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Labor Law--The Steel Strike--National Safety Imperiled

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to the decedent or to a third party. Extending such reasoning to its natural conclusion would mean that any widow's allowance that is actually paid would qualify for the marital deduction. Further, even a life estate with a remainder over would appear to qualify for the marital deduction as to such amounts as are actually received by the life tenant.

OHIO'S POSITION

The provisions of the Ohio Revised Code that authorize the granting of a widow's allowance[22] require the appraisers of the deceased's estate to make an allowance sufficient to support a widow for twelve months.[23] The Ohio courts have regarded the widow's allowance as a statutory claim that vests in the surviving spouse at the decedent's death.[24] This allowance would undoubtedly qualify for the marital deduction under the construction given in the *Quivey* decision, or, more important, the Ohio widow's allowance should qualify under the narrower construction given in the previous cases,[25] which construction appears to be more sound and more likely to endure.

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LABOR LAW — THE STEEL STRIKE — NATIONAL SAFETY IMPERILED

On June 30, 1959, contracts between the United Steelworkers of America and the steel companies expired. Collective bargaining failed, leaving several unresolved labor disputes. This resulted in an industry-wide steel strike of one-half million workers. Within fifteen weeks, because of the steel shortage, hundreds of thousands of production workers in related industries were laid off. In early October President Eisenhower created a Board of Inquiry which attempted to determine the issues in this strike. After the board rendered its written report to the President, as required by law,[1] the Attorney General was instructed to commence injunctive proceedings against the Union and ninety-six steel companies.

The injunction was sought in the Federal District Court for the

22. OHIO REV. CODE §§ 2117.20-.24.

23. OHIO REV. CODE § 2117.20.

24. *In re* Croke's Estate, 155 Ohio St. 434, 99 N.E.2d 483 (1951); Raleigh v. Raleigh, 153 Ohio St. 160, 91 N.E.2d 241 (1950); *In re* Estate of Wreede, 106 Ohio App. 324, 154 N.E.2d 756 (1958); Estate of John W. Priest, 156 N.E.2d 206 (Ohio P. Ct. 1958).

25. One provision of the statute authorizing the Ohio widow's allowance, OHIO REV. CODE 2105.21, appears to subject the allowance to the terminable interest rule. This provision prohibits the surviving spouse from taking if she does not survive the decedent by thirty days. However, this provision falls under an exception to the terminable interest rule. INT. REV. CODE OF 1954, § 2056(b)(3), provides that if the failure of the interest can only occur by the death of the surviving spouse within six months of the decedent's death, the interest will not be considered terminable.

Western District of Pennsylvania under the National Emergency provision, section 208[2] of the Labor Management Relations Act of 1947, hereafter referred to as the Taft-Hartley Act. Upon its findings of fact the district court enjoined the continuance of the steel strike for the statutory eighty-day period and required the steel companies to make their plants available for resumption of production.[3] The judgment of the court of appeals[4] upholding the district court's decision was affirmed by the Supreme Court. The Court held that the strike had imperiled national safety.[5]

The significance of this decision lies in the fact that it was a case of first impression, with respect to interpreting the "national health or safety" clause in the Taft-Hartley Act. Although labor strikes had been enjoined under this clause by the district courts in many prior instances, this was the first time that the Supreme Court granted certiorari and rendered a decision enjoining a strike which imperiled national health or safety.

In a per curiam opinion, section 208 of the Taft-Hartley Act[6] received careful scrutiny. Since it was generally accepted by both parties that the strike affected the entire steel industry, the first condition[7] needed for the issuance of an injunction was met. The real question arose over the second condition,[8] which was whether the nation's health or safety would be imperiled by the strike. The argument centered upon the words "national health," the petitioner urging that they only meant the *physical health* of the nation. Respondent, the Government, attached a broader meaning, contending that the country's economic well-being and general welfare was the correct connotation of "national health." The Court did not resolve this question; it held instead that the findings of fact below indicated that the steel strike had imperiled *national safety* alone.[9] The Supreme

1. Labor Management Relations Act (Taft-Hartley Act) § 206, 61 Stat. 155 (1947), 29 U.S.C. § 176 (1958).

2. 61 Stat. 155 (1947), as amended, 63 Stat. 107 (1949), 29 U.S.C. § 178 (1958).

3. United States v. United Steelworkers of America, 178 F. Supp. 297 (W.D. Pa. 1959).

4. United Steelworkers of America v. United States, 271 F.2d 676 (3d Cir. 1959).

5. United Steelworkers of America v. United States, 361 U.S. 39 (1959).

6. 61 Stat. 155 (1947), as amended, 63 Stat. 107 (1949), 29 U.S.C. § 178 (1958), which follows in part:

> 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 trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and
>
> (ii) if permitted to occur or 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.

7. See note 6 *supra*, § 208(a)(i).

8. See note 6 *supra*, § 208(a)(ii).

9. United Steelworkers of America v. United States, 361 U.S. 39, 42 (1959).

Court relied upon evidence of the strike's effect on the nation's defense and space programs, particularly the military missile and manned-satellite projects. In a concurring opinion rendered later, Mr. Justice Frankfurter and Mr. Justice Harlan completely adhered to the majority view.[10]

Mr. Justice Douglas, the lone dissenter, contended that "national health" should be interpreted narrowly.[11] He believed that such was the intention of Congress. Regarding "national safety," Douglas agreed with petitioner. Both felt that if several steel mills were to be re-opened, the nation's defense needs would be satisfied, while the right of organized labor to strike would still be protected. But there is no legal support for this plan in statutes or in case law.

The Supreme Court gave equal consideration to the other two issues in the instant case: *First,* petitioner contended that the district court did not have the right to exercise equitable jurisdiction to enjoin the steel strike. This contention was disapproved by the Court. *Second,* neither the Taft-Hartley Act in its entirety, nor section 208 in particular, was held to be constitutionally invalid. Section 208 did not violate the constitutional limitation which prohibited the courts from exercising powers of a legislative or executive nature. The concurring justices elaborated more fully on this point, declaring that section 208 entrusted to the courts only the determination of a "case or controversy." Therefore, section 208 (a) was within the judicial power as contemplated in the Constitution.[12]

The holding of the Supreme Court in this, its first encounter with section 208 of the Taft-Hartley Act, was undoubtedly correct. The majority justified its position on the three main issues by relying upon cases[13] decided prior to the enactment of the Taft-Hartley Act. The constitutionality and jurisdictional questions were discussed fully in the lengthy concurring opinion.

The Court's position was essentially the same as that taken by a lower federal court in *United States v. American Locomotive Company.*[14] There, the district court cited two instances[15] in which federal courts had upheld the constitutionality of section 208. In the *Locomotive* case, the Supreme Court's denial of certiorari, after the circuit court had affirmed, lent strength to the district court's holding.

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10. *Id.* at 44 (concurring opinion).

11. *Id.* at 65 (dissenting opinion).

12. *Id.* at 62 (concurring opinion).

13. See Federal Radio Comm'n v. General Elec. Co., 281 U.S. 464 (1930); Sanitary Dist. of Chicago v. United States, 226 U.S. 405 (1925); Keller v. Potomac Power Co., 261 U.S. 428 (1923); United States v. American Bell Tel. Co., 128 U.S. 315 (1888).

14. 109 F. Supp. 78 (W.D.N.Y. 1952), *aff'd,* United States v. United Steelworkers of America, 202 F.2d 132 (2d Cir. 1953), *cert. denied,* 344 U.S. 915 (1953).

15. See United States v. United Mine Workers of America, 89 F. Supp. 187 (D.D.C. 1950), *aff'd,* 190 F.2d 865 (D.C. Cir. 1951); United States v. International Longshoremen, 78 F. Supp. 710 (N.D. Cal. 1948).