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Scope Of The President's Power To Secure 80-Day Injunction Against Continuation of Steel Strike Under Labor Management Relations Act, Section 208

United Steelworkers of America v. United States[1]

After a strike of more than three months by the United Steelworkers of America (hereafter called the Union), affecting plants representing 85% of the nation's basic steel production capability, the President appointed a board of inquiry to report to him on the state of negotiations between the Union and the steel industry.[2] The Board's subsequent report stated that no early settlement of the strike could be foreseen.[3] Thereupon, the President ordered the Attorney General to seek an 80-day injunction against the Union's continuance of the strike,[4] pursuant to Section 208 of the Labor Management Relations Act, which gives a district court "jurisdiction to enjoin any . . . strike or lockout" in interstate commerce which "affects an entire industry or a substantial part thereof" and "if permitted . . . to continue, will imperil the national health or safety."[5]

The District Court for the Western District of Pennsylvania granted the injunction upon fact-findings that the strike would produce an irreparable time-lag in the nation's military and research programs, and upon a further fact-finding that the strike would adversely affect the nation's economic health because of the large number of layoffs which would occur in related industries due to disappearing steel reserves.[6] The Court of Appeals affirmed, Judge Hastie dissenting,[7] and the Supreme Court granted certiorari.[8]

In a *per curiam* opinion the Supreme Court affirmed the judgments of the lower federal courts, Mr. Justice Douglas dissenting.[9] Mr. Justice Frankfurter and Mr. Justice

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[1] 361 U.S. 39, 80 S.Ct. 1 (1959).

[2] Exec. Order 10843, 24 F.R. 8289 (1959), amended by Exec. Order 10848, 24 F.R. 8401 (1959).

[3] United States v. United Steelworkers of America, 178 F. Supp. 297, 300 (D.C. Pa., 1959).

[4] *Ibid.*, 299.

[5] 61 STAT. 155, Ch. 120, § 208 (1947), U.S.C.A. 178.

[6] United States v. United Steelworkers of America, 178 F. Supp. 297 (D.C. Pa., 1959).

[7] United States v. United Steelworkers of America, 271 F. 2d 676 (3rd Cir., 1959).

[8] United Steelworkers of America v. United States, 361 U.S. 878, 80 S.Ct. 143 (1959).

[9] *Supra*, n. 1.

Harlan later filed a concurring opinion.[10] The Court found that the District Court's findings that the strike affected 85% of the nation's basic steel production capability and imperiled four military or quasi-military programs, fulfilled the statutory requirements for the injunction. Thus it was unnecessary to decide whether the "national health" included the nation's economic health as well as the physical health of the citizenry. The Court further determined that the statute conferred a judicial task of finding whether the conditions required for granting an injunction were present, and not a legislative or executive one, since Congress had predetermined what the injunctive conditions were to be.

Judge Hastie's dissent in the Court of Appeals had been predicated upon the view that an injunction should not issue unless the government made a positive showing that the injunction would facilitate a settlement of the dispute.[11] The Supreme Court denied the validity of this reasoning, emphatically stating that the "basic purpose" of Section 208 was "to see that vital production should be resumed or continued for a time while further efforts were made to settle the dispute."[12] The Court further stated that Congress did not intend the issuance of a Section 208 injunction to depend upon inquiries into such matters as the availability of other remedies, the effect of an injunction on the collective bargaining process, the merits of the parties' positions, or the conduct of the parties in their negotiations. It would seem that the removal of the above-mentioned factors for equitable consideration has severely modified or entirely eliminated any equitable discretion with respect to the propriety of granting an injunction, once the statutory bases for the injunction have been found. Hence, by inference from the majority opinion and as clearly stated by the concurring opinion,[13] Congress has

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[10] United Steelworkers of America v. United States, 361 U.S. 39, 80 S.Ct. 177 (1959).

[11] *Supra*, n. 7, 960.

[12] 361 U.S. 39, 80 S.Ct. 1 (1959).

[13] *Supra*, n. 10. The opinion states, at p. 183:

"* * * We conclude that under the national emergency provisions of the Labor Management Relations Act it is not for the judiciary to exercise conventional 'discretion' to withhold an 'eighty-day' injunction upon a balancing of conveniences.

" 'Discretionary' jurisdiction is exercised when a given injunctive remedy is not commanded as a matter of policy by Congress, but is, as a presupposition of judge-made law, left to judicial discretion. Such is not the case under this statute. The purpose of Congress expressed by the scheme of this statute precludes ordinary equitable discretion. * * *"

made it mandatory that an injunction be granted after the requisite fact-findings are made.

Section 208 says, that if the district court finds the statutory requisites, "it shall have jurisdiction to enjoin such strikes. . . ." It does not say, "it shall enjoin such strikes. . . ." This language of the Act could reasonably be construed as permissive rather than mandatory. If Congress had meant to deviate from the traditional principle regarding equity, that the chancellor has discretion to act rather than an absolute duty to act, it seems appropriate that it would have used words expressly conferring such a duty.[14] It is submitted that perhaps Congress did intend to give the district court only a narrow discretion to decline to grant the injunction if the statutory bases for it were present, but did not intend to completely abolish the court's equitable discretion.[15] This contention stems from the fact that Section 208 was intended, when the Act was passed, to apply mainly to the bituminous coal industry rather than to the basic steel industry.[16] Indeed, the first use of the Section 208 injunction was against the International Union, United Mine Workers.[17] Strikes in the bituminous coal industry had long threatened the physical

[14] *Cf.* Hecht Co. v. Bowles, 321 U.S. 321 (1944), which was distinguished from the noted case in the concurring opinion, *supra*, n. 10, 184-185. See also Alabama v. United States, 279 U.S. 229 (1929), where the Supreme Court held an act of Congress requiring the consideration of applications for interlocutory injunctions in certain cases by three judges and allowing appeal to the Supreme Court, had in no way modified the well-established doctrine that such applications are addressed to the sound discretion of the trial court. The Court reasoned, 230, that traditional equitable principles were applicable since "there was nothing in the legislation to suggest that in the exercise of judicial power in respect of such writs pertinent principles of equity as heretofore understood, are to be disregarded or modified." Beach, *Extent of Discretion Exercised by District Courts in Issuing Temporary Injunctions Against Alleged Unfair Labor Practices*, 56 Mich. L. Rev. 102 (1958), provides an excellent comment on the same problem within a labor area closely related to the Sec. 208 injunction.

[15] Equity courts often narrow their discretion where a public interest is involved. See Virginian Ry. v. System Federation, 300 U.S. 515, 552 (1937), where the Supreme Court said, "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

[16] Cox, *Some Aspects of the Labor Management Relations Act*, 61 Harv. L. Rev. 274, 286 (1948), citing Senate Report No. 105, 80th Congress. 1st Session, 14 (1947), as relevant to this opinion. Note, *The Injunction Under the Labor Management Relations Act of 1947*, 2 Rutgers L. Rev. 240 (1948), emphasizes the litigation regarding bituminous coal strikes which immediately preceded the passage of the Labor Management Relations Act. Teller, *The Taft-Hartley Act and "Government by Injunction,"* 35 Va. L. Rev. 50 (1949), discusses in detail the labor cases and legislation which led up to the Labor Management Relations Act.

[17] United States v. International Union, United Mine Workers, 77 F. Supp. 563 (D.C.D.C., 1948).

health of a large segment of the nation's citizenry; but as dangerous as these strike conditions were, the remedy necessary to abate them would not seem to require the same degree of emergency as the remedy required to maintain defense production essential to the country's survival in today's rocket age. But, although historically the above approach may be correct, it could very plausibly be argued that the Supreme Court has ruled otherwise — and an injunction will accordingly issue henceforth whenever the statutory requisites are met, without regard for the effect such an injunction will have on the collective bargaining between the union and industry involved.

Justice Douglas' dissent was founded on the ground that less than 1% of the nation's steel production was needed for defense; therefore a selective reopening of the plants might be had upon remand to the District Court.[18] Such a result would have avoided sending the entire Union back to work and would in part have retained the efficaciousness of the strike as a coercive weapon against the basic steel industry. The majority opinion looked upon Section 208, however, as "a public remedy in times of emergency" and refused to find any Congressional intent for "reorganization of the affected industry" in such times.[19]

As of today, it is entirely foreseeable that the factual situation present in the instant case, or an equivalent factual situation, will also occur in any future steel strike, due to the Cold War and the nation's attendant demand upon the steel industry for defense production. Therefore, the practical effect of the dominant opinion, although not mentioned by the Court, will be to give the President the power to use the Section 208 injunction shortly after the onset of any steel strike, if not before its inception.

Those companies in the basic steel industry either having defense contracts or supplying steel to related industries with defense contracts, could avoid the Section 208 injunction for a time at least by stockpiling large steel reserves so that defense production would not be immediately curtailed by a strike. This seems unlikely. In the first place, the related industries are the more logical choice to stockpile steel rather than the steel producers themselves. Secondly, the creation of such reserves in either the basic steel industry or related industries would seem prohibitive from an economic standpoint because of the large storage cost of the reserves and the taxation

[18] United Steelworkers of America v. United States, 361 U.S. 39, 80 S.Ct. 1, 5 (1959).

[19] *Ibid.*, 3.

which would be levied upon them in many cases. Finally, so far as the Union is concerned, an injunctive delay caused by stockpiling is fortuitous since it depends upon the act of management; and it is the Union, not industry, which is really harmed by the injunction.

One of the principal criticisms of the Section 208 injunction is that it forces the Union involved back to work under pre-strike conditions.[20] President Harry S. Truman, in his message to Congress vetoing the Labor Management Relations Act, stated:

> "Furthermore, a fundamental inequity runs through these provisions. The bill provides for injunctions to prohibit workers from striking, even against terms dictated by employers after contracts have expired. There is no provision assuring the protection of the rights of the employees during the period they are deprived of the right to protect themselves by economic action."[21]

The injunction, being against the Union, also tends to throw public opinion toward industry and away from the Union.[22] Moreover, Section 209 of the Act expresses the undesirable Congressional recognition of a dichotomy between the Union leadership and the striking workers by providing the workers with an opportunity to vote against a strike's inception or continuance, as the case may be, before the end of the injunctive period.[23] The threat of such a vote is quite likely to make the Union leadership more amenable to settlement: a result adverse to their strike order could mean the virtual end of power for the leadership, and for the Union itself.[24]

The writers believe that the inequities of the Section 208 injunction could be substantially decreased by the adoption of flexible federal controls, as opposed to the

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[20] See law review articles, *supra*, n. 16.

[21] U.S.C. Cong. Svc., 80th Congress, 1st Session, 1851, 1857 (1947).

[22] Note, *The Labor Management Relations Act and the Revival of the Labor Injunction*, 48 Col. L. Rev. 759, 772 (1948), says, ". . . as in the case of injunctions generally, the labor injunction tends to throw public opinion on the side of management, the strikers being regarded as law breakers."

[23] 61 STAT. 155, Ch. 120, § 209 (1947), 29 U.S.C.A. 179, states:

> ". . . the National Labor Relations Board, within the succeeding fifteen days [after the injunction has been in effect 60 days], shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter."

[24] Cox. *op. cit.*, *supra*, n. 16, stresses this point.

single remedy of injunction. Federal seizure of the affected industry seems a proper alternative to the injunction, seizure being somewhat detrimental to industry just as the injunction is somewhat detrimental to labor, in so far as ultimate settlement is concerned as well as the conditions of the temporary strike cessation. Changes in wages and working conditions of the workers could, if appropriate, be effected through seizure. More importantly, the choice of alternative remedies in the President's power would evoke an apprehension in both parties to the dispute, rather than in the Union alone, as to the remedy which would be used, and would therefore tend to encourage an early settlement on fair terms.

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