

STUDENT COMMENTS

EFFECT OF THE EMERGENCY PROVISIONS OF THE TAFT-HARTLEY ACT UPON BASIC EQUITABLE DISCRETION

In *United Steelworkers of America v. United States*¹ pursuant to power vested in the Attorney General under provisions of the Labor Management Relations Act of 1947 (Taft-Hartley Act) an injunction was sought and obtained in the District Court for the Western District of Pennsylvania² enjoining, for a period of eighty days the continuation of an industry-wide strike of workers in the basic steel industry. The decision was affirmed by the Court of Appeals for the Third Circuit³ and by the United States Supreme Court.⁴ HELD: The District Court properly exercised its basic equitable discretion in issuing the injunction pursuant to the power granted by § 208.

The statute under consideration provided;

§ 206: Whenever in the opinion of the President . . . , a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof . . . , will, if permitted to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him. . . .⁵

§ 208: (a) Upon receiving a report . . . the President may direct the Attorney General to petition any district court . . . to enjoin such strike or lock-out and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof . . . , and

(ii) if permitted to occur or continue, will imperil the national health or safety, it shall have jurisdiction to enjoin . . . , and to make such other orders as may be appropriate.⁶

§ 209: (a) Whenever a district court has issued an order . . . enjoining acts or practices which imperil or threaten to imperil national health or safety, it shall be the duty of the parties . . . to make every effort to adjust and settle their differences, . . .

(b) . . . at the end of sixty days the board of inquiry shall report to the President the current position of the parties The National Labor Relations Board, within the succeeding fifteen days shall take a secret ballot

¹ 361 U.S. 39 (1959).

² *United States v. United Steelworkers of America*, 178 F. Supp. 297 (W.D. Pa. 1959).

³ *United Steelworkers of America v. United States*, 271 F.2d 676 (3d Cir. 1959).

⁴ *United Steelworkers v. United States*, supra note 1.

⁵ Labor Management Relations Act, ch. 120 Title II, § 206, 61 Stat. 155 (1947), 29 U.S.C. § 176 (1958).

⁶ Labor Management Relations Act, ch. 120 Title II, § 208, 29 U.S.C. § 178 (1958).

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of the employees . . . on the question of whether they wish to accept the final offer of settlement made by their employer. . . .⁷

Involved in the Supreme Court decision, although not a factor in its ultimate determination, was the question whether the application of § 208 to a given case acts as a mandate upon the court to issue a blanket injunction whenever the facts create a situation covered by the Act. In other words, has the Act abrogated the use of equitable discretion in molding the decree?

This specific question was treated separately in three opinions; the dissent of Judge Hastie at the Third Circuit,⁸ the dissent of Justice Douglas,⁹ and the concurring opinion of Justices Frankfurter and Harlan.¹⁰ In each the conclusion turned basically upon an evaluation of the underlying purpose of Congress in enacting these emergency provisions. Yet none of the three could be considered similar in approach.

JUDGE HASTIE'S OPINION

Judge Hastie read the statute as permitting a temporary cessation of a strike threatening the national health or safety, in order to create an atmosphere more favorable for collective bargaining and the ultimate settlement of the dispute.¹¹

In this light he takes the position that restoration of production is not the prime aim of the Act. He deduced this from the fact that otherwise Congress would not have limited the injunction to a period of only eighty days. Further he pointed out that sweeping powers are already available to the President to acquire goods when an emergency exists, e.g., the power to seize struck plants under § 18 of the Universal Military Training and Services Act,¹² and the power to allocate scarce materials under § 101 of the Defense Production Act of 1950.¹³

Based on these conclusions Judge Hastie decided that while the Act confers jurisdiction to enjoin once the substantiality and threat are found to exist, it leaves to the court the power to exercise full discretion in adducing whether the injunction, if granted, will in fact stimulate and facilitate collective bargaining.

In viewing the facts of the present case he found no real evidence of hostility or violence which might create an atmosphere detrimental to negotiations between the parties. On the contrary he referred to statements of various persons familiar with the strike and the settlement processes in general, whose opinions evinced the belief that the granting of such an injunction might increase animosity due to basic union hostility to the injunctive

⁷ Labor Management Relations Act, ch. 120 Title II, § 209, 29 U.S.C. § 179 (1958).

⁸ *United Steelworkers v. United States*, supra note 3 at 690.

⁹ *United Steelworkers v. United States*, supra note 1 at 62.

¹⁰ *Id.* at 44.

¹¹ *United Steelworkers v. United States*, supra note 3 at 691.

¹² Universal Military Training and Services Act, ch. 625 Title I, § 18, 62 Stat. 625 (1948), 50 U.S.C. App. § 468 (1958).

¹³ Defense Production Act, ch. 932 Title I, § 101, 64 Stat. 799 (1950), 50 U.S.C. App. § 2071 (1958).

device.¹⁴ Still further he felt that the court should have taken into consideration the fact that the injunction would remove the economic forces which tend to drive the parties into agreement, i.e. loss of income to both employer and employee.

On the basis of these considerations Judge Hastie believed that the purpose of the Act could be effectuated by a decree merely ordering the parties to do those acts provided in § 209.

JUSTICE DOUGLAS'S OPINION

In Justice Douglas's opinion there was again involved an interpretation of the purpose of the statute. Unlike Judge Hastie, Justice Douglas does not stress the collective bargaining aspect of the statute, but rather reads the Act as being designed mainly to prevent strikes imperiling national health or safety. Thus in his approach he differs markedly from Judge Hastie's basic supposition that the purpose of the Act is directed at facilitating collective bargaining. However, like Judge Hastie, he does conclude that the Act itself does not abridge the court's basic equitable discretion.

Justice Douglas supports this conclusion initially upon an interpretation of the meaning of "health or safety." He feels that in the separate findings of the President and the board of inquiry, as well as in the district court findings, the word "health" was read as including the material well-being of the nation. This interpretation was unwarranted in his opinion on the basis of the Congressional debate wherein, during discussion between Senators Kennedy and Owens, the distinction between health or safety and the broader expressions, welfare and interest was emphasized.¹⁵ As Justice Douglas points out, "If 'national health' includes the public welfare, injunctions will issue whenever any important industry is involved—."¹⁶

Then, focusing with particularity on national safety, he considers that the fact-findings by the board and the district court did not attempt to determine what per cent of the total industry was actually devoted to production for defense, i.e. for the national safety, a determination necessary in order that the court might render a decree designed to safeguard the national safety and protect the rights of labor.¹⁷

In line with this reasoning Justice Douglas refers specifically to the issue under consideration, i.e. equitable discretion under § 208. He holds that the language of the Act, "shall have jurisdiction to enjoin," does not command all strikers be enjoined where only a part are engaged in acts imperiling "national safety."¹⁸ So to interpret would reduce the court to the level of "an automaton stamping the papers the Attorney General presents."¹⁹ Stressing the historical power of equity to mold decrees to fit

¹⁴ *United Steelworkers v. United States*, supra note 3 at 692-693.

¹⁵ *United Steelworkers v. United States*, supra note 1 at 66-7.

¹⁶ *Id.* at 69.

¹⁷ *Id.* at 70.

¹⁸ *Id.* at 71.

¹⁹ *Ibid.*

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the needs of the parties, he reiterates the concept that the Court will not read into the statute an intent to revoke this power "unless the statutory mandate is clear and unambiguous."²⁰

The conclusion is thus reached that the district court erred in failing to consider these necessary factors before concluding that a blanket injunction should issue.

THE OPINION OF JUSTICES FRANKFURTER AND HARLAN

In the concurring opinion of Justices Frankfurter and Harlan a conclusion is reached in direct opposition to those of Judge Hastie and Justice Douglas, namely that the emergency provisions do impose a mandate upon the court to issue a blanket injunction once the prerequisite findings have been made. The Justices, like Judge Hastie, determine that the court must find "substantiality" and a threat to "health and safety" as a prerequisite to assuming jurisdiction. However, beyond this initial accord the decisions take opposite approaches.

The concurring opinion adduces that while both the findings are necessary they are not—as Douglas would seem to indicate—interrelated. Rather, once it is found that the strike affects a substantial part of the industry and imperils "national health or safety" nothing further is necessary. In other words, it is not required that "the abstract quantitatively substantial character of the effect of the stoppage 'be' found to be the cause in fact of the peril."²¹ Rather it is necessary to find only that a "substantial" part of an industry is affected and that to some extent "national health or safety" is imperiled. Here it is undisputed that "national safety" was threatened to a degree because of the effect of the strike on missile and atomic weapons production.²² Consequently the questions of whether "national health" also was threatened or whether the peril to "national safety" was caused by all or only a part of the strikers would be superfluous.

The concurring Justices see the Act as being directed also at settling the labor dispute itself but, unlike Judge Hastie, do not consider it as the overriding purpose. Rather they see it as a second purpose which has been separately provided for by § 209. However, the opinion points out that since the Act does have a dual function it must be considered that a partial injunction—as suggested by Justice Douglas—against so much of the strike as imperils national safety "would at best serve only the purpose of alleviating the peril, while stultifying the provisions designed to effect settlement of the underlying dispute."²³ The concurring Justices state in furtherance of their opinion that national health and safety is the prime concern. "Here

²⁰ Id. at 72 citing *Hecht v. Bowles*, 321 U.S. 321 (1943).

²¹ Id. at 51.

²² Id. at 47 and see, complete findings, *United States v. United Steelworkers*, *supra* note 2 at 298-301.

²³ *United Steelworkers v. United States*, *supra* note 1 at 52.

Congress has made an appraisal that the interests of both parties must be subordinated to the overriding interest of the Nation."²⁴

With this last consideration in mind the Justices in discussing the extent to which equitable discretion has been abrogated state, "... it is the primary purpose of the act to stop the national emergency . . . , which would be defeated if the court were left with discretion to withhold an injunction. . . ."²⁵

Further they buttress their argument by pointing out that the President's act in directing the Attorney General to invoke the Act involves "elements not susceptible of ordinary judicial proof nor within the general range of judicial experience, . . ."²⁶

Finally a differentiation is made of *Hecht v. Bowles* cited by Justice Douglas. It is pointed out that the statute in *Hecht* provided for a series of broad alternative remedies whereas in this Act Congress has provided a specific remedy with a maximum time limit and in addition has set up an elaborate system for invoking the court's jurisdiction. Further, while the Act provides for other remedies it makes these remedies supplementary and not alternative to injunctive relief.

Keeping in mind that the case was decided on the narrow finding that there was no abuse of equitable discretion, it might be worthwhile to contrast these diverging views to determine what effect they may have upon future interpretations and applications of this Act.

First of all, if Judge Hastie's view were to be accepted it would sharply curtail the use of the injunction where neither evidence of hostility to collective bargaining appears nor of any violence which might tend eventually to cause such hostility. Further, the apparent historical aversion of unions to injunctions as a means of forcing them into collective bargaining would always act as a counter-force tipping the balance of equitable considerations away from issuance of such a decree. In fact, had they not believed that the Act imposed a mandate to enjoin, such a consideration might have been influential on the majority of the judges of the Third Circuit since they stated, "However undesirable we may deem the use of injunctions in labor disputes to be. . . ."²⁷

It might seem that Judge Hastie's interpretation would require almost an omniscient judgment on the court's part where the facts do not clearly show that the strike has reached such a point that its continuance makes collective bargaining impossible. For without such findings it would appear to be only speculative as to whether the injunction would have any beneficial effect. Justices Frankfurter and Harlan in deciding that the Act imposed a mandate precluded such speculation; "... (it) is not for the judiciary to

²⁴ Id. at 54.

²⁵ Id. at 57.

²⁶ Id. at 58.

²⁷ *United Steelworkers v. United States*, supra note 3.

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negative the direction of Congress because of its own confident prophecy that the 'eighty-day' injunction . . . will not induce voluntary settlement. . . ."²⁸

Secondly, it might be observed that Judge Hastie and Justices Frankfurter and Harlan—and to a lesser degree Justice Douglas—pointed out that the purpose of the Act was in whole or in part to facilitate collective bargaining. Judge Hastie, however, held that the findings of substantiality and a threat to "national health and safety" were necessary preliminary findings to confer jurisdiction for an injunction, when such an injunction would create a favorable atmosphere for collective bargaining. The Justices Frankfurter and Harlan likewise viewed the findings as requisites to jurisdiction but held that once found, the overriding purpose of the Act, to avert an emergency situation, required a blanket injunction. While it would appear that the logic and acuity of Judge Hastie's opinion should be influential in causing a re-evaluation of the adequacy of the Act itself, it would not seem that his interpretation would prevail in the light of national exigencies which make "safety" of such paramount concern.

In the third place, it might be noted that the approach of Justice Douglas in contradistinction to that of Justices Frankfurter and Harlan would represent a stricter recognition of and adherence to the historic concept of equitable discretion. It would appear that this concept should not be lightly brushed aside. Yet, as was noted by the Justices, in a situation where a complex industry is involved, the practical capability of a court to mold a decree which could correlate the various economic and productive factors in such a way as to effectuate the legislative purposes successfully, while at the same time limiting it to that segment of the strike which is directly causing the peril, seems highly conjectural.²⁹ However, whether this in fact is true should be scrutinized, since the possibility that a court could adequately issue such a decree would tend to reduce the force of the Justices' contention that the Act imposes a mandate on the court.

Fourth, it is evident that Justice Douglas and Justices Frankfurter and Harlan differ markedly with respect to the effect of the words "national health or safety." While the concurring Justices do not take the approach that the terms can be equated with "national welfare" the practical effect is the same. Justice Douglas considered that the words should be construed literally and applied only to so much of the strike as could be tied to "health or safety." The other Justices, however, held that any finding of peril to health or safety would create a situation where an injunction must issue. Thus in effect their interpretation might give rise to the same objections which Justice Douglas had to treating the words as meaning "welfare" or "interest," namely that it would, one, return the free and easy use of injunctions to labor disputes;³⁰ two, make the court of equity

²⁸ *United Steelworkers v. United States*, supra note 1 at 184.

²⁹ *Id.* at 180-81.

³⁰ *United Steelworkers v. United States*, supra note 1 at 67.

merely a "rubber stamp";³¹ and three, sweep all strikes in all major industries into the purview of the statute, since all industries are to some extent involved in defense work, and thus it could be said that a strike therein would imperil "national health or safety."³²

³¹ Id. at 71.

³² Id. at 69.