

Labor Law--Power of National Labor Relations Board--Reimbursement of Governmental Agencies (Republic Steel Corporation v. National Labor Relations Board, et al., 311 U.S. 7 (1940))

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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* case¹³ 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 with back pay certain employees found to have been discriminatorily discharged for exercising the rights guaranteed to them under Section 7² 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 Appeals³ 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).

tices dissenting, the provision requiring reimbursement of governmental relief agencies is beyond the board's power and authority. *Republic Steel Corporation v. National Labor Relations Board, et al.*, 311 U. S. 7, 61 Sup. Ct. 77 (1940).

The court maintained that the board, in directing back pay, may deduct amounts earned in other employment whether public or private,⁴ but where as in the instant case the board orders the deducted amounts to be paid to governmental agencies, it is acting beyond the power and authority⁵ conferred upon it by Section 10(c)⁶ of the National Labor Relations Act. The board's order is punitive in its nature and its purpose is to redress injuries sustained, not by employees, but by governmental agencies. The National Labor Relations Act is essentially remedial⁷ in nature, not punitive, nor does it prescribe penalties to be imposed in vindication of public rights nor indemnity against public losses. The power of the board under Section 10(c) must be construed in harmony with the policy and remedial purposes⁸ of the Act, and not as vesting an unlimited authority

⁴ The board may deduct from back pay whatever is earned in other employment during the period of discharge; but not for "extra-curricular" work. *In re National Motor Bearing Co.*, 5 N. L. R. B. 409 (1938); *In re Anwelt Shore Co.*, 1 N. L. R. B. 939 (1936). The employee has the duty of seeking employment to mitigate damages. *Phelps Dodge Corp. v. N. L. R. B.*, 113 F. (2d) 202 (C. C. A. 2d, 1940). *In re Crossett Lumber Co.*, 8 N. L. R. B. 440 (1938) (the employer must reimburse the employee for expenses incurred in seeking other employment).

⁵ *N. L. R. B. v. Leviton Mfg. Co.*, 111 F. (2d) 202 (C. C. A. 2d, 1940); *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9th, 1940); *N. Y. Handkerchief Co. v. N. L. R. B.*, 114 F. (2d) 144 (C. C. A. 7th, 1940); *N. L. R. B. v. Wanambec Mills, Inc.*, 114 F. (2d) 226 (C. C. A. 1st, 1940). *Contra*: *N. L. R. B. v. Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 4th, 1939); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472 (C. C. A. 3d, 1939); *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587 (C. C. A. 3d, 1940).

⁶ 49 STAT. 453, 29 U. S. C. A. § 160(c) (1935) ("If upon all the testimony taken the Board shall be of the opinion that any person . . . has engaged in . . . unfair labor practice, then the Board shall issue . . . an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act").

⁷ 49 STAT. 449, 29 U. S. C. A. § 151 (1940) ("Findings and declaration of policy . . . hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection"); *N. L. R. B. v. Pa. Greyhound Lines*, 303 U. S. 261, 58 Sup. Ct. 571 (1938); *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 59 Sup. Ct. 208 (1938).

⁸ *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 Sup. Ct. 648 (1939) (the fundamental policy of the N. L. R. B. is to safeguard the rights of self-organization and collective bargaining and by the promotion of industrial peace to remove obstructions to the free flow of commerce); *Precision Castive Co. v. Boland*, 85 F. (2d) 15 (C. C. A. 2d, 1936) (the purpose of the

in the board to devise punitive measures.⁹ The affirmative action of the board is limited to an adjustment between employer and employee to effectuate the policies of the National Labor Relations Act. The board is not empowered to rectify losses sustained by governmental agencies in connection with work relief,¹⁰ for if such function had been intended, the legislature would have expressly conferred it upon the board. The board's orders must be addressed to employees and employers for the purpose of adjusting their conflicting interests and compensating employees¹¹ for what they have lost through discriminatory discharge.

Although the courts have maintained that the policy of the Act is, essentially, remedial and that orders of the board must also be remedial in nature, we are still faced with the actuality that the employer is penalized when he is ordered to pay back pay to a wrongfully discharged employee for his period of unemployment for he is compelled to pay something for which he received no benefits. However, had the legislature been more explicit and precise in defining the affirmative action that the board should take, then the courts would not have found it necessary to classify orders of the board as punitive or remedial.

J. R. D.

MORTGAGE FORECLOSURE—DEFICIENCY JUDGMENT.—Defendant's testator executed and delivered to plaintiff a real property mortgage on December 29, 1932. Having defaulted in the terms of the mortgage, this action was brought by plaintiff to foreclose and satisfy its lien. Upon the sale of the property a deficiency owing plaintiff-mortgagee, amounting to \$16,162.12, was found by the referee. By virtue of the new amendment to Section 1083 of the Civil Practice Act

N. L. R. B. is to recognize and furnish means of enforcing the rights of labor to deal on an equal footing with employers).

⁹ N. L. R. B. v. Fansteel Metallurgical Corp., 306 U. S. 240, 59 Sup. Ct. 490 (1939) (the statutory authority of the N. L. R. B. to require "affirmative action" to "effectuate the policies of the Act" is broad, but not unlimited, is remedial, but not punitive, and is to be exercised in aid of the board's authority to restrain violations and avoid or remove the consequences of violations which may tend to thwart the purposes of the Act. The Court held it was beyond the board's power to order reinstatement of employees who participated in criminal acts, for that would not effectuate the policies of the Act). *Contra*: N. L. R. B. v. Carlisle Co., 99 F. (2d) 533 (C. C. A. 9th, 1938), *cert. denied*, 306 U. S. 646, 59 Sup. Ct. 586 (1939). The purpose of this section was not to reward employees, but to punish employers who were guilty of unfair labor practices, therefore, the Court should not construe provisions on the basis of what might be considered just between employer and employees, but should endeavor to ascertain the intent of Congress. International Ass'n v. N. L. R. B., 110 F. (2d) 29 (App. D. C. 1939), *aff'd*, 311 U. S. 72, 61 Sup. Ct. 83 (1940).

¹⁰ See note 5, *supra*.

¹¹ Note (1939) 48 YALE L. J. 1265.