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Sherman Anti-Trust Act--"Restraints of Trade"--Application to Labor Unions (Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940))

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power to secure the public health, morals, safety and welfare.[14] To appoint one whose teachings and whose example tend to destroy the very institutions which form the basis of a well ordered society is clearly not within the limits of a school board's discretionary power.[15] In the instant case, as has been stated, no defense was offered by the Corporation Counsel of the appointee's character, nor did he make any attempt to justify or explain passages which the court has quoted from writings of Russell. These passages standing alone and unexplained clearly establish that the appointee has subscribed to theories, which if implemented, would result in a lowering of the community's morality and in violations of the Penal Law. The appointment of a person with such views to instruct the young in a public university would certainly constitute an abuse of discretion which, consistent with the principles of law applicable, would warrant an exercise of the court's injunctive power.

A. J. G.

SHERMAN ANTI-TRUST ACT—"RESTRAINTS OF TRADE"—APPLICATION TO LABOR UNIONS.—Petitioner, a Pennsylvania corporation, is engaged in the manufacture of hosiery, a substantial part of which is shipped in interstate commerce. In April, 1937 it was operating a non-union shop. A demand of the respondent Federation at that time for a closed shop was refused. Upon continued refusal of the petitioner to sign a contract for a closed shop respondent Leader ordered a sit-down strike. Immediately acts of violence against the plant were commenced. The strikers were, however, forcibly ejected pursuant to an injunction.[1] Shipments were prevented by the occupation of the factory by the strikers. This action is brought to recover treble the amount of damage inflicted in the conducting of the strike alleged to be a conspiracy in violation of the Sherman Anti-Trust Act.[2] A judgment for petitioner was reversed by the Circuit Court of Appeals.[3] Upon *certiorari*[4] to the Supreme Court of the

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[14] Matter of Badger, 286 Mo. 139, 226 S. W. 936 (1920); People *ex rel.* Bennett v. Laman, 277 N. Y. 368, 14 N. E. (2d) 439 (1938).

[15] Pierce v. Society of Sisters, 268 U. S. 510, 45 Sup. Ct. 571 (1925) ("* * * that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare"); Matter of Epstein v. Board of Education, 162 Misc. 718, 295 N. Y. Supp. 796 (1936).

[1] Apex Hosiery Co. v. Leader, 90 F. (2d) 155, 159 (C. C. A. 3d, 1937), *rev'd and dismissal ordered sub nom.*, Leader v. Apex Hosiery Co., 302 U. S. 656, 58 Sup. Ct. 362 (1937).

[2] 26 STAT. 209, 15 U. S. C. A. § 1 (1927).

[3] 108 F. (2d) 71 (C. C. A. 3d, 1939) (reversal on ground that interstate commerce restrained was unsubstantial for it was less than three per cent of total output of industry in country).

[4] 310 U. S. 469, 60 Sup. Ct. 589 (1940).

United States, *held,* three judges dissenting, the effect of the combination among the respondents was not a restraint of trade within the meaning of the Sherman Act. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 60 Sup. Ct. 982 (1940).

No diversity of citizenship having been alleged, the court could acquire jurisdiction only if petitioner could show some federal right conferred upon it by the Sherman Act. Respondents urged that Congress intended to exclude labor organizations from the operation of the Act. The Supreme Court denied the validity of this argument and stated that the court has repeatedly held that the Act does embrace, to some extent, the activities of labor unions.[5] It pointed out that Congress, fully aware of this judicial interpretation, has not seen fit to alter the Act. However, the court decided that not all labor union activities are within the purview of the statute. The Supreme Court of the United States never applied the Act to labor unions unless it was of the opinion that there was some form of restraint upon commercial competition in the marketing of goods or services.[6]

The first case to have been considered by the courts with a set of facts similar to those in the case under discussion was the case of *United Mine Workers* v. *Coronado Coal Co.*[7] There the members of the union sought to unionize the mine and compelled the mine to shut down and prevented interstate shipment. The court, notwithstanding the substantial effect of the strike on the interstate movement of coal, held that there was no prohibited restraint of trade inasmuch as the intent to obstruct coal mining is not the required intent. This rule was explained in *United Leather Workers* v. *Herkert & Meisel Trunk Co.*[8] where it was held that the intent or effect must be "to monopolize the supply or control the price". Further application was made in the second *Coronado* case.[9] There on amended pleadings it appeared that the "purpose was to stop production of non-union coal and prevent shipment throughout the country so that it would not compete with and affect injuriously the union wage scale elsewhere." This was held to be a direct violation of the Act. No such restraint in competition in the marketing of hose was either shown to have been intended or effected here. The dissenting opinion of Justice Stone denies the interpretation of the prevailing opinion and declares that, since a restraint of interstate commerce has resulted, the Act should apply.

S. K.

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[5] Loew v. Lawler, 208 U. S. 274, 28 Sup. Ct. 301 (1908) (first application).

[6] 221 U. S. 1, 31 Sup. Ct. 502 (1910); United States v. American Tobacco Co., 221 U. S. 106, 31 Sup. Ct. 632 (1910).

[7] United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 42 Sup. Ct. 570 (1922).

[8] United Leather Workers v. Herkert and Meisel Trunk Co., 265 U. S. 457, 471, 44 Sup. Ct. 623 (1923).

[9] 268 U. S. 310, 45 Sup. Ct. 556 (1924).