Masthead Logo

DePaul Law Review

Volume 7
Issue 2 *Spring-Summer 1958*

Article 19

Labor Law - "Unlawfully Assisted" Union Which Has Not Complied With Filing Requirements May Obtain Recognition Without Certification

DePaul College of Law

clauses to the Railroad Adjustment Board.[17] Several cases have held that the Adjustment Board has the right to arbitrate disputes after the contract has been made and that the decision of the Adjustment Board is final.[18] Therefore, in the principal case, the court found that the Adjustment Board had jurisdiction to decide whether the clause of the contract in dispute was sufficiently broad to encompass the right of management to unilaterally initiate changes. Since the question was presented to the Adjustment Board by the carrier, the union could not strike until final determination of the dispute by the Adjustment Board.[19]

In a belated effort, the union admitted the validity of the carrier's contention that the action was in accordance with the clause in the contract, but the court pointed out that although this concession would leave the matter before the Adjustment Board a moot question, a strike was still unlawful.[20]

Thus, the enforcement of the Railway Labor Act is strengthened by the decision in the instant case. The determination of the dispute between management and the union is within the jurisdiction of the Adjustment Board, and during the pendency of this dispute an injunction will issue prohibiting a strike. In the words of the court:

> It [Railway Labor Act] cannot leave them free to strike in aid of proposed contract changes when they have not fully processed any such proposal as a "major dispute" under the required procedures of the Act.[21]

[17] Texas & N.O. R.R. v. Brotherhood of Ry. & Steamship Clerks, 281 U.S. 548 (1930); Sampsell v. B. & O. R.R., 235 F. 2d 569 (C.A. 4th, 1956); Alabaugh v. B. & O. R.R., 222 F. 2d 861 (C.A. 4th, 1955).

[18] Watson v. Mo.-Kan.-Texas R.R., 173 S.W. 2d 357 (Tex. Civ. App., 1943). In Brotherhood of R.R. Trainmen v. N.Y.C. R.R., 246 F. 2d 114, 118 (C.A. 6th, 1957) the court said, "A minor dispute may be submitted to the National Railroad Adjustment Board by either party, and the award of the Board is final and binding on both parties."

[19] Chgo. R. & I. R.R. v. Brotherhood of R.R. Trainmen, 229 F. 2d 926 (C.A. 7th, 1956).

[20] E.J.E. Ry. v. Burley, 325 U.S. 711 (1945). Major disputes are differences arising out of proposals for new contracts or of changes in existing contractual or legal obligations or relations. The Railway Labor Act provides for procedures to be followed in the event of a major dispute, but compulsions go only to insure that those procedures are exhausted before resorting to self-help. No authority is given to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

[21] Norfolk and P.B.L.R. v. Brotherhood of R.R. Trainmen, 248 F. 2d 34, 46 (C.A. 4th, 1957).

LABOR LAW—"UNLAWFULLY ASSISTED" UNION WHICH HAS NOT COMPLIED WITH FILING REQUIREMENTS MAY OBTAIN RECOGNITION WITHOUT CERTIFICATION

The National Labor Relations Board found that Bowman Transportation, Inc., unlawfully assisted District 50, United Mine Workers to organ-

ize its workers in order to defeat the efforts of a Teamsters local to organize them.[1] In accordance with its long-standing practice[2] the Labor Board issued a cease and desist order directing the company to withdraw and withhold recognition from District 50 unless and until it received the Board's certification as the exclusive representative of the employees.[3] The United Mine Workers, however, has adamantly refused to comply with Secs. 9 (f), (g), and (h) of the Labor-Management Relations Act.[4]

[1] The company violated § 8(a) (2) of the Labor-Management Relations Act (29 U.S.C. § 158), which provides: "It shall be an unfair labor practice for an employer . . . to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

[2] It has been Labor Board practice to order the complete disestablishment of a company-dominated union, i.e., one which was completely the creature of an employer but to order merely the withholding of recognition for a time from a union which, although independently established, has received unlawful assistance in organizing or financial support from an employer. The Board first ordered the withholding of recognition in Lenox Shoe Co., 4 N.L.R.B. 372 (1937).

[3] 112 N.L.R.B. 387 (1955).

[4] 29 U.S.C. § 159 (f), (g) and (h) provide: "(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization, under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b), of section 160 of this title, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and by-laws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) of this subsection were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and by-laws showing the procedure followed with respect to, (a) qualifications for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization of strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year,

Because of its refusal to file the so-called non-Communist affidavits and financial reports required by these sections, the union cannot use Board processes or obtain the Board's certification. The Mine Workers first asked the Labor Board to delete the requirement for a certification from its order, arguing that by requiring it in this case the Board was depriving the employees of their right to choose any union they wished. When the Board refused to modify its order,[5] the union petitioned the Court of Appeals for the District of Columbia for a review. That court modified the order so that the company would be free to recognize District 50 as its employees' bargaining agent not only when that union was certified by the Board but, *alternatively*, when District 50 "shall have been freely chosen . . . by a majority of the employees after all effects of unfair labor practices have been eliminated."[6]

The Supreme Court granted certiorari and upon review, remanded the case to the Board with instructions to permit the employer to recognize District 50 upon a showing that it has in fact been chosen as bargaining agent by the employees without requiring that the union be certified by the Board. *NLRB v. District 50, United Mine Workers of America*, 78 S. Ct. 386 (1958).

(c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) of this subsection to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B) of this section. *No labor organization shall be eligible for certification under this section as the representative of any employees* (emphasis supplied), and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection. "(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

[5] 113 N.L.R.B. 786 (1955).

[6] 237 F. 2d 585 (App. D.C., 1956).

The court, in the instant case, suggested to the Board a number of ways in which it may determine, either by the use of its own machinery or by borrowing that of state or private agencies, whether, in fact District 50 is the free and uncoerced choice of a majority of the Bowman employees, and still not actually certify the union.

The decision raises a question as to whether the effect intended by Congress in passing the filing and non-Communist affidavit provisions has been circumvented by judicial interpretation.

The Court has held that Congress, in passing the non-Communist affidavit and filing provisions, had the single objective of stopping the use of the Labor Board by non-complying unions.[7] This is, of course, true. Congress, however, was well aware that the Board's processes facilitated the unions' efforts to organize and gain recognition. No union, no matter what its compliance status, must obtain a Labor Board certification to be recognized as the bargaining agent of a company's employees. The employer is free to recognize a union voluntarily and the union has great leeway to bring economic pressure to force the employer to recognize it. The certification merely furnishes the clearest indication of the employees' choice. The union that was barred from use of the Board's election and certification procedures was to be left to the vicissitudes of economic warfare.

The Supreme Court, however, indicated in an earlier case that non-compliance with the filing requirements would not leave a union open to all the legal dangers that might attend economic warfare. In *United Mine Workers v. Arkansas Oak Flooring Co.*, the court refused to permit a state court to enjoin the Mine Workers from picketing for recognition. The majority of the court said:

> Subsections (f), (g) and (h) of Sec. 9 merely describe advantages that may be gained by compliance with their conditions. The very specificity of the advantages to be gained and the express provision for the loss of these advantages imply that no consequences other than those so listed shall result from non-compliance.[8]

The filing requirements are neither compulsory nor a condition precedent to a union's recognition as the exclusive representative of employees, the court went on to point out. Justice Frankfurter, in dissent, however, harked back to the intent of Congress. The policy of Sec. 9, he admonished:

> [I]s that of Congress and the wisdom of the policy is not our concern. . . . It is . . . incumbent to give to the scope of the non-Communist affidavit and other reporting requirements of Sec. 9 the reasonable direction of their meaning and

[7] NLRB v. Dant, 344 U.S. 375 (1953).

[8] 351 U.S. 62, 73 (1956).

purpose. . . . Congress designed to hamper non-conforming unions and to discriminate against them by denying them rights deemed of the utmost importance to trade unions. This being so, I find it rather difficult to conclude that while visiting such consequences upon a nonconforming union in the federal domain of law enforcement, the Congress has impliedly withdrawn from the States the power to regulate such a union.[9]

Nonetheless, the court is, in the instant case, placing upon the Labor Board the burden of finding for the non-complying union an avenue for achieving recognition instead of placing upon the union the onus of removing the disability it has voluntarily incurred.

[9] Ibid., at 78.

PROCESS–STATUTE SUBJECTING NON-RESIDENT DEFENDANT TO JURISDICTION UPON COMMITTING TORTIOUS ACT WITHIN STATE HELD CONSTITUTIONAL

On June 3, 1954, defendant, a resident of Wisconsin, sent one of his employees to deliver a gas stove to the plaintiff in Pecatonica, Illinois. At the request of the employee, the plaintiff assisted in unloading the stove from the truck. The employee negligently pushed the stove thereby injuring the plaintiff. The complaint was filed in April, 1955, and two attempts to serve summons failed because the defendant was not found in Illinois. In February of 1956, summons was served personally on the defendant in Wisconsin. The defendant appeared specially and moved to quash the summons on the grounds that the provisions of the Illinois Civil Practice Act contravene both the United States and Illinois Constitutions. The Circuit Court of Winnebago County granted this motion and the plaintiff appealed. The Supreme Court of Illinois upheld the service, ruling that since the defendant submitted to the jurisdiction of the courts of Illinois, the requirements of due process were met. *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673 (1957).

Section 17 of the Illinois Civil Practice Act provides:

> Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said actions:
> (a) The transaction of any business within this State;
> (b) The commission of a tortious act within this State;
> (c) The ownership, use, or possession of any real estate situated in this State;
> (d) Contracting to insure any person, property or risk located within this State at the time of contracting.[1]

Defendant argued that in order to attack the service of process by special appearance, he would have to disprove the commission of a tortious act

[1] Ill. Rev. Stat. (1957) c. 110, § 17.