

Work Stoppage—Injunction (United States v. professional Air Traffic Controllers Organization (PATCO))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Note is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

ADMINISTRATIVE LAW

WORK STOPPAGE — INJUNCTION

It has been generally held that in exercising its equity jurisdiction¹ to provide injunctive relief, a court is free to impose conditions requiring the maintenance of the status quo.² However, in *United States v. Professional Air Traffic Controllers Organization (PATCO)*,³ the Second Circuit Court of Appeals held that where the Federal Aviation Agency (FAA) had proven a prima facie case of illegal work stoppage by the air controllers, a union employed by the agency, it was improper for a district court to condition its granting of a preliminary injunction in favor of the government on the FAA's not taking any disciplinary action against the striking workers.⁴

¹ Equity jurisdiction refers to the power of a federal court to grant specific relief when the remedy at law is inadequate. See *Beacon Theaters v. Westover*, 359 U.S. 500 (1959). See also Judiciary Act of 1911, ch. 231 § 9, 36 Stat. 1088.

² See *Bhd. of Locomotive Eng'rs v. Missouri-Kan.-Tex. R.R.C.*, 363 U.S. 528 (1960), where the Court further noted,

Conditions of this nature traditionally may be made the price of relief when the injunctive powers of the court are invoked and the conditions are necessary to do justice between the parties.

Id. at 531-32. See also *Yakus v. United States*, 321 U.S. 414 (1944).

³ 438 F.2d 79 (2d Cir. 1970).

⁴ The district court had issued the preliminary injunction enjoining the air controllers from

in any manner continuing, encouraging, ordering, engaging, aiding or taking part in any strike, work stoppage or slowdown or any interference with or obstruction to the movement or operation of any aircraft.

United States v. Air Traffic Controllers Org., 313 F. Supp. 181 (E.D.N.Y. 1970). However, it added a condition to the injunction. In Paragraph III, the court stated:

That the Federal Aviation Administration be and it hereby is directed until further order of this court:

(a) To restore all defendants in the action who have returned to work to the performance of the duties to which they were assigned prior to March 25, 1970, not later than May 18, 1970.

(b) To withhold any further administrative actions in respect of suspensions, removals or any other sanctions based upon the alleged work stoppage between March 25, 1970 and April 14, 1970, against any employees who are defendants in these actions and subject to the temporary injunction issued by this court.

Id. at 181.

In explanation of its decision, the district court noted,

[t]he order is based on the need for urgent resolution of the present work stoppage, and the possibility that long hearings may be necessary to establish whether the individual defendants are in contempt of the temporary restraining order and whether there are circumstances which might mitigate any penalties for violation of the order.

313 F. Supp. at 185. The court added a caveat:

[t]hose who knowingly disobey a law must face the penalty for the violation. They have no right to amnesty. Nevertheless, they are entitled to fair treatment in the administration of penalties, to consideration of mitigating circumstances, and to a procedure that is such, as far as the court can assure, as to make the defendants think it is "fair."

Id. at 187. From this conditional injunction, the government appealed.

The rationale for the court's enjoining the FAA from taking disciplinary action was

The circuit court in this case, however, did not base its decision on purely equitable grounds. On the contrary, it was primarily concerned with the common-law precedents in administrative law and the construction of the statutes involved in the granting of power to the agency.

The court noted that an administrative agency "has the power to discipline its own employees without judicial interference" and that there was a very limited scope of judicial review in this area.⁵ Such a holding is in general accord with earlier Second Circuit decisions.⁶ The very statute which governs the FAA demands that the agency, in light of the fact that it has the necessary expertise, carry out its activities in the public interest, taking whatever disciplinary measures it deems necessary.⁷ Given this statutory demand, the Second Circuit has traditionally held that the courts should not interfere in the agency's disciplinary proceedings.⁸ The only basis for judicial review in such a case is if the agency has acted in an arbitrary and capricious manner. For judicial review purposes, such an argument must mean that there

based on *Leyden v. FAA*, 315 F. Supp. 1398 (E.D.N.Y. 1970) which was then pending in the federal district court. *Leyden*, in a class action on behalf of the members of *PATCO* had sued the FAA seeking a preliminary injunction enjoining the Eastern Regional Director from acting as an appeals official in connection with suspensions of the plaintiffs and enjoining the agency from holding any hearing regarding the plaintiffs' appeals unless certain specific procedural safeguards were afforded the plaintiffs, such as a recording or taking a transcript of all proceedings. At the time that the district court granted the conditional injunction in *PATCO*, the *Leyden* case was pending, thus explaining the district court's decision to enjoin the FAA from taking disciplinary action against the controllers until a decision was made concerning the propriety of the disciplinary proceedings used.

⁵ 438 F.2d at 80.

⁶ See, e.g., *McTiernan v. Gronouski*, 337 F.2d 31 (2d Cir. 1964), a case concerning a federal employee's efforts to have the courts review the administrative action of the Post Office Department dismissing him as a postmaster. In dismissing his complaint, the court noted,

The taking of disciplinary action against government employees, including the invocation of the sanction of dismissal, is a matter of executive discretion, and is subject to judicial "supervision only to the extent required to insure substantial compliance with the pertinent statutory procedures provided by Congress" [footnotes omitted] . . . and to guard against arbitrary or capricious action.

Id. at 34.

⁷ The Administrator is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable air space; and assign by rule, regulation, or order the use of the navigable air space under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such air space. He may modify or revoke such assignment when required in the public interest.

Federal Aviation Act of 1958, 49 U.S.C. § 1348(a) (1963).

⁸ See *Air Line Pilots Ass'n v. Quesada*, 276 F.2d 892 (2d Cir. 1960), where the court, in denying a petition to restrain enforcement by the FAA of a regulation forbidding commercial air carriers from utilizing pilots beyond the age of 60, stated,

It is not the business of courts to substitute their untutored judgement for the expert knowledge of those who are given authority to implement the general directives of Congress.

Id. at 898.

was no reasonable cause for the exercise of judgment.⁹ In the *PATCO* case the court found nothing arbitrary in the FAA's discipline of employees who had participated in an illegal work stoppage¹⁰ and for that reason felt that the district court had improperly restrained the FAA from taking such action. To prevent the agency from taking any disciplinary action, in light of the statute's declaration of illegality of a strike, seemed to the court to "fl[y] in the face of the statute."¹¹

Prior to this case, the Second Circuit had not dealt with this particular issue. But, it would seem to be clear that the court's tendency in earlier decisions has been toward judicial restraint in reviewing administrative action.¹² Furthermore, although the court did not so state, it seems concerned with the question of "ripeness."¹³ The circuit court implied that the district court had made a determination in a case which was not yet ripe. The district court had restrained the FAA from acting against the air controllers on the supposition that the disciplinary procedures might be found to be improper in the *Leyden* case, then pending before the district court. Without actually saying so, the circuit court intimated that to make such a determination was an error because the FAA had not yet been proven guilty of improper conduct.¹⁴

⁹ See, e.g., *Am. Trucking Ass'n v. United States*, 344 U.S. 298, 314 (1953); *Norman v. Baltimore & O.R.R.*, 294 U.S. 240 (1935).

¹⁰ The court is particularly concerned with strictly construing the federal statute which reads:

An individual may not accept or hold a position in the Government of the United States . . . if he—

(3) participates in a strike, or asserts the right to strike, against the Government of the United States. . . .

5 U.S.C. § 7311 (Supp. V. 1965-69). The penalty for the violation thereof is up to a year and a day imprisonment and a fine of up to \$1,000. 18 U.S.C. § 1918 (Supp. V. 1965-69). A large amount of controversy has developed over this particular statute. One court has even held that this section violates the first amendment of the United States Constitution. See *Nat'l Ass'n of Letter Carriers v. Blount*, 305 F. Supp. 546 (D.D.C. 1969), *appeal denied*, 400 U.S. 801 (1970).

¹¹ 438 F.2d at 82. In so stating, the court vacated Paragraph III of the injunction. In his dissent, Circuit Judge Waterman took issue with the court's interpretation of the statute. He noted that the district court had merely ordered the government to hold all disciplinary measures in abeyance until the issues in *Leyden* were resolved and had not restrained the FAA from ever bringing disciplinary action against the defendants.

¹² See note 8 *supra*.

¹³ The ripeness doctrine is concerned with whether a case is a true justiciable controversy at the time it is presented to the court. The court must determine if it would be more advantageous to wait and see how the situation develops in the case, *i.e.*, until the case is "ripe." See, e.g., *CBS v. United States*, 316 U.S. 407 (1942).

¹⁴ Subsequent to the district court's determination of *PATCO*, the same court had decided *Leyden v. FAA*, 315 F. Supp. 1398 (E.D.N.Y. 1970). The court held that the controllers were entitled to have a transcript of all proceedings. It further held that the balance between the constitutional rights of employees and the needs of prompt discipline must leave some discretion in the employing agency. Where that balance would lie in the *Leyden* case, however, could not be determined until the agency answered the complaint and the issues had been explored. One month later, the government answered the com-

In deciding as it did, the court of appeals further rejected the appellee's contention that Paragraph III of the injunction was necessary to protect the court's jurisdiction over the action before it. The appellees had cited a federal statute¹⁵ which permits the federal courts to issue writs to aid their jurisdiction. The court here felt that any action taken by the FAA against any of the defendants would have no detrimental effect on the court's jurisdiction.¹⁶

While procedural safeguards are becoming a very significant area in administrative law,¹⁷ the circuit court particularly avoided the entire question. It was concerned basically with the interpretation of the federal statute prohibiting illegal work stoppages and with the judicial interference in administrative activities. For this reason, the case is in line with precedents in the area and merely underlines the Second Circuit's tendency to exercise judicial restraint in interfering with administrative disciplinary proceedings.

SEC INVESTIGATION — DISCLOSURE

When an administrative agency gathers information or documents in the course of an investigation, this information has usually been held

plaint and two weeks later it appealed the decision. All of these events had not transpired at the time the district court granted the conditional injunction in *PATCO*.

¹⁵ The federal statute involved here was 28 U.S.C. § 1651(a) (1964), which states:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Various courts have used this rationale in similar situations to affirm district courts' conditional injunctions. *See, e.g.,* *United States v. Moore*, 427 F.2d 1024 (10th Cir. 1970) (Breitenstein, J., dissenting) which dealt with a protective order issued by the courts with its injunctive relief, restraining FAA disciplinary action against air traffic controllers, pending disposition of issues of civil actions seeking permanent injunctions. The Tenth Circuit held that the order was authorized for purposes of maintaining the district court's jurisdiction over the parties.

The Second Circuit did not accept the same rationale. It agreed with the dissent in *Moore* which argued:

The majority hold that the protective order effected a permissible restoration and maintenance of the status quo and was issued in aid of the district court's jurisdiction as authorized by 28 U.S.C. § 1651. These reasons, considered either separately or collectively, do not warrant the judicial encroachment on executive powers which results from the protective order.

Id. at 1025.

In *PATCO* the court quoted from the Supreme Court which stated in *DeBeers Consol. Mines Ltd. v. United States*, 325 U.S. 212, 220 (1945),

Section 1651 cannot be used to allow a court to deal "with a matter lying wholly outside the issues in the suit."

438 F.2d at 81-82.

¹⁶ *See* 6 J. MOORE, *FEDERAL PRACTICE* ¶ 54.10[5] at 106 (2d ed. 1966) which stated that the court would retain subject matter and personal jurisdiction over the defendants.

¹⁷ The case of *Goldberg v. Kelly*, 397 U.S. 254 (1970), outlined the various procedural safeguards required in an evidentiary proceeding prior to the termination of welfare benefits. Its impact was undoubtedly felt in the district court's decision in *PATCO*.