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NORRIS-LAGUARDIA ANTI-INJUNCTION ACT—EXISTENCE OF A LABOR DISPUTE.—
Plaintiff, a Delaware corporation, maintained several meat markets in Milwaukee, Wis., employing a total of some thirty persons, none of whom were union members. Defendants, members of a labor union, after a fruitless demand that plaintiff require its employees to become members of the union, picketed plaintiff's place of business to force unionization. On a bill in the Federal courts for an injunction, Held, a labor dispute existed within the meaning of both the Federal¹ and the state² anti-injunction acts, and an injunction could not issue except in accordance with those acts.³

In surprisingly few words,⁴ the Supreme Court has cast aside doubts as to the constitutionality of the Norris-Laguardia Act—doubts that have persisted during the six years that have elapsed since its adoption.⁵ In equally brief fashion, the Court has laid down its first authoritative construction of the Act.

¹² *Western & Southern Indemnity Co. v. Cramer* (1937), 10 N. E. (2d) 440; (Ind. App. Court); *Hirth v. Powers* (1896), 108 Mich. 339, 66 N. W. 215; *Grace Harbor Lumber Co. v. Ortman* (1916), 190 Mich. 429, 157 N. W. 96; *Radichel v. Federal Security Co.* (1927), 170 Minn. 92, 212 N. W. 171; *Standard Oil v. Day* (1924), 161 Minn. 281, 201 N. W. 410; *City of Marshfield v. United States Fidelity Co.* (1929), 128 Ore. 547, 274 P. 503.

¹³ *Fidelity and Deposit Co. v. Union State Bank* (1927), 21 F. (2d) 102.

¹⁴ *White v. Beem* (1881), 80 Ind. 239.

¹⁵ 47 Stat. 70 (1932), 29 U. S. C. §§ 101-115.

² State statutes similar to the Federal Act have been adopted in Indiana (*Burns Ind. Stat. Ann.*, 1933, §§ 40-501ff), Colorado, Idaho, Louisiana, Maryland, Massachusetts, Minnesota, New York, North Dakota, Oregon, Utah, Washington, and Wisconsin. Several other states have restrictive statutes of narrower scope.

³ *Lauf et al v. E. G. Shinner & Co.* (1938), — S. Ct. —.

⁴ The majority opinion found it necessary to cite only one authority for its result, simply stating, "There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."

⁵ Recent indications had pointed to this result. The Supreme Court had upheld the Wisconsin statute in *Senn v. Tile Layers Protective Union* (1937), 301 U. S. 468, 57 S. Ct. 857. The lower Federal courts had consistently upheld the Act, as had the majority of state courts in passing upon the validity of their statutes. See, for example, *Levering & Garrigues Co. v. Morrin* (CCA,

Unfortunately, the interpretation of the statute can not be so easily resolved as was its validity. The Act contains several phrases, the interpretation of which can make the Act confer broad freedom on laborites or can make it a practical nullity.⁶ The meaning of "labor dispute,"⁷ for example, is of vital concern. The employment relation is the basis of the whole problem, and yet the term "dispute" can not be limited by a simple definition of that relation without undermining the purpose of the Act. The difficult cases and the real problems arise where the employment relationship and the dispute do not coincide—before employment has commenced, after employment has terminated, and during employment when no dispute exists between employer and employee.

There has been no case directly on the question of a labor dispute arising before employment has begun. The disposition of the cases involving cessation of employment indicate that it will be held that no dispute exists when one who has never employed anyone is picketed to induce him to employ labor.⁸ Where, however, employment is contemplated, it seems possible that a dispute could exist before the employment relation is formally commenced.

The effect of termination of the employment relation has confronted the courts on several occasions. In two cases where the employer discharged all of his men and did the entire work himself, courts have held that no labor dispute could exist even though unions picketed to force the re-employment of union men.⁹ These decisions seem sound. While it is unnecessary, according

2d, 1934), 71 F. (2d) 284, cert. denied (1934), 293 U. S. 595; *Cinderella Theatre Corp. v. Sign Writers Local* (E. D. Mich., 1934), 6 F. Supp. 164; *United Electric Coal Cos. v. Rice* (CCA, 7th, 1935), 80 F. (2d) 1, cert. denied (1936), 297 U. S. 714; *Local Union No. 26 v. City of Kokomo* (Ind., 1937), 5 N. E. (2d) 624; *Schuster v. Int. Ass'n. of Machinists* (Ill., 1938), 12 N. E. (2d) 50; *Dehan v. Hotel and Restaurant Employee etc. Union* (La., 1935), 159 S. 637; *Starr v. Laundry and Dry Cleaning Workers Union* (Ore., 1936), 63 P. (2d) 1104; *American Furniture Co. v. I. B. of T. C. & H. of A.* (Wis., 1936), 268 N. W. 250. *Contra: Blanchard v. Golden Age Brewing Co.* (1936), 188 Wash. 396, 63 P. (2d) 397.

⁶ The advocates of the Act were well aware of this possibility from the fate of the anti-injunction section of the Clayton Act (29 U. S. C. § 52), hailed at the time of its passage as a magna charta of the rights of labor, but whose supposed advantages vanished under a series of restrictive decisions. For an excellent general discussion of this development, see Frankfurter and Greene, *The Labor Injunction*, (1930). The new Act was carefully phrased to avoid the doctrine of the restrictive decisions. (See *infra*, notes 14, 15.)

⁷ The Act is confined to the issuance of an injunction in cases involving or arising out of a labor dispute, and provides that: "The term labor dispute includes 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, regardless of whether the disputants stand in the proximate relation of employer and employee." Further provisions describe what persons or groups may become parties to labor disputes in broad terms. (29 U. S. C. § 113.)

⁸ *Thompson v. Boekhout* (1937), 273 N. Y. 390, 7 N. E. (2nd) 674; *Jensen v. St. Paul M. P. O. Union* (1935), 194 Minn. 58, 259 N. W. 811.

⁹ *Thompson v. Boekhout* (1937), 273 N. Y. 390, 7 N. E. (2nd) 674; *Jensen v. St. Paul M. P. O. Union* (1935), 194 Minn. 58, 259 N. W. 811. One other case reached a similar result where members of the family aided with the work. *Luft v. Flove* (1936) 270 N. Y. 640, 1 N. E. (2nd) 369. Where the employer did only part of the work, and union men objected to this practice,

to the provisions of the statute, that the disputants stand in the proximate relation of employer and employee, the very essence of the problems toward which the Act was directed is an employment relation. Consequently, unless each person alleged to be a party to a labor dispute falls within the general classification of an employer or an employee, the Act should be held inapplicable.¹⁰ There is justification for holding that a temporary discontinuance of business, especially if it resulted from a strike or lockout arising out of a labor dispute, does not terminate the relation for purposes of the Act;¹¹ to rule otherwise would be to emasculate the Act.¹² However, where there is clear proof of a permanent cessation of business, it does not seem possible that a dispute within the meaning of the Act could exist.¹³

Perhaps the most difficult problems to resolve are those involving situations where an employment relation exists, but where there is no dispute between the parties to the relation. The Act expressly provides that a dispute may exist "regardless of whether the disputants stand in the proximate relation of employer and employee."¹⁴ In the teeth of this statutory language, the Circuit Court of Appeals for the Seventh Circuit held that no labor dispute could exist between two labor unions where there was no immediate controversy as to terms or conditions of employment.¹⁵ In disposing of the case now under discussion, that same court held that no labor dispute existed where outsiders picketed a place of business whose employees had no dispute with their employer.¹⁶ Such decisions are strongly reminiscent of the judicial treatment of the Clayton Act. The Supreme Court, in reversing the last-mentioned decision, has indicated that, like the majority of other courts which have passed on the problem, it is willing to give the Act a broad construction.¹⁷ The situation is one of no little difficulty. The court is, in effect,

a labor dispute was held to exist in *Senn v. Tile Layers Protective Union* (Wisc., 1936), 268 N. W. 270.

¹⁰ See *New Negro Alliance v. Sanitary Grocery Co.* (D. C., 1937), 92 F. (2d) 510. There defendants were a racial group picketing to force employment of members of that race; it was held that no labor dispute existed.

¹¹ *Michaelson v. U. S.* (1924), 266 U. S. 42, 45 S. Ct. 18.

¹² Note that this result is accomplished in the National Labor Relations Act by express definition. 49 Stat. 450, 29 U. S. C. § 152.

¹³ But see *Diamond Hosiery Co. v. Leader et al.* (E. D. Pa., 1937), 20 F. Supp. 467. There a dispute was found to exist after a factory had been sold and partially dismantled. The soundness of the decision is questionable.

¹⁴ 29 U. S. C. § 113. This provision of the Act was obviously intended to prevent recurrence of a limiting formula adopted by *Duplex Printing Press Co. v. Deering* (1921), 254 U. S. 443, 41 S. Ct. 172, a leading case under the Clayton Act.

¹⁵ *United Electric Coals Co. v. Rice* (CCA, 7th, 1935), 80 F. (2nd) 1, cert. denied (1936), 297 U. S. 714. Contra: *Cole v. Atlanta Terminal Co.* (N. D. Ga., 1936), 15 F. Supp. 131. Note, in contrast, the broad provision of the Act (cited *supra*, note 7) which sought to circumvent the restrictive interpretation placed by *Vonnegut Mach. Co. v. Toledo Mach. & Tool Co.* (1920), 263 F. 192 on "A dispute concerning terms or conditions of employment," the comparable Clayton Act provision.

¹⁶ *Lauf v. E. G. Shinner & Co.* (CCA, 7th, 1936), 82 F. (2nd) 68.

¹⁷ Holding a labor dispute to exist: *Cinderella Theatre Co. v. Sign Painters Local* (E. D. Mich., 1934), 6 F. Supp. 164; *Geo. B. Wallace Co. v. Int. Ass'n. of Mech.* (Ore., 1936), 63 P. (2d) 1090; *American Furniture Co. v. I. B. of T. C. & H. of A.* (Wisc., 1936), 268 N. W. 250; *Miller Parlor Furniture Co. v.*

asked in the name of protecting labor's freedom of organization to sanction picketing which attempts to exert influence through an employer or other workers who have exercised their own freedom of choice to reject the picketing organization. The paradoxical conflict is even more accentuated when the business is subject to the National Labor Relations Act,¹⁸ so that the employer is forbidden by law to interfere with the organization of his men, and is compelled to bargain exclusively with representatives of their majority.¹⁹ Nevertheless, the view adopted by the Supreme Court is preferable in that it recognizes the opportunity to acquaint others with the contentions in a peaceable manner without regard to the merits of those contentions.

Finally, there are some related problems to be decided after finding the existence of a labor dispute. For example, do the limitations of the Act apply when relief is sought by some party outside the dispute? Inasmuch as the Act gives protection to the specific practices in furtherance of a dispute and is expressly worded to include "any case involving or growing out of a labor dispute," relief should be denied even though an outsider suffers consequential injuries.²⁰ One step farther than this is the secondary boycott situation wherein pressure is brought on outsiders in an effort to force the disputant to yield.²¹ The operation of the Act on these problems is unsettled.

D. M. C.

Furn. Workers Ind. Union (D. N. J., 1934), 8 F. Supp. 209; L. I. Coryell & Son v. Petroleum Workers Union (D. Minn., 1936), 19 F. Supp. 749; Dean v. Mayo (W. D. La., 1934), 8 F. Supp. 73; Shuster v. Int. Ass'n. of Machinists (Ill., 1937), 12 N. E. (2d) 50. Holding a labor dispute not to exist: Lauf v. E. G. Shinner & Co. (CCA, 7th, 1936), 82 F. (2nd) 68; Donnelly Garment Co. v. Int. Fed. Garment Workers Union (1937), 21 F. Supp. 807; Safeway Stores v. Retail Clerks Union (1935), 184 Wash. 322; 51 P. (2nd) 372; Feller v. Local Union No. 144 (N. J., 1937), 191 A. 111 (statute somewhat different); Culinary Workers Union v. Fuller (Tex., 1937), 105 S. W. (2nd) 295 (statute also different).

¹⁸ 49 Stat. 450, 29 U. S. C. § 152. Note that the two Acts are overlapping rather than concurrent in scope. The Wagner Act applies to businesses affecting interstate commerce; the Norris-LaGuardia Act applies to all actions in the Federal courts.

¹⁹ In three cases, the policy of the Wagner Act has been argued as a modification of the Norris-LaGuardia Act in making unlawful any picketing which sought to oppose the organization desires of the majority of the employees. Two decisions (by the same judge) turned down that argument; *Grace v. Williams* (W. D. Mo., 1937), 20 F. Supp. 263; *Cupples Co. v. A. F. of L.* (E. D. Mo., 1937), 20 F. Supp. 894. The third case reached the opposite result: *Oberman & Co. v. United Garment Workers* (W. D. Mo., S. D., 1937), 21 F. Supp. 20.

²⁰ Assuming that those injuries would support an action in the absence of statute.

²¹ The majority of courts have held, in the absence of statute, that a secondary boycott was unlawful both as to the person picketed and as to the other disputant. The working of the statute is broad enough to cover secondary boycotts, but the great aversion of the courts to this practice may prevent such a construction. The New York courts have held that under the comparable New York statute neither the disputant nor the outsider who was picketed could get relief so long as the picketing was primarily directed toward the disputant even though the outsider's place of business was used as the locale; but where the pressure was primarily upon the outsider, even though in an attempt to strengthen the fight against the disputant, it was coercive and unlawful. *Goldfinger v. Feintuch* (1937), 276 N. Y. 281, 11 N. E. (2nd) 910;