St. John's Law Review

Volume 15, April 1941, Number 2 Article 23

National Labor Relations Act--Unfair Labor Practice--Refusal to Sign Written Agreement as a Refusal to Bargain Collectively (H. J. Heinz Company v. National Labor Relations Board, 61 Sup. Ct. 320 (1941))

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strictly to judicial standards,[17] but have to substantially comply with the evidence.[18] The findings must be stated by the Board itself,[19] and it may not delegate this duty to a trial examiner.[20] Though it may treat his findings as a recommendation,[21] the Board may reverse them when no exceptions are taken.[22]

B. F.

NATIONAL LABOR RELATIONS ACT—UNFAIR LABOR PRACTICE—REFUSAL TO SIGN WRITTEN AGREEMENT AS A REFUSAL TO BARGAIN COLLECTIVELY.—In the campaign preceding an election by petitioner's employees of an organization to represent them in collective bargaining, petitioner's supervising employees participated in behalf of the Heinz Employees Association, a plant organization. Their activities ranged from disparaging remarks about the outside union to threats of discharge, if the union were recognized. Following a complaint by a representative of the union, petitioner instructed the supervising employees to refrain from interfering in the campaign, and they did. However, petitioner failed to notify its employees that it repudiated the participation of its supervising employees in the organization of the association, and so had not removed the belief of the employees that petitioner would favor those joining the association, or that support of the union would result in reprisals. Since the election, in which the union was designated by a majority as their bargaining representative, petitioner has consistently recognized and bargained with the union. Although petitioner has reached an agreement with the union concerning wages, hours and working conditions of the employees, it has refused to sign any contract embodying the terms of the agreement. After a complaint by the union, the National Labor Relations Board directed petitioner to cease the unfair labor practices in which petitioner had engaged in connection with the association, to disestablish the association, to recognize and bargain collectively with the union, and to sign a written contract embodying any agreement which petitioner might reach respecting wages, hours and working conditions of petitioner's employees. On *certiorari* to review a judgment[1] of the

[17] International Ass'n of Mach. v. N. L. R. B., 110 F. (2d) 587 (App. D. C. 1939).

[18] N. L. R. B. v. Sands Mfg. Co., 306 U. S. 332, 59 Sup. Ct. 508 (1939); N. L. R. B. v. Oregon Worsted Co., 94 F. (2d) 671 (C. C. A. 9th, 1938); International Ass'n of Mach. v. N. L. R. B., 110 F. (2d) 587 (App. D. C. 1939).

[19] 49 STAT. 453, 29 U. S. C. A. § 160(c) (1935).

[20] N. L. R. B. v. Elkland Leather Co., Inc., 114 F. (2d) 221 (C. C. A. 3d, 1940).

[21] N. L. R. B. v. Oregon Worsted Co., 94 F. (2d) 671 (C. C. A. 9th, 1938).

[22] See note 21, *supra*.

[1] 110 F. (2d) 843 (C. C. A. 6th, 1940).

Circuit Court of Appeals directing the enforcement of the order of the National Labor Relations Board, the Supreme Court *held,* affirmed. (1) An employer, who may benefit from unauthorized acts on the part of supervisory employees, which constitute unfair labor practices within the meaning of the National Labor Relations Act, is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self organization. (2) There is adequate basis for the Board's order disestablishing the association, since there is evidence that the influence of the participation of petitioner's employees in the organization of the association had not been removed and that there was danger that petitioner would seek to take advantage of such continuing influence to renew its recognition of the association and control its action. (3) Petitioner's refusal to sign a written agreement is a refusal to bargain collectively and an unfair labor practice. *H. J. Heinz Company* v. *National Labor Relations Board,* — U. S. —, 61 Sup. Ct. 320 (1941).

The National Labor Relations Act [2] is a farreaching enactment designed primarily to reduce strikes and other forms of industrial strife and unrest.[3] As the refusal of an employer to bargain with his employees has so often led to just such disastrous consequences,[4] the Act made it compulsory for the employer to bargain collectively with the representatives of his employees [5] with the aim of reaching an agreement.[6] Although the Act does not require that an agreement be reached,[7] the employer must negotiate in good faith. The mere perfunctory acts of bargaining without an intent of reaching an agreement will not suffice.[8] Difficult as is the enforcement of this requirement

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[2] 49 STAT. 449, 29 U. S. C A. § 151, *et seq.* (1935).

[3] 49 STAT. 449, 29 U. S. C. A. § 151 (1935).

[4] *Ibid.*

[5] 49 STAT. 452, 29 U. S. C. A. § 158(5) (1935).

[6] See N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615 (1937); Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 59 Sup. Ct. 206 (1938); N. L. R. B. v. Highland Park Mfg. Co., 110 F. (2d) 632, 638 (C. C. A. 4th, 1940). "If reason and not force is to have sway in industrial relationships, such agreements should be welcomed by capital as well as labor. They not only provide standards by which industrial disputes may be adjusted, but they add dignity to the position of labor and remove the feeling on the part of the worker that he is a mere pawn in industry subject to the arbitrary power of the employer."

[7] *See* N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615 (1937); Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 59 Sup. Ct. 206 (1938).

[8] N. L. R. B. v. Griswold Manufacturing Co., 106 F. (2d) 713, 723 (C. C. A. 3d, 1939). "It is obvious that an employer who enters into negotiations with a labor union representing his employees, with his mind hermetically sealed against even the thought of entering into an agreement with the union, is guilty of refusing to bargain collectively with the representatives of his employees in good faith, as required by the Act, and is therefore guilty of an unfair labor practice. The studied and meticulous efforts of the respondent, in the course of its negotiations with its employees, and in its relationship with its own dominated union, to be 'within the law,' tell their own story. Duties imposed by law cannot be discharged by offering shadow for substance."

the Board encountered an almost unsurmountable obstacle where employers, after having reached an agreement, claimed the right to refuse to commit the provisions thereof to a signed writing.[9] The National Labor Relations Act does not specifically call for a signed agreement. It is conceded that a stipulation in an oral contract that it be reduced to writing is one of the terms of the agreement.[10] Since the parties here have not agreed that such a term be included and since the Act does not require *any* agreement to be reached, petitioner argues that it cannot be compelled to affix its signature to a writing it has never agreed to sign.[11] This interpretation of the National Labor Relations Act ignores both its history [12] and its aims.[13] If it were followed, the evils which the Act sought to eliminate would return scarcely abated, for the purpose of the Act can be effectuated only where the signing of the agreement is mandatory.[14] The refusal of an employer to sign a collective bargaining agreement might well be considered as indicating his lack of good faith. Such a refusal tends to discredit the union and results in a failure to provide an authentic record of the agreement.[15] In short, the refusal of an employer to sign a collective bar-

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[9] Inland Steel Co. v. N. L. R. B., 109 F. (2d) 9 (C. C. A. 7th, 1940); Art Metals Construction Co. v. N. L. R. B., 110 F. (2d) 148 (C. C. A. 2d, 1940); N. L. R. B. v. Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4th, 1940); Fort Wayne Corrugated Paper Co. v. N. L. R. B., 111 F. (2d) 869 (C. C. A. 7th, 1940); Bethlehem Shipbuilding Corp. v. N. L. R. B., 114 F. (2d) 930 (C. C. A. 1st, 1940); Wilson & Co. v. N. L. R. B., 115 F. (2d) 759 (C. C. A. 8th, 1940).

[10] 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 28.

[11] Inland Steel Co. v. N. L. R. B., 109 F. (2d) 9, 24 (C. C. A. 7th, 1940); Fort Wayne Corrugated Paper Co. v. N. L. R. B., 111 F. (2d) 869 (C. C. A. 7th, 1940).

[12] See note 18, *infra*.

[13] See note 3, *supra*.

[14] Art Metals Construction Co. v. N. L. R. B., 110 F. (2d) 148, 150 (C. C. A. 2d, 1940). "It is indeed true, and for that matter a truism, that a stipulation in an oral contract that it shall be put into writing is one of its terms, and that if an employer must put it in, he is not free pro tanto. But he is no longer wholly free anyway; before the act he was not obliged to bargain with his employees collectively; he was at liberty to refuse to negotiate with them at all, or otherwise than severally. The act impaired that freedom; it meant to give to the employees whatever advantage they would get from collective pressure upon their employer; and the question here is what are the fair implications of that grant. They should include whatever is reasonably appropriate to protect it, and no one can dispute that a permanent memorial of any negotiation which results in a bargain, is not only appropriate, but practically necessary, to its preservation; it is hardly necessary to observe that without it the fruits of the privilege are exposed to the sport of fugitive and biased recollection. The purpose of a contract is to define the promised performance, so that when it becomes due, the parties may know the extent to which the promisor is bound; and it is the merest casuistry to argue that the promisor's freedom to contract includes the opportunity to put in jeopardy the ascertainment of what he has agreed to do, or indeed whether he has agreed to do anything at all. The freedom reserved to the employer is the freedom to refuse concessions in working conditions to his employees, and to exact concessions from them; it is not the freedom, once they have in fact agreed upon those conditions, to compromise the value of the whole proceeding and probably make it nugatory."

[15] See note 14, *supra*.

gaining agreement frustrates the aim of the statute to secure industrial peace through collective bargaining.[16] Administrative agencies dealing with labor relations before the enactment of the National Labor Relations Act had adopted the settled practice of treating the signing of a written contract as the final step in the bargaining process.[17] Congress, by incorporating in the National Labor Relations Act the collective bargaining requirements of the earlier statutes,[18] included as a part thereof the signed agreement.[19]

B. B.

NEGLIGENCE—HOSPITALS—CIRCUMSTANTIAL EVIDENCE CONSTITUTING A PRIMA FACIE CASE.—Plaintiff was admitted to defendant hospital one morning at 8:00 A. M. to undergo an operation. At about 5:30 P. M., a hospital attendant hung an electric light lamp, having a reflector on top of the bedstead at the foot of the bed. Plaintiff was taken to the operating room at about 8:00 P. M., and at that time the lamp was still hanging on the end of the bed. For purposes of the operation, he was given a spinal anesthetic which "deadened" his body from about the middle thereof to the end of his feet. When one hour later he was brought back to his room by two attendants, he was put into bed and covered with a sheet and spread. At about midnight plaintiff felt a burning sensation in his feet and complained to the nurse who, upon lifting the bed clothes, found the electric light lamp. His foot was severely burned, and he now seeks to recover damages for his injury. Defendant contends that plaintiff has failed to state a *prima facie* case as it contains no proof (a) that the burn was caused by the lamp and (b) that the lamp was placed in a position to burn his foot as a result of the negligence of any person for whose act or omission defendant is liable. The Appellate Division affirmed a judgment of the trial term dismissing the complaint. *Held,* reversed, and new trial granted. *Dillon* v. *Rockaway Beach Hospital & Dispensary,* 284 N. Y. 176, 30 N. E. (2d) 373 (1940).

A hospital, whether charitable or private, is immune from liability for the negligence of its doctors or nurses with respect to any matter relating to a patient's medical care and attention.[1] This exemption

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[16] See notes 14, 15, *supra.*

[17] N. L. R. B. v. Highland Park Mfg. Co., 110 F. (2d) 632, 638 (C. C. A. 4th, 1940).

[18] See note 17, *supra.*

[19] See notes 14, 17, *supra.*

[1] CLERK AND LINDSELL, TORTS (9th ed.) 274 ("The law appears to be that while a hospital authority may not be liable for medical treatment by doctors or nurses, provided reasonable care has been exercised in their selection it will be liable for any of their negligent acts or omissions not directly concerned with medical treatment but in respect to which the doctors and nurses could be considered as servants of the authority").