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LABOR LAW - NATIONAL LABOR RELATIONS ACT - POWER OF STATE COURT TO LEVY ON EMPLOYER'S OBLIGATION UNDER BACK PAY ORDER - POWER OF FEDERAL COURT TO ENJOIN STATE PROCEEDINGS

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LABOR LAW — NATIONAL LABOR RELATIONS ACT — POWER OF STATE COURT TO LEVY ON EMPLOYER'S OBLIGATION UNDER BACK PAY ORDER — POWER OF FEDERAL COURT TO ENJOIN STATE PROCEEDINGS — A decree of the federal circuit court had been issued enforcing an order of the National Labor Relations Board requiring respondent company to pay back wages to certain employees who had been discharged in violation of the National Labor Relations Act. While the sums payable under the award were still unliquidated, creditors and estranged wives of the employees brought suits in state courts on claims against the employees; and writs of attachment, process of garnishment and injunctive orders were issued by the state courts against respondent requiring it to pay portions of the awards to the creditors rather than the employees. The National Labor Relations Board petitioned the circuit court to enjoin the

creditors from maintaining these state proceedings. *Held*, one judge dissenting, the injunction should issue. Third persons "cannot, by resort to judicial process, be permitted to command the payment of the awards to others than those whom the decree had designated as the appropriate recipients." Section 265 of the Judicial Code [1] is not an obstacle to granting the injunction; "the authority to enjoin proceedings inimical to the free exercise of the court's exclusive jurisdiction is implicit in the terms" and the policy of the National Labor Relations Act. *National Labor Relations Board v. Sunshine Mining Co.*, (C. C. A. 9th, 1942) 125 F. (2d) 757.

The initial inquiry concerns the power of state courts to levy on a back pay award. Two obstacles face a creditor of the employee attempting to invoke a state process in the nature of garnishment in this situation. First, the local attachment and garnishment statutes must be liberally construed in order to include such an obligation as that imposed by a decree enforcing a back pay award. Neither the award nor the decree enforcing it creates private rights, and the power and duty of enforcement rest solely with the board.[2] Thus, statutes permitting attachment of "credits" or personal property of the defendant would hardly seem to embrace this inchoate right to back pay.[3] However, interpretation of the state statute is the province of the state court; and assuming the creditor overcomes this difficulty, a second obstacle is met in the questionable power of the state court to order payment of the award to the creditor. Limitations on the power of state courts to interfere with the process and proceedings in national courts inhere in our federal system and would preclude a state court from ordering payment of back wages contrary to the decree of the federal court.[4] Moreover, exclusive jurisdiction to determine the means for accomplishing and administering the declared purposes of the National Labor Relations Act are vested in the board and the federal courts.[5] Yet it seems plausible that a state decree requiring payment of the award to the creditor of the employee

[1] 36 Stat. L. 1162, § 265 (1911), 28 U. S. C. (1940), § 379. Quoted infra, note 7.

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

[3] The state statute involved in the principal case provided: "all debts due such defendant, and all other property . . . may be attached. . . ." Idaho Code (1932), § 6-505; "any credits or other personal property belonging to the defendant, or . . . any debt to the defendant" may be garnished. Id., § 6-507.

[4] 90 UNIV. PA. L. REV. 714 (1942); Warren, "Federal and State Court Interference," 43 HARV. L. REV. 345 at 348 et seq. (1930); Riggs v. Johnson County, 6 Wall. (73 U. S.) 166 at 195 (1867).

[5] National Licorice Co. v. National Labor Relations Board, 309 U. S. 350 at 365, 60 S. Ct. 569 (1940): "it will not be open to any tribunal to compel the employer to perform . . . acts, which . . . would violate the Board's order or be inconsistent with any part of it. Section 10(a) and (c) of the Act commits to the Board the exclusive power to decide whether unfair labor practices have been committed and to determine the action the employer must take to remove or avoid the consequences of his unfair labor practice." See also Manning v. Feidelson, 175 Tenn. 576, 136 S. W. (2d) 510 (1940).

would not be beyond state power. This would not seem to contravene the federal decree or the board order, since it is, in effect, payment to the employee. It seems clear, however, that a state court is without power to interfere when the board has determined, at least impliedly, that the purposes of the act will be accomplished more effectively by requiring payment to the employee directly rather than to his creditor. This is the premise of the court in the principal case. A question of the validity of such a determination by the board might arise, but it would appear to be within the scope of the board's power under the act.[6] Assuming a lack of power in the state court, doubt may still be cast upon the propriety of enjoining the state proceedings. Narrow judicial interpretation of section 265 of the Judicial Code [7] had, in the opinion of many observers, made of it a dead law,[8] but recent pronouncements of the Supreme Court have revitalized the section, and it now seems destined for a more vigorous life.[9] The majority in the instant case held that a seventh qualification of the section may be added to the six which the Supreme Court laid down in the *Toucey* case.[10] Authorization for the injunction is found in section 10(e) of the National Labor Relations Act giving the federal courts "exclusive" jurisdiction to enforce board

[6] The majority in the principal case state that the board "believed that an appropriate corrective of the unfair labor practices lay in the payment of back pay to the individuals who were the immediate victims of those practices. . . . we cannot say that the Board's conclusion as to what should be done at this juncture is without a rational basis." Principal case, 125 F. (2d) 757 at 761. See also the dissenting opinion, id. at 766, stating that the court would restrain payment to any others than the employees if the board requested such a decree.

While theoretically payment to his creditors is receipt of the benefit by the employee, practically a requirement of payment to the employee personally could easily be justified as a necessary means of protecting the awards and the proper recipients from exploitation or the expense and difficulty of defending against unfounded claims. This would seem an affirmative order aimed at effectuating the policy of the act.

[7] 36 Stat. L. 1162, § 265 (1911), 28 U. S. C. (1940), § 379: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

[8] Durfee and Sloss, "Federal Injunction against Proceedings in State Courts: The Life History of a Statute," 30 MICH. L. REV. 1145 (1932); Taylor and Willis, "The Power of Federal Courts to Enjoin Proceedings in State Courts," 42 YALE L. J. 1169 at 1172 (1933).

[9] Toucey v. New York Life Ins. Co., 314 U. S. 118, 62 S. Ct. 139 (1941), discussed in 26 MINN. L. REV. 558 (1942); Southern Ry. v. Painter, 314 U. S. 155, 62 S. Ct. 154 (1941).

[10] In Toucey v. New York Life Ins. Co., 314 U. S. 118, 62 S. Ct. 139 (1941), the Court was willing to recognize six exceptions which comprised five statutory exceptions: in (1) bankruptcy proceedings, (2) federal interpleader, (3) removal, (4) ship owners' liability, (5) proceedings under the Frazier-Lemke Act (the last three being implied exceptions); and (6) one nonstatutory exception, *res* cases. Other nonstatutory exceptions were dealt with or at least mentioned, but there was no hint of any other statutory exceptions.

orders and providing that the court's decree shall be "final." Accordingly, it is argued, power is possessed by the federal court, notwithstanding section 265, to enjoin state proceedings which interfere with the decree enforcing the board's determination of the proper affirmative action to accomplish the policy of the act. Whether the Supreme Court will accept this reasoning is conjectural, but it appears that the dissenting opinion in the instant case reflects more accurately the spirit of the *Toucey* case. The Court there took pains to enumerate the statutory exceptions to section 265, and while three of them were implied exceptions,[11] these were much less equivocal than the section of the National Labor Relations Act upon which the majority in the principal case rely.[12]

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[11] See note 10, supra. The removal statute, 36 Stat. L. 1095, § 29 (1911), 28 U. S. C. (1940), § 72, provides that after removal it shall be the duty of the state court to "proceed no further." But the "inference" of a statutory exception to section 265 therefrom is ex post facto, for this was not the original theory upon which the cases first enjoined state proceedings after removal. See Taylor and Willis, "The Power of Federal Courts to Enjoin Proceedings in State Courts," 42 YALE L. J. 1169 at 1172-1175 (1933). The statute limiting shipowners' liability, 49 Stat. L. 1480, § 3 (1936), 46 U. S. C. (1940), § 185, provides, "Upon compliance with the requirements of this section all claims and proceedings against the owner . . . shall cease." See Taylor and Willis, supra. The Frazier-Lemke Act, 47 Stat. L. 1473, § 1 (o) (1933), 11 U. S. C. (1940), § 203 (o), provides that certain specific proceedings against the farmer or his property "shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained in any court. . . ."

The thory of the board (and the respondent, who also sought an injunction against the state proceedings) in the principal case collapsed during the course of the litigation, for they relied on section 262 of the Judicial Code, 36 Stat. L. 1162 (1911), 28 U. S. C. (1940), § 377, which provides that federal courts "shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions. . . ." It was claimed therefore that the injunction was authorized despite § 265. See principal case, 125 F. (2d) 757 at 759, 764. This theory became untenable after the Toucey case, which was decided during the trial of the instant case, for the Court there stated, "The general powers thus given to the federal courts were obviously limited by the subsequent enactment of the specific prohibitory provisions of the Act" which is now § 265 of the Judicial Code. Toucey v. New York Life Ins. Co., 314 U. S. 118 at 132, note 4, 62 S. Ct. 139 (1941). See Durfee and Sloss, "Federal Injunction against Proceedings in State Courts: The Life History of a Statute," 30 MICH. L. REV. 1145 at 1150, note 18 (1932).

[12] There has been a noticeable reluctance to infer statutory exceptions to § 265. Taylor and Willis, "The Power of Federal Courts to Enjoin Proceedings in State Courts," 42 YALE L. J. 1169 at 1169-1170, note 5 (1933). See note 11, supra. Compare the law under the Federal Employers' Liability Act, 52 Stat. L. 1404, § 2 (1939), 45 U. S. C. (1940), § 56, giving concurrent jurisdiction to state and federal courts to try actions thereunder and providing that no case brought in a state court shall be removed. A state court cannot enjoin a suit in the federal courts, but a federal court cannot enjoin state proceedings to enjoin suit in the federal court. Southern Ry. v. Painter, 314 U. S. 155, 62 S. Ct. 154 (1941). See 90 UNIV. PA. L. REV. 714 at 725 et seq. (1942).