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Labor Dispute--Applicability of Norris-LaGuardia Act When Anti-Trust Act Is Involved (Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, Inc., et al., 310 U.S. 91 (1940))

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be contrary to the well settled precedent established by the cases interpreting the commerce clause.[6]

J. A. S.

LABOR DISPUTE—APPLICABILITY OF NORRIS-LAGUARDIA ACT WHEN ANTI-TRUST ACT IS INVOLVED.—Plaintiffs [1] sought to enjoin the defendants [2] from attempting to unionize the employees of the plaintiff dairies including certain independent-contractor drivers known as "vendors" [3] and also from picketing certain cut-rate stores which purchased milk from the plaintiff dairies. It was contended by the plaintiffs that the controversy was not a labor dispute, but that defendants' acts constituted an unlawful secondary boycott for the purpose of obtaining for the defendants' employers a milk monopoly contrary to the Sherman Anti-Trust Act. *Held,* the controversy arose out of a "labor dispute" involving associations of employees and employers, all of whom are engaged in the milk industry, and the picketing constituted an effort to compel the "vendors" and drivers of the plaintiff dairies to join the defendant union. As a "labor dispute" was involved, notwithstanding the alleged violations of the Sherman Act, compliance with the Norris-LaGuardia Act was deemed a prerequisite to injunctive relief. Since the requirements of that Act had not been met here, the Court did not have jurisdiction to grant an injunction. *Milk Wagon Drivers' Union, etc.* v. *Lake Valley Farm Products, Inc., et al.,* 310 U. S. 91, 61 Sup. Ct. 122 (1940).

The lower court found that the defendants had attempted for some time to unionize the employees of the plaintiff and other cut-

[6] Guy v. Baltimore, 100 U. S. 434 (1879) (an ordinance of Baltimore, which required vessels laden with the products of other states to pay for the use of the public wharfs of that city, is in conflict with the Constitution of the United States); Webber v. Virginia, 103 U. S. 344 (1880); Robbins v. Shelby County, 120 U. S. 489, 7 Sup. Ct. 592 (1886); Baldwin, Commissioner of Agriculture & Markets, *et al.* v. G. A. F. Seelig, Inc., 294 U. S. 511, 55 Sup. Ct. 497 (1935) ("The state statute must not be discriminatory, and it must not conflict with any regulation of commerce enacted by Congress"); Hale, *et al.* v. Bimco Trading, Inc., *et al.,* 306 U. S. 375, 59 Sup. Ct. 526 (1939) (a Florida statute, requiring inspection and imposing an inspection fee of fifteen cents per hundredweight on cement imported from abroad, held invalid under the commerce clause of the Constitution where same fee was not imposed on domestic cement).

[1] There are four plaintiffs: one was the Chicago local of a C. I. O. union, the Amalgamated Dairy Workers; two were Chicago dairies whose milk was processed and distributed by members of the C. I. O. union; the fourth was a Wisconsin cooperative association which supplied milk to the plaintiff dairies.

[2] The defendants were the Chicago local of the A. F. of L. Milk Wagon Drivers Union, and its officials.

[3] These "vendors" buy milk from the plaintiff dairies and resell it at wholesale to retail stores. The dairy takes back any unsold milk at full purchase price. They are practically employees of the dairies.

rate dairies, and that the picketing was an effort to compel the "vendors" and employees of the plaintiff dairies to join the defendant union for the purpose of improving working conditions and raising wages, which were lower than the union scale. Such a controversy between an association of employees and employers engaged in the same industry or trade is expressly termed a "labor dispute" by the Norris-LaGuardia Act.[4] Nor does the controversy cease to be a "labor dispute" because the employees of the plaintiff dairies became organized as members of an independent union. A controversy between associations of employees [5] concerning the "representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee",[6] is specifically included within the Norris-Laguardia Act.[7] The policy of the Act contemplates effective organization of labor without injunctional interference. If this entails competition between unions to eliminate the possibilities of corruption and inertia, such organizational activities should fall under the protection of the statute.[8]

Having concluded that a "labor dispute" did exist and that the requirements of the Norris-LaGuardia Act were not met, there still remained the contention that jurisdiction to grant an injunction existed, nevertheless, by virtue of the alleged violation of the Sherman Anti-Trust Act.[9] The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act, but which was frustrated by unduly restrictive judicial construction.[10] Congress attempted to reassert the original purpose of the Clayton Act by expressly extending the prohibitions respecting the exercise of jurisdiction by the federal courts.[11] To hold in the face of this legislation and its historical background

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[4] 47 STAT. 70, 29 U. S. C. A. § 113(a) (1932).
See Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 Sup. Ct. 857 (1936); Lauf v. Shinner & Co., 303 U. S. 323, 58 Sup. Ct. 578 (1938); New Negro Alliance, *et al.* v. Sanitary Grocery Co., Inc., 303 U. S. 552, 58 Sup. Ct. 703 (1938).

[5] 47 STAT. 70, 29 U. S. C. A. § 113(a) (1932).

[6] 47 STAT. 70, 29 U. S. C. A. § 113(c) (1932).

[7] The court should not deny the existence of a "labor dispute" merely because of its sympathy for an employer caught in a struggle between two competing unions. *See* Cupples Co. v. Am. Fed. of Labor, *et al.*, 20 F. Supp. 894 (E. D. Mo. 1937); Stillwell Theatre, Inc. v. Kaplan, 259 N. Y. 405, 182 N. E. 63 (1932).

[8] International Brotherhood of Teamsters, *et al.* v. International Union of United Brewery Workers, *et al.*, 106 F. (2d) 871 (C. C. A. 9th, 1939).

[9] 26 STAT. 209, 15 U. S. C. A. §§ 1–7 (1890).

[10] H. R. REP. No. 669, 72d Cong., 1st Sess. (1932) 3.

[11] 47 STAT. 70, 29 U. S. C. A. § 105 (1932). *See* New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 58 Sup. Ct. 703 (1938); United States v. United Brotherhood of Carpenters and Joiners, — U. S. —, — Sup. Ct. — (1941); Donnelly Garment Co. v. Int'l Ladies Garment Workers Union, 99 F. (2d) 309 (C. C. A. 8th, 1938); Diamond Full Fashioned Hose v. Leader, 20 F. Supp. 467 (E. D. Pa. 1937).

that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress.[12]

As a result of this case and the *Apex Hosiery* v. *Leader* case [13] the federal courts, it would seem, cannot any longer base their jurisdiction in labor cases on the Sherman Act alone. It must appear that a tort has been committed and that there is a diversity of citizenship —and even then an injunction may not issue, unless the requirements of the Norris-LaGuardia Act have been met.

A. A.

LABOR LAW—POWER OF NATIONAL LABOR RELATIONS BOARD—REIMBURSEMENT OF GOVERNMENTAL AGENCIES.—The National Labor Relations Board, upon finding that the petitioner had engaged in unfair labor practices in violation of Section 8(1–3) of the National Labor Relations Act,[1] ordered the petitioner, among other things, to desist from these practices and to reinstate wth back pay certain employees found to have been discriminatorily discharged for exercising the rights guaranteed to them under Section 7 [2] of the National Labor Relations Act. In the provision for back pay, the board directed the company to deduct from the payments to the reinstated employees the amounts they had received for work performed upon work relief projects and to pay over such amounts to the proper governmental agencies which supplied the funds for the work relief projects. Except for a minor modification not important to the immediate consideration the Circuit Court of Appeals [3] affirmed the board's order. On appeal to the Supreme Court of the United States, *held,* two jus-

[12] Instant case, 311 U. S. at 101, 61 Sup. Ct. at 128. *But see* Levering v. Garrigues Co., 71 F. (2d) 284 (C. C. A. 2d, 1934); United Electric Coal Co. v. Rice, 80 F. (2d) 1 (C. C. A. 7th, 1935), *cert. denied,* 297 U. S. 714, 56 Sup. Ct. 590 (1936); United States v. Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 1 Labor Cases 671 (S. D. N. Y. 1938).

[13] 310 U. S. 469, 60 Sup. Ct. 982 (1940).

[1] 49 STAT. 449, 29 U. S. C. A. § 158(1–3) (1940) ("It shall be an unfair labor practice for an employer—(1) To interfere with, restrain or coerce employees in the exercise of rights guaranteed in section 7. (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. (3) By discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any organization").

[2] 49 STAT. 449, 29 U. S. C. A. § 157 (1940) ("Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through their representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection").

[3] 107 F. (2d) 472 (C. C. A. 3d, 1939).