaged in the production of goods for commerce; 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 orders as may be appropriate."

The injunction is not to be limited by its terms to 80 days, but §180 provides that within 80 days the attorney general must move to discharge the injunction and the motion "shall then be granted and the injunction discharged."

[4] United States v. United Steelworkers of America, (W.D. Pa. 1959) 178 F. Supp. 297. The struck steel companies were also defendants to this suit.

[5] United States v. United Steelworkers of America, (3d Cir. 1959) 271 F. (2d) 676, one judge dissenting upon the factual, not the constitutional, issue.

[6] The judicial power of the United States "extend[s]" only to "Cases" or "Controversies." U.S. CONST., art. III, §2. See Muskrat v. United States, 219 U.S. 346 at 356 (1911).

[7] The union unsuccessfully raised these same objections in United States v. United Steelworkers of America, (2d Cir. 1953) 202 F. (2d) 132, cert. den. before judgment 344 U.S. 915 (1953); notes, 51 MICH. L. REV. 1092 (1953); 66 HARV. L. REV. 1531 (1953).

[8] Justice Douglas dissented upon the factual and not the constitutional issue. Justices Frankfurter and Harlan joined the Court's opinion and also wrote concurring opinions.

defense needs.[9] Having decided that the facts warranted the injunction, the Court had to determine the constitutionality of the statute. Both of the union's contentions that the act is unconstitutional were based upon the premise that the act does not impose upon labor and management a duty to refrain from endangering the national health or safety. The union argued that because it owed the United States no duty, there was no case or controversy and therefore the government's suit should have been dismissed for lack of jurisdiction. Furthermore, if Congress did not create a duty, it must have unconstitutionally delegated to the courts the legislative power to do so, since injunctions are proper only to enforce pre-existing duties. It is difficult, however, to accept the view that no duty is created. The act expressly states that "neither party [union nor management] has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest."[10] This language clearly seems intended to create a duty, and the remedy provided is one traditionally used to enforce a duty. Moreover, even if the statute were ambiguous in this respect, the Court would adopt this construction, for the Court will, if possible, construe an act so as to effectuate its purpose and to avoid any constitutional objections.[11] Nevertheless, the union argued that because the injunction must be dissolved within 80 days, the duty, if there is one, must be a duty not to strike for 80 days. But, the union urged, this could not be the duty; for even if the union voluntarily delayed the strike for 80 days, the duty would not be satisfied and the emergency provisions would still be applicable. But this argument misconceives the duty, which is to refrain, at all times, from endangering the national health or safety.[12] Once the no-duty premise is rejected, the union's contentions must be rejected. Because the executive is enforcing a duty, there is a case or controversy; because Congress has created the duty, there is no delegation of legislative power.

However, two other questions should be discussed, namely, does Congress have the power to create a duty of this type, and is the duty of such character that it may be judicially enforced. Although only the latter question was raised by the parties, a discussion of the constitutional issues presented by this statute invites consideration of both. In 1937, when the Wagner Act[13] was held to be a valid exercise of the power to "regulate

[9] The majority of the Court does not deny the possibility of something less than a blanket injunction, but they are unwilling to construe the act to require the government either to formulate a plan of selective reopening or to demonstrate the infeasibility of such a plan. Justice Douglas disagreed on these points.

[10] 61 Stat. 136 (1947), 29 U.S.C. (1958) §141 (b).

[11] Panama Railroad Co. v. Johnson, 264 U.S. 375 at 390-391 (1924). See NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 at 30 (1937).

[12] In effect, Congress has restricted the federal courts' jurisdiction to a maximum of 80 days. This it can do, for it is well settled that Congress may limit the jurisdiction of the inferior federal courts. Lauf v. Shinner & Co., 303 U.S. 323 at 330 (1938).

[13] National Labor Relations Act, 49 Stat. 449 (1935).

Commerce,"[14] it was established that Congress has the power to regulate both the steel companies and the "steel union." But there remains the question whether a ban upon strikes is a permissible form of regulation. The Supreme Court has never been forced to decide whether a state legislature or Congress could prohibit all strikes.[15] However, the Court's decisions do indicate that legislation prohibiting only certain strikes is constitutional if designed to protect, promote, or preserve an overriding public interest.[16] Where only concerted action is forbidden[17] such statutes have been held neither to deny free speech[18] nor to bind into involuntary servitude.[19] Congress has, therefore, the power to impose a duty to refrain from striking in a manner which will "imperil the national health or safety." Nevertheless, for this act to be valid the duty must be capable of judicial enforcement. The duty must be sufficiently definite and certain,[20] and its enforcement must not require the courts to make a political[21] or administrative[22] decision. These two requirements are not unrelated,[23] for the more definite the standards, the more likely the determination is judicial. This act seems as definite as, and to involve no more a political determina-

[14] NLRB v. Jones & Laughlin Steel Corp., note 11 supra. See United States v. Darby, 312 U.S. 100 (1941) (upholding the Fair Labor Standards Act.)

[15] See Dorchy v. Kansas, 272 U.S. 306 at 309 (1926); Duplex Printing Press Co. v. Deering, 254 U.S. 443 at 488 (1921) (dissenting opinion).

[16] See United Auto Workers v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949); Dorchy v. Kansas, note 15 supra, at 311. See also State v. Traffic Telephone Workers' Federation of New Jersey and New Jersey Bell Telephone Co., 2 N.J. 335, 66 A. (2d) 616 (1949). Cf. Executive Order 9017, 7 Fed. Reg. 237 (1942) (forbidding strikes and lockouts for the duration of the war).

[17] The injunction of the district court enjoined only concerted action, adding ". . . nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act. . . ." United States v. United Steelworkers of America, note 4 supra, at 298.

[18] United Auto Workers v. Wisconsin Employment Relations Board, note 16 supra, at 251; Carpenters and Joiners Union of America, Local No. 213 v. Ritter's Cafe, 315 U.S. 722 at 725 (1942). But see Thornhill v. State of Alabama, 310 U.S. 88 (1940). See, generally, Jaffe, "In Defense of the Supreme Court's Picketing Doctrine," 41 MICH. L. REV. 1037 (1943).

[19] United Auto Workers v. Wisconsin Employment Relations Board, note 16 supra, at 251. Cf. United States v. Petrillo, 332 U.S. 1 (1947).

[20] See, e.g., United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921).

[21] Chicago & Southern Air Line, Inc. v. Waterman S.S. Corp., 333 U.S. 103 at 111 (1948).

[22] Compare Federal Radio Commission v. General Electric Co., 281 U.S. 464 (1930) (decision of Court of Appeals for the District of Columbia pursuant to a statute authorizing the Court of Appeals for the District of Columbia to take evidence and to review and revise commission's decision is not reviewable by the Supreme Court because the character of the decision is administrative and not judicial) with Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266 (1933) (decision of Court of Appeals for the District of Columbia pursuant to amended statute limiting court's review to questions of law and to determining whether the findings of facts are supported by substantial evidence is reviewable by Supreme Court).

[23] See, e.g., Standard Oil Co. v. United States, 221 U.S. 1 at 69 (1911); Elizabeth Arden v. Federal Trade Commission, (2d Cir. 1946) 156 F. (2d) 132 at 134, cert. den. 331 U.S. 806 (1947).

tion than, antitrust legislation which has been upheld.[24] However, comparing the language of this statute with the language of others necessarily requires speculation and extrapolation, and is unlikely to be rewarding.[25] A more satisfactory approach is to compare the nature of the issues which this statute asks the court to decide with the nature of issues which a court has the "inherent" power to decide. This act, in effect, declares a strike which imperils the national health or safety to be a public nuisance.[26] Since courts of equity have traditionally determined when an activity becomes a nuisance,[27] the character of the determination required by this act is clearly judicial.[28] The duty is thus one which Congress has power to impose and the courts have power to enforce.

James N. Adler

24 E.g., Standard Oil Co. v. United States, note 23 supra.

25 Compare United States v. L. Cohen Grocery Co., note 20 supra (prohibition of "unjust or unreasonable" charge for necessities too vague) with Levy Leasing Co. v. Siegel, 258 U.S. 242 (1922) (prohibition of "unjust and unreasonable" rent held sufficiently definite). Compare also Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U.S. 210 (1932) (prohibition of "waste" incident to production of oil held too vague) with Bandini Petroleum Co. v. Superior Court, Los Angeles County, California, 284 U.S. 8 (1931) (prohibition of "unreasonable waste of natural gas" held sufficiently certain). That the two statutes held unconstitutional were criminal, while the two upheld were civil, suggests a basis for explaining these cases. However, such a theory was rejected in A. B. Small Co. v. American Sugar Refining Co., 267 U.S. 233 (1925). See, generally, Aigler, "Legislation in Vague or General Terms," 21 MICH. L. REV. 831 (1923); note, 45 HARV. L. REV. 160 (1931).

26 Even without statutory authority strikes have occasionally been enjoined as public nuisances. E.g., In re Debs, 158 U.S. 564 at 583-590 (1895); State ex rel. Richard Hopkins v. Howat, 109 Kan. 376, 198 P. 686 (1921), writ of error dismissed 258 U.S. 181 (1922). There is some question, however, whether in the absence of a statute a nuisance can be an offense against the United States. See Willamette Iron Bridge Co. v. Hatch, 125 U.S. 1 at 8 (1888). But see In re Debs (railroad strike which adversely affected the public at large properly enjoined as a public nuisance upon suit by the federal government). See, generally, comment, 2 STAN. L. REV. 303 at 313 (1950)

27 Baines v. Baker, 3 Atk. 750, 26 Eng. Rep. 1230 (1752); 4 POMEROY, EQUITY JURISPRUDENCE, 5th ed., §§1349, 1350 (1941).

28 This approach to the union's objection is taken by Justices Frankfurter and Harlan in their separate concurring opinion. 361 U.S. 44 (1959). And cf. Nash v. United States, 229 U.S. 373 at 377 (1913); Pettibone v. United States, 148 U.S. 197 at 203 (1893).