Masthead Logo

DePaul Law Review

Volume 3
Issue 2 *Spring-Summer 1954*

Article 15

Labor Law - Disloyalty as Cause for Discharge

DePaul College of Law

the court of the demanding state.[14] The question of the guilt or innocence of the accused, or the method of his apprehension, are not for consideration. The hearing on the writ of habeas corpus is limited to the determination of whether or not the two requisite elements for extradition are present.[15]

The purpose of the federal constitutional provision and statute is the expeditious return of fugitives from justice to the demanding state.[16] A state statute which hinders or impedes the operation of the federal statute has been held void.[17] Further, it has been held that a state statute in aid of extradition need not necessarily be complied with.[18]

Extradition by direct requisition upon the asylum state supersedes prior proceedings under any state process of extradition. Procedural errors in the prior proceedings do not invalidate the subsequent proceedings on the direct requisition. The right of the accused is limited to a review by writ of habeas corpus of the two essential elements enumerated above. Other matters are extraneous to the procedure, and do not constitute grounds for relief.

LABOR LAW–DISLOYALTY AS CAUSE FOR DISCHARGE

A labor union representing television technicians appealed to the United States Supreme Court for modification of a National Labor Relations Board order upholding the discharge of certain technicians by the television station. At a critical time in the initiation of the station's television service, the technicians sponsored or distributed handbills, which made a sharp, public, disparaging attack upon the quality of the station's product and its business policies, in a manner reasonably calculated to harm the station's reputation. The handbills contained no reference to a labor dispute. The decision of the Supreme Court was that these acts constituted disloyalty and, thus, grounds for "discharge for cause" and not an "unfair labor practice," within the meaning of the Taft-Hartley Act. The decision was not influenced by the fact that at the time of distribution of the handbills a labor dispute existed between the station and the union. *NLRB v. Local Union No. 1229, International Broth. of Elec. Workers*, 74 S.Ct. 172 (1953).

[14] Drew v. Thaw, 235 U.S. 432 (1914); Flowers v. Ross, 196 F. 2d 25 (App. D.C., 1952).

[15] Davis v. O'Connell, 185 F. 2d 513 (C.A. 8th, 1950); Dean v. State of Ohio, 107 F. Supp. 937 (N.D. W. Va., 1952); Gerrish v. New Hampshire, 97 F. Supp. 527 (S.D. Me., 1951).

[16] Biddinger v. Commissioner of Police, 245 U.S. 128 (1917).

[17] State v. Parrish, 242 Ala. 7, 5 So. 2d 828 (1941).

[18] In re Sanders, 31 N.E. 2d 246 (Ohio App., 1937); Ex parte Bergman, 60 Tex. Crim. Rep. 8, 130 S.W. 174 (1910).

The Taft-Hartley Act in Section 7 provides that employees shall have the right to self-organization and to engage in concerted activities for the purpose of collective bargaining.[1] Section 8(a)(1) provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7. Section 10(c) gives the NLRB the power to order the employer to cease and desist and reinstate with pay an employee injured by an unfair labor practice. However, "no order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."[2]

Generally, the employer has the right to discharge the employee for insubordination, disobedience and other causes so long as the employer does not, under cover of that right, intimidate or coerce his employees with respect to their rights to self-organization and representation.[3] The cause of discharge must be separable from the concerted union activities which are protected by Section 7.[4] The NLRB is given the responsibility of finding the facts concerning complaints of unfair labor practices.[5]

The NLRB, in the instant case, found "these tactics, in the circumstances of this case, were hardly less 'indefensible' than acts of physical sabotage" and refused to grant an order for reinstatement.[6] The Court of Appeals remanded the cause to the Board for a further finding as to "unlawfulness" of the employees' acts, on the grounds that the findings of the Board were not in accordance with the Act since "indefensible" is vague and a finding that the acts were indefensible does not necessarily mean that they are not under the protection of Section 7 of the Act.[7] The U.S. Supreme Court apparently disregarded the question of whether finding an act "indefensible" is sufficient cause to remove an employee from the protection of Section 7.

Justice Burton, in rendering the majority opinion relied on Section 10(c) which permits discharges "for cause" and stated that "there is no

[1] National Labor Relations Act, as amended by the Labor Management Relations Act, 61 Stat. 140 (1947), 29 U.S.C.A. § 157 (1947).

[2] 61 Stat. 146, 147 (1947), 29 U.S.C.A. § 160 (c) (1947).

[3] National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937).

[4] Hoover Co. v. National Labor Reations Board, 191 F. 2d 380 (C.A. 6th, 1951); Albrecht v. National Labor Relations Board, 181 F. 2d 652 (C.A. 7th, 1950); Joanna Cotton Mills Co. v. National Labor Relations Board, 176 F. 2d 749 (C.A. 4th, 1949).

[5] National Labor Relations Act, as amended by the Labor Management Relations Act, 61 Stat. 146, 147 (1947), 29 U.S.C.A. § 160 (c) (1947).

[6] 94 N.L.R.B. 1507, 1511 (1951).

[7] 202 F. 2d 186 (App. D.C., 1952).

more elemental cause for discharge of an employee than disloyalty to his employer."[8] The Board did not in its finding use the word disloyalty, nor is the word to be found in the Taft-Hartley Act. The opinion of the court is of little help in defining what the court means by disloyalty. The dissent recognized this by pointing out that many of the legally recognized tactics and weapons of labor would readily be condemned for "disloyalty", were they employed between man and man in friendly personal relations.[9] The majority opinion emphasized the peculiar facts of this case. It discussed the fact that the handbills were distributed only two months after the station began telecasting, that the station was the only one televising in the area, and that the station had invested $100,000 in equipment and was losing $10,000 each month during the period in which the labor dispute was carried on.

Other facts in the instant case which affected the decision were, that the handbills were signed "WBT Technicians" but made no mention of any labor dispute; and that they were distributed, not at a picket line, but two or three blocks from the company's premises; and that the employees were not on strike, but carrying on these activities during their leisure hours, while still in the employ, and receiving a salary from, the company. The handbills did not refer to labor. However, they were critical of the company's television programing and implied that the company considered the city to be a second-class community not worthy of better programs.

The dissenting opinion said:

> The Board and the courts of appeals will hardly find guidance for future cases from this Court's reversal of the Court of Appeals, beyond that which the specific facts of this case may afford. More than that, to float such imprecise notions as "discipline" and "loyalty" in the context of labor controversies, as the basis of the right to discharge, is to open the door wide to individual judgment by Board members and judges. One may anticipate that the Court's opinion will needlessly stimulate litigation.[10]

The aforementioned comment of the dissent seems to sum up the importance of this decision. Although the majority has seen fit to call disloyalty a cause for discharge, it does not set forth any guide as to what constitutes such disloyalty.

It seems that there is insufficient objectivity in this phase of the law. "Disloyalty" is not given a lucid definition by the court. Hence, it is apparent that the courts will have to apply individual subjective standards to determine what constitutes "disloyalty" in each case. The general and

[8] 74 S. Ct. 172, 176 (1953).

[9] Ibid., at 180.

[10] Ibid., at 181.

indefinite principles set forth by the court in this case will do little to quiet litigation. It is to be desired and hoped that future decisions will present clear and more easily determinable standards by which individual cases may be uniformly decided.

LABOR LAW—UNFAIR LABOR PRACTICE: DISCHARGE FOR WHIPSAWING

Defendants were wholesale liquor dealers engaged in annual collective bargaining agreements with the union representing their liquor salesmen. An impasse was reached concerning salesmen's commissions during the 1949 negotiations. The union struck only one member of the multi-employer bargaining unit and announced this to be the beginning of a whipsawing action. The employers attempted to retaliate by locking out their salesmen but the National Labor Relations Board ruled that the salesmen had been discharged. The U.S. Court of Appeals held that the companies could have successfully locked out their salesmen, but by discharging them they were guilty of an unfair labor practice and the court allowed the National Labor Relations Board's award of back pay to the union employees. *NLRB v. Morand Bros. Beverage Co.*, 204 F. 2d 529 (C.A. 7th, 1953).

In order to better understand the effect of this decision on labor-management relations, and to more easily comprehend the reasoning upon which it is based, it is necessary to examine in more detail the factual circumstances upon which it was decided.

When the union representing defendant's salesmen[1] struck only one member of the multi-employer bargaining unit,[2] thus beginning a general whipsawing action,[3] the association,[4] according to prearranged plans, sent to its salesmen a letter notifying them to turn in their accounts and

[1] The exclusive collective bargaining agent for all salesmen of the Chicago Association and of the Illinois Association, defendants in the instant case, was the Liquor and Wine Salesmen's Union, Local 62, Distillery, Rectifying and Wine Workers Int'l Union of America, AFL.

[2] April 6, 1953, the union struck the Old Rose Distributing Co., a member of the Illinois Association.

[3] The term refers to a device by which the union strikes only one employer or a small group of employers in the multi-employer bargaining unit and then moves on to another small segment. The union can exert pressure on a single employer who finds his fellow members of the bargaining unit gathering his market, while the union can support the small part of its membership which is on strike almost indefinitely. The technique is described in Leonard v. NLRB, 205 F. 2d 355, 356 (C.A. 9th, 1953) and in "Whipsawing in Multi-Employer Bargaining," 3 Stanford L. Rev. 510 (1951).

[4] Defendants in the initial action were all members of either the Illinois Wholesale Liquor Dealers Association or the Chicago Wholesale Liquor Dealers Association, both of which will hereinafter be referred to as the association.