Volume 47
Issue 4 *Dickinson Law Review - Volume 47, 1942-1943*

5-1-1943

The Scope of Unfair Labor Practices Under the National Labor Relations Act and the Pennsylvania Labor Relations Act

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THE SCOPE OF UNFAIR LABOR PRACTICES UNDER THE NATIONAL LABOR RELATIONS ACT AND THE PENNSYLVANIA LABOR RELATIONS ACT

The term "unfair labor practice" has no common law background; it is a term of recent origin which is an outgrowth of the industrial strife and unrest which was intensified by the recent depression. Various legislative acts have been passed to safeguard the privileges of American workers to organize and select representatives for the purpose of collective bargaining.[1] The wrongs known as "unfair labor practices" were a result of this unrest which culminated in legislative enactments.[2]

The first attempt to set forth what were unfair labor practices was in the Federal Railway Labor Act.[3] This Act set forth certain practices of employers as unfair labor practices and provided that indulgences in them by an employer was a misdemeanor.[4] The rights given labor under this act were the rights to organize and bargain collectively through representatives of their own choosing. However, the scope of this act was limited to railroad employees engaged in interstate commerce.

The first general act setting forth unfair labor practices was the National Industrial Recovery Act.[5] The right given labor was that the employees could organize and bargain collectively through representatives of their own choice, and unfair labor practices were set out, but were not designated as such but were similar to those acts called unfair labor practices by the Federal Railway Labor Act.[6] These unfair labor practices were: (1) employees could organize and choose their representatives free from interference from their employer; (2) no employee as a prerequisite to becoming employed should be required to join a company union. This act was of short life. It was declared unconstitutional in 1935.[7]

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[1]Rohlfing, Charles C.; Carter, Edward W.; West, Bradford W.; Hervey, John G.; BUSINESS AND GOVERNMENT, 2nd Edition, page 464; Daugherty, Carroll R., LABOR PROBLEMS IN AMERICAN INDUSTRY, Revised Edition, page 341; Ross, Malcolm, *The Purpose and Scope of the Labor Act,* 2 University of Pittsburgh Law Review 39.

[2]Commons, John R. and Andrews, John B., PRINCIPLES OF LABOR LEGISLATION, 4th Edition, page 424;Daugherty, Carroll R., LABOR PROBLEMS IN AMERICAN INDUSTRY, Revised Edition, pages 283 and 341; Koenig, Louis W., *The National Labor Relations Act—An Appraisal,* 23 Cornell Law Quarterly, 392.

[3]Act of May 20, 1926, c. 347, 44 Stat. 577, As Amended in 1934, 45 U.S.C.A. 151.

[4]The Attorney General's Committee on Administrative Procedure, Railway Labor, page 45.

[5]Act of June 16, 1933, 48 Stat. 195, 15 U.S.C.A., sec. 701 *et seq.*

[6]*See* note 3, *supra.*

[7]Schecter Poultry Corporation v. United States, 295 U.S. 495, 55 Sup. Ct. 837 (1935).

The unfair labor practices embodied in the National Industrial Recovery Act were amplified,[8] and made clear in the National Labor Relations Act,[9] which was held to be constitutional.[10].

The Labor Relations Act sets out what are unfair labor practices, and states:

> "Section 7: Employees shall have the right of self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concentrated activities for the purpose of collective bargaining or other mutual aid or protection.
>
> Section 8: It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it . . . .
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.
>
> (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.
>
> (5) To refuse to bargain collectively with representatives of his employees, subject to the provisions of section 9 (a).
>
> Section 9 (a): Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . ."

Professor Frey of the University of Pennsylvania Law School, has classified the practices of employers designated by the Act as being unfair, into three groups:[11]

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[8]The Attorney General's Committee on Administrative Procedure, National Labor Relations Board, page 1.

[9]Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C.A. 151.

[10]National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U.S. 1; 57 Sup. Ct. 615.

[11]Frey, Alexander Hamilton, *The National Labor Relations Act Should Not Be Amended At The Present Session Of Congress*, 33 Illinois Law Review 658, page 659.

"(1) discrimination among workers in regard to hire or tenure or other terms or conditions of employment because of union activity;

(2) stimulation of company-dominated unions in order to check the development of independent labor unions;

(3) refusal to bargain collectively with representatives freely selected by a majority of employees."

This classification shows the scope of the practices that were intended to be covered by the National Labor Relations Act.

The National Labor Relations Act was enacted under the commerce power of the Federal Constitution.[12] The purpose of the Labor Relations Act was to guarantee to labor certain rights which were felt to be necessary to give it bargaining power equal to that of the employers.[13] The scope of the board's power extends to unfair labor practices affecting commerce.

Section 2 (6) of the National Labor Relations Act defines the term "affecting commerce": "The term affecting commerce, means in commerce, or burdening or obstructing commerce, or having lead or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Thus the act is very broad in its scope, but there are a large number of employers who would not come under this act. The regulation of unfair labor practices which do not come under this act are free from regulation unless a state is in a position to regulate them under an act passed under its so-called police power. The National Labor Relations Act does not apply to employees of businesses purely local in character, government employees, agricultural or domestic servants, and persons employed by parents.[14]

In 1937 Pennsylvania passed an act entitled, "Pennsylvania Labor Relations Act."[15] This act was held constitutional as a valid exercise of the so-called police power.[16] As we have seen the Federal Act does not cover the whole field.

Who is an employer as defined by the Pennsylvania Labor Relations Act? The Act, Section 3 (c)[17] defines the term employer: "The term 'employer' includes any person acting, directly or indirectly in the interest of an employer, but shall not include the United States or the Commonwealth, or any political subdivision thereof, or any person subject to the Federal Railway Labor Act or

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[12]Constitution of the United States, Article 2, sec. 8, par. 3.

[13]Ross Malcoln, *The Purpose and Scope of the Labor Act,* 2 University of Pittsburgh Law Review, 39.

[14]National Labor Relations Act. Sec. 2 (3); *see* note 5, *supra.*

[15]Act of June 1, 1937, P.L. 1168, 43 PS 211 *et seq.*

[16]Spungin's Appeal, 32 D.&C. 611 (1938); United Retail Employees of America, Local No. 134 v. W. T. Grant Company, Inc., 341 Pa. 70 (1941).

[17]*See* note 15, *supra.*

the National Labor Relations Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

The Pennsylvania Act as does the Federal Act excludes persons employed as an agricultural laborer, or in the domestic service of any person in the home of such person, or any individual employed by his parents or spouse.[18] A further limitation was added by the Supreme Court of Pennsylvania in *Western Pennsylvania Hospital v. Lichliter,*[19] which held that hospital employees are not subject to the Labor Relations Act. This decision has been criticized as doing more harm than good, in that an orderly settlement by the Labor Board of many unfair labor practices and grievances of laborers must be supplanted by unwanted strikes.[20]

The Pennsylvania Labor Relations Act sets forth what are unfair labor practices under the Act:[21]

> "(1) It shall be an unfair labor practice for an employer—
>
> (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act.
>
> (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . .
>
> (c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in labor organizations . . .
>
> (d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.
>
> (e) To refuse to bargain collectively with the representatives of his employees subject to provisions of section 7 (a) of this Act.
>
> . . . Section 7 (a) — Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . ."

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[18]Pennsylvania Labor Relations Act, sec. 3 (d); *see* note 15, *supra.*

[19]Western Pennsylvania Hospital v. Lichliter, 340 Pa. 382, 17 A. (2d) 206.

[20]Note, *Labor Law—Collective Bargaining Rights of Employees of Non-Profit Institutions,* 89 University of Pennsylvania Law Review 1103.

[21]Pennsylvania Labor Relations Act, secs. 6 and 7; *see* note 15 *supra.*

The unfair labor practices set out in the Pennsylvania Labor Relations Act of 1937 are almost identical with those expressed in the National Labor Relations Act.

Now, the question arises as to whether the Pennsylvania Act is limited in its operation and applies only where the National Act does not apply, or whether the two acts apply concurrently.

The Pennsylvania Labor Relations Act does not apply where the National Labor Relations Act applies, and does not apply where the Federal Railway Labor Act applies, section 3 (c) of Pennsylvania Labor Relations Act, *supra.*

In the case of *Abbott Dairies Incorporated,*[22] the court said, "The National Labor Relations Act . . . confers jurisdiction upon the Board, which it creates, to prevent any person from engaging in any unfair labor practice 'affecting commerce.' These words in the terms of the act mean interstate commerce. Therefore, where the dispute involved is one affecting interstate commerce, it is within the jurisdiction of the National Board and is excluded from the jurisdiction of the State Board by the terms of the Commonwealth's statute 'shall not include any person subject to the National Labor Relations Act' ".

The Pennsylvania Act does not apply concurrently with the National Act, but applies only where the National Act does not apply. There is some authority to the affect that the state acts are concurrent with the Federal Act.[23]

In 1939 the Pennsylvania Labor Relations Act was amended[24] and unfair labor practices were added which favored the employers, i.e., they made certain acts of employees unfair labor practices. This made the Pennsylvania Act inconsistent with the Federal Act because the Federal Act was passed for the benefit of labor and not for the benefit of the employers.[25] The Federal Act could have been amended, as was the Pennsylvania Act, to include provisions in favor of the employer. But the Federal Act was not amended; it was criticized, but no amendments were adopted.[26]

The Act now guarantees rights to the employer, which are as follows:

> "(2) It shall be unfair labor practice for a labor organization, or any officer or officers of a labor organization, or any

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[22]Abbott Dairies, Incorporated, 341 Pa. 145, page 146.

[23]Davega City Radio, Inc. v. State Labor Relations Board, 281 N.Y. 13, 22 N.E. (2d) 145; Wisconsin Labor Relations Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N.W. 673; Unkovic, Nicholas, 44 Dickinson Law Review, 16 at page 28.

[24]Act of June 9, 1939, P.L. 293; 43 PS 211, *et seq.*

[25]Ross, Malcolm, *The Purpose and Scope of the Labor Act,* 2 University of Pittsburgh Law Review 39; Freedman, Walter, *The Inquisitional Powers of the National Labor Relations Board,* 22 Washington University Law Quarterly, 81; Frey, Alexander Hamilton, *The National Labor Relations Act Should Not Be Amended at the Present Session of Congress,* 33 Illinois Law Review, 658.

[26]Burke, Edward R., *Why The National Labor Relations Act Should Be Amended,* 33 Illinois Law Review 648.

(a) To intimidate, restrain, or coerce any employe by threats of force or violence or harm to the person of said employe or the members of his family or his property, for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representatives for the purpose of collective bargaining.

(b) During a labor dispute, to join or become a part of a sit-down strike, or, without the employer's authorization, to seize or hold or to damage or destroy the plant, equipment, machinery or other property of the employer, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or harm to the person of said employer or the members of his family, with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining."

Originally the Pennsylvania Act, as the Federal Act, gave rights to the laborer only, but the amendments to the Pennsylvania Act gave rights to the employer as well as to the employee, and made the Pennsylvania Act not only different from the Federal Act but inconsistent as well.

> Where there is a state act with a federal act on the same subject, and the agent or agents of a labor organization, or any one acting in the interest of a labor organization, or for an employe or for employes acting in concert —

state act is inconsistent with the federal act, the federal act controls.[27] Thus the Pennsylvania Act does not apply concurrently with the Federal Act as to these added provisions.

Every court has the power to determine the jurisdiction of its own court.[28] The Pennsylvania Labor Relations Board can determine whether they have jurisdiction or not, the correctness of the court's ruling being subject to review.[29]

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[27]Constitution of the United States, Article 4, section 2; Charleston and Western Carolina Railway Co. v. Varnville Furniture Co., 237 U.S. 597, 35 S. Ct. 715.

[28]Standard Oil Company v. Missouri 224 U.S. 270, 32 S. Ct. 406; Silver v. Schuylkill, 30 Pa. 356; Keyser's Estate, 329 Pa. 514.

[29]Abbott Dairies Incorporated, 341 Pa. 145;Margiotti, Attorney General, "Jurisdiction Of Pennsylvania Labor Relations Board"; 30 D.&C. 280.

In conclusion we can state that the National Labor Relations Act applies to all labor practices by an employer affecting commerce, which are designated as being unfair labor practices by the National Act, except, those practices covered by the Federal Railway Labor Act, and those employees of businesses purely local in character, government employees, agricultural employees, domestic servants, and persons employed by their parents.

The Pennsylvania Act applies to employers and employees within the state except those that come under the National Labor Relations Act, the Federal Railway Labor Act, and employees of hospitals, government employees, agricultural employees, domestic servants, and persons employed by their parents or spouse.

The Pennsylvania Labor Relations Act does not operate concurrently with the National Labor Relations Act. Where the two acts overlap the National Act controls.[80]

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[80] *See* note 29, *supra.*