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Labor Law — Labor Management Relations Act — Section 8(b)(4)(i)(ii)(B) — Applicability to Secondary Pressure Arising out of Inter-Union Dispute.— National Maritime Union v. NLRB

Daniel C. Sacco

Labor Law—Labor Management Relations Act—Section 8(b)(4)(i)(ii)(B)—Applicability to Secondary Pressure Arising out of Inter-union Dispute.—*National Maritime Union v. NLRB.*[1]—The Grace Line, which had a collective bargaining agreement with the Marine Engineers' Beneficial Association (MEBA), sold the freighter *Maximus* to Cambridge Carriers, which had a collective bargaining agreement with the Brotherhood of Marine Officers (BMO), an affiliate of the National Maritime Union (NMU). When Cambridge Carriers replaced all MEBA members with BMO members, MEBA picketed the *Maximus*. Dock workers refused to cross the picket line, and all work on the ship ceased. In retaliation and in the hope of putting pressure on MEBA to induce it to terminate its picketing, the NMU picketed the *Del Valle* and the *Del Mar*, ships owned by Delta Steamship Lines, and the *Neva West*, owned by Bloomfield Steamship Company, all staffed with MEBA members. The placards stated, "Information Picketing. MEBA engineers interfere with employers lawfully recognizing NMU." In addition, the picketers passed out leaflets stating that if employers did not stand up to MEBA demands, "they would be in real trouble." Longshoremen, ordered by Delta from their union halls, and Delta's carpenters and painters refused to cross the picket lines. When Delta awarded repair work on the *Del Valle* to two companies, the general manager of one company, upon learning there was a picket line, informed Delta that his men would not cross it. The shop superintendent of the other also refused to pass. When a foreman of a marine repair company retained by Bloomfield inquired if he could pass to make repairs on the *Neva West*, a picket told him that he could not do so. On another occasion, a picket stated to employees of Bloomfield's port agent, "We are picketing the ship to keep the longshoremen from going on." Finally, when Bloomfield's vice president requested that the pickets be called off, the NMU's port agent refused, stating that he wanted Bloomfield to put pressure on MEBA to call off its pickets. The NLRB issued a cease and desist order against the NMU on the ground that the NMU had violated Section 8(b)(4)(i)(ii)(B) of the Labor Management Relations Act.[2] The

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[1] 346 F.2d 411 (D.C. Cir.), cert. denied, 382 U.S. 840 (1965). The Second Circuit reached an essentially identical result in National Maritime Union v. NLRB, 342 F.2d 538 (2d Cir.), cert. denied, 382 U.S. 835 (1965).

[2] 61 Stat. 141 (1947), as amended, 29 U.S.C. § 158(b)(4)(i)(ii)(B) (1964):

> It shall be an unfair labor practice for a labor organization or its agents—
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> . . . .
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> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
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> . . . .
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> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his em-

NMU petitioned the Court of Appeals for the District of Columbia to review and set aside the NLRB's order, and the NLRB cross-petitioned for enforcement. Affirming the Board's order, the court HELD: The NMU had violated section 8(b)(4)(i)(ii)(B).

The court concluded that there had been a violation of the statute, but it did not state the facts on which it was relying. An analysis of section 8(b)(4)(i)(ii)(B) reveals that it requires on the union's part (1) an engaging in, inducing, or encouraging of a work stoppage *or* coercion and (2) an object to force any person to cease doing business with another. Applying the statute to the facts, there seems to have been a violation of its language. First, (i) there was a secondary "work stoppage" induced by the NMU, and (ii) this, in turn, "coerced" various employers. Second, from the statements by the NMU's port agent that the NMU wanted the work stoppage to be continued despite its knowledge of the halt in the business relations between Bloomfield and the stevedoring companies and from the pickets' statements that no one was to cross the picket line, an object to cause a discontinuance of business relations among employers was shown.

The present case raises important questions as to the scope of 8(b)(4)(i)(ii)(B). One question is whether the object proscribed must be the union's ultimate purpose or may also be an intermediate purpose. In *Douds v. International Longshoremen's Ass'n*,[3] a union, having a representational dispute with another union, intentionally brought about work stoppages of secondary employers by its picketing at their places of business. Speaking for the court, Judge Learned Hand concluded that there was no violation of section 8(b)(4). The rationale was that although the union's intent was to bring about a work stoppage among secondary employers, the union's ultimate objective was not for that proscribed purpose but for the valid purpose of representing the employees. If the *Douds* interpretation of the statute's language "where an object" as meaning "the concluding state of things that the actor seeks to bring about"[4] is valid, the present decision is clearly incorrect. There would be no violation, for the NMU's ultimate purpose in imposing the secondary pressure was to enable its members to resume work. However, such an interpretation is questionable. The ordinary import of the statute's "*an* object" is that one of several purposes suffices for a violation. Moreover, as originally drafted, section 8(b)(4) contained the words "for the purpose of";[5] but these words were deleted in conference and the words "where an object thereof" were substituted.[6] In the words of Senator Taft, the reason for the substitution was "to close any loophole which would prevent the Board from being blocked in giving relief against such illegal activities simply because one of the purposes of such strikes might have been lawful."[7] Finally,

ployees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 . . . .

[3] 224 F.2d 455 (2d Cir. 1955).

[4] Id. at 459.

[5] 1 NLRB, Legislative History of the Labor Management Relations Act, 1947, at 113, 240 (1948).

[6] Id. at 547.

[7] 2 id. at 1623.

the Supreme Court and the Second Circuit have held that if one of the objects of the conduct is forbidden, there is a violation even though the object be intermediate.[8]

The present case also raises the question whether section 8(b)(4)(i)(ii)(B) forbids only the classic secondary boycott, which requires a primary dispute between a union and an employer and pressure on a supplier or customer of the employer to force him to terminate his dealings with the employer. The NMU argued that the section is concerned only with the classic secondary boycott; consequently, since the primary dispute was between NMU and MEBA, two unions, secondary pressure to aid NMU in its dispute with MEBA was not forbidden. After examining the section's legislative history, the court held that Congress intended to prohibit more than the classic secondary boycott and that there need be no dispute with a primary employer.

From the legislative history of section 8(b)(4)(i)(ii)(B) it appears that Congress intended to forbid at least some secondary pressures in addition to the classic secondary boycott. For example, in congressional debate, Senator Taft, the bill's sponsor in the Senate, declared: "There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike."[9] Moreover, the Report of the House Committee on Education and Labor, which sponsored the bill, stated that "illegal boycotts take many forms" and that the section was a novel definition of unlawful secondary boycotts,[10] thus negating the idea that only the classic secondary boycott was proscribed. The section's opponents conceded that the section made unlawful boycotts other than the classic boycott.[11]

In his State of the Union Message in 1947, President Truman recommended that secondary boycotts, when used to aid certain inter-union disputes, be forbidden.[12] During the debates, the section's opponents attacked the provision because it failed to distinguish between the various types of secondary boycotts. In a statement representative of the general views of the section's opponents, Senator Murray said:

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[8] International Bhd. of Elec. Workers v. NLRB, 341 U.S. 694 (1951); NLRB v. Wine Workers Union, 178 F.2d 584, 586 (2d Cir. 1949).

[9] 2 NLRB, op. cit. supra note 5, at 1107.

[10] 1 id. at 315.

[11] Id. at 363. In his Supplemental Minority Report, then Senator John F. Kennedy stated:

> The bill is seriously defective in that it fails to make a distinction between the various types of jurisdictional and sympathy strikes and secondary boycotts. The bill in broad terms condemns all of these as unlawful concerted activities. The blanket approach wholly ignores economic realities. There are some sympathy strikes, secondary boycotts, and even jurisdictional strikes which promote a legitimate economic objective of a union. There are others which are completely indefensible and which injure innocent parties without any direct connection with the legitimate objectives of the individual union involved.

Id. at 405.

[12] See 2 id. at 1033-34.

> We would support legislation carrying out these recommendations [of President Truman]. . . . [But] we are opposed to legislation such as is included in the committee majority bill which fails to distinguish between justifiable and unjustifiable secondary boycotts and proscribes all boycotts indiscriminately as unfair labor practices.[13]

Finally, Senator Taft, after hearing the Secretary of Labor reaffirm the President's recommendations,[14] stated:

> It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice.[15]

In finding that the congressional intent was to forbid the present instance of secondary pressure and not just the traditional secondary boycott, the present court agrees with the weight of case authority. In cases involving a refusal by carpenters to hang non-union made doors, the Sixth and Ninth Circuits have held there need be no dispute with a primary employer for a violation of section 8(b)(4);[16] in *Retail Fruit Clerks v. NLRB*,[17] the Fifth Circuit has stated that it was not the intent of Congress to limit the application of the section's substantially identical predecessor to the classic boycott situation.[18] And in *NLRB v. Denver Bldg. & Constr. Trades Council*,[19] the Supreme Court stated in dicta that in enacting section 8(b)(4)(i)(ii)(B) Congress had the dual objectives "of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and shielding unoffending employers and others from pressures in controversies not their own."[20] From this, it can be fairly inferred that the Court would probably regard at least some secondary pressures arising out of an inter-union dispute as proscribed by the statute. For once the conclusion is reached that the purpose of Congress was to protect secondary neutral employers, it should make no difference whether the primary dispute is with an employer or with another union.

The final question posed as to the scope of the section is whether, even though there need be no dispute with the primary employer, the union must intend that the breakdown in business relations occur between the neutral

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[13] Id. at 1034.

[14] See id. at 1491.

[15] Id. at 1106.

[16] NLRB v. Local 751, United Bhd. of Carpenters, 285 F.2d 633, 639 (9th Cir. 1960); NLRB v. Local 11, United Bhd. of Carpenters, 242 F.2d 932, 935 (6th Cir. 1957); see NLRB v. Washington-Oregon Shingle Weavers' Dist. Council, 211 F.2d 149, 152 (9th Cir. 1954).

[17] 256 F.2d 630 (5th Cir. 1958).

[18] Id. at 637. Although the court did not specifically state "classic boycott situation," it is unquestionably clear that this is the situation to which it was referring.

[19] 341 U.S. 675 (1951).

[20] Id. at 692.

employer and the primary employer. The present court implicitly found that an intent to break down relations between neutrals was sufficient. Certainly the section's broad language permits this finding; yet, on this point, one case stands contrary to the instant decision. In *Retail Fruit Clerks v. NLRB*,[21] the Ninth Circuit held that picketing the entrance to a large market complex when the dispute was solely with the lessor who operated a minority of the stands inside was an unlawful secondary boycott. In dicta, however, the court stated its understanding of the section "indicates that the neutral employer must be doing some sort of business with the primary employer."[22] The court was silent on the merits of the Board's argument that there would be a violation if there was only a disruption of the neutral's business with his suppliers and found a violation in that the lessor and lessee were forced to cease doing business with one another. Under this rationale, since Cambridge Carriers, the primary employer in the dispute, did no business with any of the employers involved in the work stoppage in New Orleans, there was no cessation of the business dealings between the primary employer and neutral employers and hence there was no violation.

Despite the apparently unanimous agreement of congressmen and the weight of case authority that the section is sufficiently broad to forbid secondary pressures arising out of inter-union disputes, section 8(b)(4)(i)(ii)(B) contains a clause that secondary work stoppages or coercion, where an object is "forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees" are prohibited *unless* "such labor organization has been certified as the representative of such employees. . . ." Since Congress was apparently willing to allow neutral employers to be injured by a certified union when a primary employer refused to recognize it, it is possible to argue that the NMU should have been able to institute secondary pressure against MEBA. The harm to the neutral is as great whether the original source of the pressure is a union-employer or an inter-union dispute, and there is no reason to permit this form of union self-help in the one instance and not in the other. The purpose of Congress in allowing this exception to the prohibition against secondary pressures seems to be to secure the recognition of the certified union as bargaining agent, and it would be in line with this policy to secure acquiescence from a rival union as well as from the employer. On this reasoning, the instant decision is questionable.

DANIEL C. SACCO

Mortgages and Mechanics' Liens—Priorities Where Separate Contracts Are Performed Subsequent to Attachment of the Mortgage Lien.— ***American-First Title & Trust Co. v. Ewing.***[1]—First Federal Savings and Loan Association, a Kansas lending institution, was mortgagee of the real estate in question, located in Oklahoma. Upon the mortgagor's failure to

21 249 F.2d 591 (9th Cir. 1957).
22 Id. at 594.

1 403 P.2d 488 (Okla. 1965).