

Labor--Norris-LaGuardia Act--Federal Jurisdiction--Application of the Act (New Negro Alliance v. Sanitary Grocery Co., Inc., 58 S. Ct. 703 (1938))

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the scope of the Act.⁸ The discharge of the strikers does not terminate the relationship of employer and employee, for under the Act a striking employee does not lose the identification of employee.⁹ This relationship between the company and the striking employees has not been so completely terminated as to have no further connection with the company's business or the commerce in which it is engaged.¹⁰ The mere fact that the labor dispute¹¹ had commenced prior to the passage of the Act does not withdraw the parties or the dispute from the regulatory power of Congress as to the acts subsequently occurring.¹² This is not unconstitutional as a denial of due process of law because of refusal to employers of the right to hire and discharge employees at will.¹³ It is clear that the restriction on the employer's rights, which is contained in the Statute, although curtailing his unrestricted use of the right to hire and fire, is directed merely at its abuse for the purpose of interfering with union activities.¹⁴

J. J. S.

LABOR — NORRIS-LAGUARDIA ACT — FEDERAL JURISDICTION — APPLICATION OF THE ACT.—The defendant corporation operating stores in the District of Columbia employs both white and colored persons. The petitioner, a corporation composed of colored persons, in an effort to force the defendant to adopt a policy of employing negro clerks in certain of its stores caused a member of the alliance to picket one of the defendant's stores. There existed no employer-employee

⁸ 49 STAT. 499, 29 U. S. C. A. § 152 (7) (Supp. 1935): "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

⁹ 49 STAT. 499, 29 U. S. C. A. § 152 (3) (Supp. 1935): "The term 'employee' * * * shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment."

¹⁰ Jeffrey-DeWitt Insulator Co. v. N. L. R. B., 302 U. S. 731, 58 Sup. Ct. 55 (1937).

¹¹ 49 STAT. 499, 29 U. S. C. A. § 152 (9) (Supp. 1935): "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee."

¹² The court was of the opinion that the act defined its retroactive intention, but in rendering its decision confined itself to acts committed by the defendant subsequent to the effectiveness of the act. Instant case at 145.

¹³ N. L. R. B. v. Washington, Virginia & Maryland Coach Co., 85 F. (2d) 990 (C. C. A. 4th, 1936), cert. granted, 299 U. S. 533, 57 Sup. Ct. 112 (1936), *aff'd*, 301 U. S. 142, 57 Sup. Ct. 648 (1937).

¹⁴ Legis. (1935) 35 COL. L. REV. 1098, 1123.

relationship between the defendant and the petitioner. The picketing was done in an orderly, peaceful and legal manner.

The lower courts granted injunctive relief, holding the suit was not within the statute precluding the issuance of injunctions in labor disputes, as the instant controversy was racial in nature. On appeal to the Supreme Court, *held*, reversed. The dispute comes squarely within the terms of the Norris-LaGuardia Act notwithstanding the racial nature of the controversy. *New Negro Alliance v. Sanitary Grocery Co., Inc.*, — U. S. —, 58 Sup. Ct. 703 (1938).

The instant case though factually novel to the U. S. Supreme Court¹ presented the common problems of determining, *first*, federal court jurisdiction in the issuance of anti-labor injunctions, and *second*, whether the facts presented constituted a labor dispute within the terms of the Act.²

The Norris-LaGuardia Act,³ in fact an extension of the prohibitions contained in Section 20 of the Clayton Act,⁴ was passed with a view toward the greater protection of labor from the abuses of unrestrained issuance of injunctions.⁵ Its passage limited the federal courts' injunctive power to exceptional instances,⁶ and then only after a hearing in open court. Senator Norris aptly described the effect of the Act on federal injunctive power when he said, " * * * this bill does not prevent the court from restraining any unlawful act * * *. It does not attempt to take away from federal courts all power to restrain fraud or violence in labor disputes." ⁷ It is evident from the terms of

¹ The instant case is the only case on the point decided by the U. S. Supreme Court.

² 47 STAT. 73 (1932), 29 U. S. C. A. § 113c (1934) defines a labor dispute as "any controversy concerning the association or 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".

³ 47 STAT. 70 (1932), 29 U. S. C. A. §§ 101-115 (1934).

⁴ 38 STAT. 738 (1914), 29 U. S. C. A. § 52 (1934); see instant case, p. 707; Witte, *The Federal Anti-Injunction Act* (1932) 16 MINN. L. REV. 645-647.

⁵ Norris-LaGuardia type anti-labor injunction legislation has demonstrated its effectiveness. It is estimated that the New York Act reduced the number of labor injunctions issued by the courts from an average of 100 a year during depression years to ten during the first year the statute (N. Y. CIV. PRAC. ACT § 876-a) was in effect. Note (1937) 45 YALE L. J. 1064.

⁶ Instances in which the Court will grant injunctions are enumerated in the Act, 47 STAT. 71 (1932), 29 U. S. C. A. § 107 (1934); "The exception was, as stated in the Report of the Senate Judiciary Committee in cases where such action is imperatively demanded; and yet injunctive relief is often the only adequate and effective remedy against many irreparable injuries in controversies of infinite varieties." *Oberman & Co., Inc. v. United Garment Workers of America*, 21 F. Supp. 20, 24 (D. C. Mo. 1937).

⁷ Excerpt from Senator Norris' speech before the House; cited in *United Electric Coal Companies v. Rice*, 80 F. (2d) 1, 8 (C. C. A. 7th, 1935), *cert. denied*, 297 U. S. 714, 56 Sup. Ct. 590 (1936). Accord: "The act is not intended to deprive Federal Courts of jurisdiction to restrain if necessary picketing of coercive or intimidating nature." *Knapp-Monarch Co. v. Anderson*, 7 F. Supp. 332, 339 (D. C. Ill. 1934).

the Act⁸ and decisions dealing with the point that the restrictions placed upon federal courts apply only to cases where the controversy is being carried on by legal means. Decisions⁹ indicating that picketing, if peaceful, is not violative of the federal or state statute,¹⁰ leave no doubt that the court in the instant case was restricted from issuing an injunction, *providing it found that the facts presented constituted a labor dispute.*¹¹

The determination of what constitutes a labor dispute¹² presents a difficult and unsettled problem, the answer to which lies chiefly in the courts' interpretation of the phrases, "involving or growing out of a labor dispute"¹³ and "parties participating or interested in a labor dispute."¹⁴ An example of the existing uncertainty is apparent in decisions dealing with the relation the parties must bear each other before the controversy can be considered a labor dispute. Despite statutory language to the effect that the proximate relation of employer-employee need not exist,¹⁵ there has been a diversity of opinion in cases dealing with the point.¹⁶ In view of the wording of the statute cases holding that the relationship must exist cannot be justified, but they may be explained as the continuing influence of the Clayton Act.¹⁷

The application of the Act does not depend upon the motives or

⁸ 47 STAT. 70 (1932), 29 U. S. C. A. § 104 (1934).

⁹ *Senn v. Tile Layers Union*, 301 U. S. 467, 57 Sup. Ct. 857 (1937).

¹⁰ N. Y. CIV. PRAC. ACT § 876-a is similar to the Norris-LaGuardia Act. For discussion of CIV. PRAC. ACT § 876-a see (1938) 12 ST. JOHN'S L. REV. 358.

¹¹ It has been held that even peaceful picketing in the absence of a labor dispute will be enjoined. See *Exchange Bakery & Restaurant, Inc. v. Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927).

¹² "What Is a Labor Dispute", N. Y. L. J., Jan. 10, 11, 1938; (1937) YALE L. J. 1064; (1938) 5 IND. L. J. 516; (1937) 50 HARV. L. REV. 1295.

¹³ 47 STAT. 73 (1932), 29 U. S. C. A. § 113 (1934) provides "a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade craft or occupation, or have direct or indirect interests therein; * * * or when the case involves any conflicting or competing interests in a labor dispute, of persons participating or interested therein".

¹⁴ 47 STAT. 73 (1932), 29 U. S. C. A. § 113b (1934) characterizes a person or association as participating in a labor dispute "if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs, or has a direct or indirect interest therein or is a member, officer or agent of any association composed in whole or in part of employers or employees engaged in such industry, craft, trade or occupation".

¹⁵ 47 STAT. 73 (1932), 29 U. S. C. A. § 113c (1934).

¹⁶ Cases holding that the direct relationship of employer-employee must exist in order to constitute a labor dispute: *United Electric Coal Companies v. Rice*, 80 F. (2d) 1 (C. C. A. 7th, 1935), *cert. denied*, 297 U. S. 714, 56 Sup. Ct. 590 (1936); *Safeway Stores v. Retail Clerks Union*, 184 Wash. 332, 51 P. (2d) 372 (1935). *Contra*: *Grace Co. v. Williams et al.*, 20 F. Supp. 263 (D. C. Mo. 1937); *American Furniture Co. v. Teamsters & Helpers Local No. 200*, 222 Wis. 338, 268 N. W. 250 (1936).

¹⁷ Under the Clayton Act the courts held that the relationship of employer-employee was essential to a labor dispute. *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 41 Sup. Ct. 172 (1921).

*background of the dispute.*¹⁸ It is sufficient in order to deny equitable relief that the party interested in the controversy bring the case within the elastic definitions¹⁹ contained in the Act. It is generally conceded by the courts that the Act bears broad and liberal interpretation.²⁰ It was evidently with this view in mind that the court in the instant case arrived at the conclusion that the facts presented constituted a labor dispute.²¹

The instant case is opposed to *A. S. Beck Shoe Corp. v. Johnson*,²² a New York case involving similar facts.²³ The court in the *A. S. Beck* case, however, decided that the dispute was a racial controversy, which unless enjoined might prove dangerous in that race riots and race reprisals might occur as a result. Shortly after this decision, however, the New York Legislature enacted Section 876-a of the Civil Practice Act,²⁴ which defines a labor dispute in terms substantially the same as those used in the Norris-LaGuardia Act. In view of this subsequent enactment, the New York courts, if called upon to decide a case factually similar to the instant case, would, in the opinion of the writer, follow the decision handed down in the in-

¹⁸ Instant case at 707.

¹⁹ It is clear that the Act was purposely phrased in general terms in an effort to evade the narrow interpretation placed upon Section 20 of the Clayton Act by the courts. It was evidently the intention of the legislators to allow the court wide discretion in its determination of what constituted a labor dispute, leaving it free to decide the issue by a consideration of the facts presented, rather than by a fixed formula.

²⁰ *United Electric Coal Companies v. Rice*, 80 F. (2d) 1 (C. C. A. 7th, 1935), *cert. denied*, 297 U. S. 714, 56 Sup. Ct. 590 (1936).

²¹ It has been generally held that a controversy, in order to constitute a labor dispute, must be one concerning the terms or conditions of employment. *Diamond Full Fashion Hosiery Co. v. Leader et al.*, 20 F. Supp. 467 (D. C. Pa. 1937).

In the instant case, the Court, however, expanded this view to include those controversies which arise with respect to discrimination in terms or conditions of employment based on differences of race and color. In view of the fact that all labor legislation is essentially social, having for its purpose the economic and social advancement of society in general without regard for race or color, the decision seems just and in keeping with the undoubtedly intended spirit of the Act.

²² 135 Misc. 363, 274 N. Y. Supp. 946 (1934); for discussion of case see (1935) 48 HARV. L. REV. 691; (1935) 83 PA. L. REV. 381; for a case involving a similar situation see *Green et al. v. Samuelson et al.*, 168 Md. 421, 178 Atl. 109 (1934).

²³ The *A. S. Beck* case, 135 Misc. 363, 274 N. Y. Supp. 946 (1934) involved a Negro association which in an attempt to force the *A. S. Beck Corp.* to employ Negro help, picketed one of the plaintiff's stores.

²⁴ The N. Y. CIV. PRAC. ACT § 876-a, passed in 1935, defines a labor dispute as "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee regardless of whether or not the disputants stand in the relation of employer and employee."

stant case. This result seems logical, for the Legislature in enacting Section 876-a of the Civil Practice Act has in effect declared the policy of New York, in respect to labor disputes, to be similar to that of the federal courts.

W. F. P.

LABOR LAW—JURISDICTION OF N. L. R. B.—INTERSTATE COMMERCE.—Petitioner was engaged at its plant at Oakland, California, in canning, packing and shipping fruit and vegetables, the bulk of which were grown in California. Interstate and foreign sales approximated one-third of the total sales, and were shipped either *f.o.b.* or *c.i.f.* San Francisco. Many of the permanent warehousemen in petitioner's employ were prevented from entering the plant after attending a union meeting. A picket line then formed, and was maintained with such effectiveness that interstate and export shipments virtually ceased. The National Labor Relations Board found that petitioner had violated the National Labor Relations Act¹ by engaging in unfair labor practices² which had led, and tended to lead, to labor disputes burdening and obstructing commerce. The Board ordered petitioner to desist from such practices and to reinstate with back pay certain employees who had been discharged.³ Upon petition of the Board, the Circuit Court of Appeals affirmed the order.⁴ On appeal to the United States Supreme Court, *held*, affirmed. The Board has jurisdiction inasmuch as the effect of petitioner's activities was to obstruct interstate and foreign commerce. *Santa Cruz Fruit Packing Company v. National Labor Relations Board*, 303 U. S. —, 58 Sup. Ct. 656 (1938).

The subject of federal control is commerce with foreign nations and among the several states.⁵ Sales to purchasers in another state are not withdrawn from federal control because the goods are delivered *f.o.b.* at stated points within the state of origin.⁶ Therefore petitioner

¹ 49 STAT. 449 (1935), 29 U. S. C. A. § 151 (Supp. 1937); Legis. (1936) 10 ST. JOHN'S L. REV. 359.

² 49 STAT. 452 (1935), 29 U. S. C. A. § 157 (Supp. 1937) (Labor is recognized to have the right to organize); 49 STAT. 452 (1935), 29 U. S. C. A. § 158 (Supp. 1937) (Employers are forbidden to interfere with labor's rights. Such interference is termed an unfair labor practice).

³ 1 N. L. R. B. 454 (1936).

⁴ 91 F. (2d) 790 (C. C. A. 9th, 1937).

⁵ U. S. CONST. ART. I, § 8, subd. 3, "Congress shall have power * * * to regulate commerce with foreign nations, and among the several states * * *"

⁶ *Savage v. Jones*, 225 U. S. 501, 32 Sup. Ct. 715 (1912); *Texas & N. O. R. R. v. Sabine Tram Co.*, 227 U. S. 111, 33 Sup. Ct. 229 (1913); "* * * the arrangements that are made between the seller and purchaser with respect to the place of taking title to the commodity, or as to the payment of freight where the actual movement is interstate, does not affect either the power of Congress or the jurisdiction of the Commission which Congress has established."