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Labor Law: Constitutionality of State Statutes Compelling Arbitration of Labor Disputes

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COMMENTS

CONSTITUTIONALITY OF STATE STATUTES COMPELLING ARBITRATION OF LABOR DISPUTES

One of the most controversial methods of settling labor disputes yet contrived has been compulsory arbitration. Generally, that system involves the establishing of an impartial board of arbitrators which, after collective bargaining proves futile, decides the issues involved and makes them binding on the disputing parties. Since the end of World War II, statutes providing for compulsory arbitration of labor disputes in public utilities have been enacted in eleven states.[1] In their essence, very little difference is to be found in the provisions. All provide a machinery of compulsory arbitration, generally preceded by an attempt at conciliation, and provide a sanction for their enforcement. Of course, with the passage of these acts, questions immediately arise relative to the constitutionality of the provisions therein. Consequently, a discussion involving the limitations imposed by the Constitution is deemed timely.

A review of the recent cases on this issue, of which there are relatively few in number, reveals that one of the arguments most frequently presented is based on the Thirteenth Amendment.[2] The contentions are that the statutes as applied impose a form of compulsory service or involuntary servitude in that the sanctions therein are applied not to the quitting of any individual employee, but to the quitting in concert. The position is taken that what is lawful for one man to do individually, cannot become unlawful because a group does it in simultaneous action. However, in *Van Riper v. Traffic Telephone Workers Federation,* a New Jersey court decided that this distinction was vital, a strike being an entirely different act from individual resignation.[3] The court went on to say that the rights secured by the Constitution are secured to individuals and not to classes. It was observed that the statute nowhere provides any punishment for an individual who decides not to work under the agreement reached by compulsory arbitration. The individual employee may surrender his employment at any time,

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[1] *Florida,* Laws of Fla., 1947, General Laws, Vol. I, c. 23911; *Indiana,* Act of 1947, Vol. II, c. 341, p. 1355; *Michigan,* Public Acts, 1947; *Minnesota,* Laws of Minn., 1947, c. 335; *Missouri,* Laws of Mo., 1947, Vol. I, p. 348; *Nebraska,* Laws of Neb., 1947, Leg. Bill 349; *New Jersey,* N.J. Statutes Ann., Permanent Edition, Title 34, Labor and Workmen's Comp., 1947; *Pennsylvania,* Laws of Penn., Vol. II, 1947, No. 485, p. 1161; *Texas,* General and Special Laws, Reg. Sess., 1947, c. 84; *Virginia,* Acts of Assembly, 1947, c. 9; *Wisconsin,* Wis. Stat., Vol. I, c. 111, 1947.

[2] U.S. CONST., Art. XIII, § 1: "Neither slavery nor involuntary servitude . . . shall exist within the United States. . . ."

[3] Van Riper v. Traffic Telephone Workers Federation, 142 N.J. Eq. 185, 61 A. (2d) 570 (1948).

which in and of itself preserves the liberty guaranteed by the Constitution.

Much of the legal attack on compulsory arbitration has centered around the Fourteenth Amendment of the Constitution. Three specific theories have been advanced. Firstly, it is contended that the statutes interfere with the employees' liberty of contract without due process of law.[4] Much of the argument here seeks to establish that due process of law is denied employees of public utilities by that part of these state laws that compels them to make contracts with the employer on terms decided upon by a state board, thereby denying them the right to make a contract on a bargaining basis. In the early *Adair v. United States*[5] and *Coppage v. Kansas*[6] cases the doctrine was enunciated that the due process clause precluded the states from fixing terms of employment. In 1923, the Supreme Court in the historic *Charles Wolff Packing Co.* case again construed the due process clause as forbidding state legislation to fix hours and wages. In the latter case, the Court relied on a distinction between businesses according to whether they were or were not "clothed with a public interest."[7] But, beginning with the case of *Nebbia v. New York,* the concept of public interest has undergone a marked change.[8] In discarding the public interest test, the Court in the *Nebbia* case stated that the phrase "affected with a public interest" can mean no more than that an industry, for adequate reason, is subject to control for the public good. Consequently, in *Lincoln Federal Labor Union v. Northwestern I. and M. Co.,* it was said that the due process clause is no longer to be so broadly construed that the state legislatures are put in a strait jacket when they attempt to legislate against what are found to be injurious practices in their internal commercial and business affairs and which they regard as offensive to the public welfare.[9] It is hardly conceivable that legislation of this type would not have the effect of promoting the public health, safety, and morals. Certainly the progress of invention, the development of transportation, and the growth of large-scale production has made our modern industrial society an increasingly complex interdependent

[4] U.S. CONST., Art. XIV, § 1: ". . . nor shall any State deprive any person of life, liberty, or property without due process of law. . . ."

[5] Adair v. United States, 208 U.S. 161, 28 S. Ct. 277, 52 L.Ed. 436 (1908) (employers had the constitutional right to discriminate against union members through the use of "yellow dog" contracts).

[6] Coppage v. State of Kansas, 236 U.S. 1, 35 S. Ct. 240, 59 L.Ed. 441 (1915) (a state law banning "yellow dog" contracts was invalid).

[7] Charles Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 43 S. Ct. 630, 67 L.Ed. 1103, 27 A.L.R. 1280 (1923).

[8] Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1495 (1933); *accord,* West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L.Ed. 708, 108 A.L.R. 1330 (1936).

[9] Lincoln Federal Labor Union v. Northwestern Iron and Metal Co., 69 S. Ct. 251 (1949).

entity. The change to a predominantly urban and industrial nation has resulted in an economic structure in which each part is dependent on every other. Without a doubt, public utilities are one of those essential parts. Recognizing this fact, the Court in *Van Riper v. Traffic Telephone Workers Federation* held that a strike stopping or threatening to stop the operation of a public utility is clearly within the power of the state to prohibit.[10]

The second objection, on the basis of the Fourteenth Amendment, is that the employee has been deprived freedom of speech by being restrained from exercising his right to picket and strike. This argument undoubtedly falls within the doctrine that the Fourteenth Amendment includes within its protection those fundamental rights that are embodied in the first eight amendments,[11] with freedom of speech classified as one of those fundamental rights.[12] The right to strike and the right to picket are necessarily embodied in the broader constitutional guarantee of freedom of speech. However, the Supreme Court has repeatedly said that neither the common law, nor the Fourteenth Amendment confers the absolute right to strike.[13] Within limits, workers may organize for lawful purposes. They may engage in peaceful picketing and they may strike to accomplish lawful ends. But again, all these rights and all the constitutional guarantees are subject to regulation under the police power of the state, in the interest of the public welfare.[14]

Thirdly, it is claimed that the employees of a public utility, by reason of their employment, have been denied equal protection of the laws.[15] That the employees of a public utility are but a segment of a national labor organization and that as individuals they are cogs in the huge economic wheel in the same manner as any laborer in another business, are propositions not to be denied. It has long been recognized, however, that it is valid to place employees of a public utility in a separate class from other employees for purposes of regulation.[16] The public utility, as a private enterprise, has necessarily been subjected to the regulation and control of the state. It is reasonable to place corresponding limitations on the rights of employees where such employment

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[10] *Supra,* note 3.
[11] Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L.Ed. 158, 84 A.L.R. 527 (1932).
[12] Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L.Ed. 1093 (1939).
[13] Dorchy v. State of Kansas, 264 U.S. 286, 47 S. Ct. 86, 71 L.Ed. 248 (1924); *approved,* International Union v. Wisconsin Employment Relations Board, 69 S. Ct. 516 (1949).
[14] United Gas Workers v. Wisconsin Employment Relations Board, Wis. Circuit Court, Milwaukee County, 23 L.R.R.N. 2243 (1948); *cf.* Lincoln Federal Labor Union v. Northwestern Iron and Metal Co., *supra,* note 9.
[15] U. S. CONST., Art. XIV, § 1: ". . . nor shall any state deny to any person within its jurisdiction the equal protection of the laws."
[16] Wilson v. New, 243 U.S. 332, 37 S. Ct. 298, 61 L.Ed. 755 (1917).

is accepted in a business charged with a public interest. Natural persons are as necessary as capital to keep utility services flowing freely to the public. It is that responsibility and public duty that has made the classification reasonable.[17]

A further major argument advanced, that the legislature unlawfully delegated legislative power, is based on the division of powers doctrine which is applicable to both our federal and state systems of government. Only on one occasion have these statutes been successfully attacked on this ground. The Supreme Court of Michigan held that their statute was unconstitutional insofar as it provided for a circuit judge to be chairman of the board of arbitrators.[18] It was there considered that such was a conferring of administrative and non-judicial powers and duties upon a judicial officer in violation of the state constitution. Generally, however, it is accepted that legislative power is not unconstitutionally delegated to a board of arbitration. Adequate standards are provided and as the New Jersey Court has stated, the statutes imply that the board fix just and reasonable wages and conditions of employment, such standards being as definite as the subject matter permits.[19] None of the statutes delegate the power to make a law.

In the recent *Lincoln* case it was said that the United States Supreme Court "has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some valid federal law."[20] This brings us to the remaining consideration whether there is any conflict in the state acts and the National Labor Relations Act.[21] The question becomes significant, inasmuch as most, if not all, of the enterprises affected by the states acts would come within the doctrine laid down in the *Shreveport* case, to the effect that Congress can reach admittedly local and intrastate activities having such a close and substantial relation to interstate traffic that their control is essential to the security, efficiency, and maintenance of that traffic.[22]

Section 10(a) of the Taft-Hartley Act provides in part that the National Labor Relations Board can cede jurisdiction to a state agency in cases involving the transportation industry which are predominantly local in character, "unless the provisions of the state statute applicable to the determination of such cases by such agency is inconsistent with

[17] *Supra,* note 3.
[18] Local 170, Transport Workers Union of America v. Gadola, 322 Mich. 332, 34 N.W.(2d) 71 (1948).
[19] *Supra,* note 3.
[20] *Supra,* note 9.
[21] Colloquially known as the Wagner Act, amended by the Taft-Hartley Act, 1947, 61 Stat. 136, 29 U.S.C. sec. 141 et seq., 29 U.S.C.A. sec. 141 et seq.
[22] Houston, E. and W.T.R. Co. v. United States, 234 U.S. 342, 34 S. Ct. 833, 58 L.Ed. 1341 (1913).

the corresponding provision of this Act or has received a construction inconsistent therewith.[23] Section 13 of the Act reads "nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."[24] The import of Section 10(a) indicates that it was designed in part to preclude inconsistent action on the part of a state. But section 13 has provided an exception to that objective. The intent, evidently, was to expressly permit the limiting of the right to strike, it being understood that such limiting must also be within constitutional confines. Therefore, it would seem that the state's right to enact regulations in the exercise of its police power is expressly recognized even though the field may be one in which there is concurrent jurisdiction.

Section 8(a)(5) of the Taft-Hartley Act has made the refusal to bargain collectively, in good faith, an unfair labor practice.[25] Undoubtedly the attempt thereby was to encourage collective bargaining. The question thus arises, whether the compulsory arbitration statutes do not inject into the minds of the negotiating parties the feeling that they need not negotiate in good faith, but can squeeze the other party into arbitrating their differences, the result being to discourage bargaining on a good faith level.[26] If that argument can validly be developed, the result would be to violate the spirit or to negative the affirmative policy of the Taft-Hartley Act. Some light is thrown on the subject in *Hill v. Florida*.[27] There, a Florida statute required a license for business agents of labor unions, prescribed their qualifications, and made the issuance of the license depend upon a determination that they possessed these qualifications. The statute also provided for criminal and injunction proceedings for the violation thereof. An employer had refused to bargain with a duly selected representative of workers on the ground that the representative had not secured a Florida license as a business agent. The Supreme Court held that statute repugnant to the National Labor Relations Act. The Court said that the operation of the statute had interfered with the collective bargaining process, where the declared purpose of the National Labor Relations Act is to encourage collective bargaining. The interference resulted from the sanction pro-

[23] *Supra*, note 21, sec. 10(a).
[24] *Supra*, note 21, sec. 13.
[25] Sec. 8(a) (5) states: "It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees."
[26] This point is raised in a report by the Labor Committee of the Twentieth Century Fund, "Strikes and Democratic Government" (1947) 20-31, reprinted in Gregory and Katz, "Labor Law: Cases, Materials and Comments," at p. 1257. It was suggested that government compulsion methods might give rise to dangerous interference with the process of collective bargaining since it might well be that one party or the other would prefer government interference to an acceptance of the other party's proposal.
[27] Hill v. Florida, 325 U.S. 538, 65 S. Ct. 1373, 89 L.Ed. 1782 (1944).

visions of the statute which bring about a situation inconsistent with the federally protected process of collective bargaining. It was reasoned that if the union or its representatives acted as bargaining agents without securing the required license, presumably they would be liable to criminal prosecution and to punishment for contempt of court in failing to comply with the injunction decree. Such would be a denial of free bargaining processes. Whether the apparent squeeze one party can put on the other by failing to subjectively bargain in good faith, and thereby bring into being the compulsory arbitration machinery, will amount to such an obstacle to collective bargaining as to be inconsistent with the Federal Act, is a matter yet to be judicially resolved. However, it would seem that the *Hill* case would serve as valid precedent for the party attacking the statutes.

The cost of permitting management and labor to freely fight out their differences is bound to be heavy, even though collective bargaining is made to work more effectively than in the past. The price of compulsory peace, however, may be as great or even greater. This will be particularly true, if, as both industrialists and labor leaders fear, it results in political regulation of wages, prices, and other phases of the economy. Coolness and caution appear to be cardinal virtues in this area of legislation. It is to be remembered that the serious strike situation of 1946 was essentially the result of cut-backs in take-home earnings, rising prices, shortages in essential labor and materials, and many other elements. When the economy has once again returned to a reasonable balance, a more normal type of collective bargaining will return. Possibly it would prove expedient to try voluntary collective bargaining a little longer in the field of labor disputes.

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