Marquette Law Review

Volume 31
Issue 2 *September 1947*

Article 14

1947

Labor Law: Restrictive Measure

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Repository Citation
William Hansberry, *Labor Law: Restrictive Measure*, 31 Marq. L. Rev. 189 (1947).
Available at: https://scholarship.law.marquette.edu/mulr/vol31/iss2/14

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Labor Law — Restrictive Measure — The defendant, head of the Federation of Musicians, was charged by information with violation of the *Lea Act*,[1] for attempting to compel and coerce a licensed radio station to employ additional persons not needed by the station to perform actual services. The coercion was allegedly accomplished by: 1) directing three musicians of the Chicago Federation of Musicians, employed by the radio station, to discontinue their employment. 2) By directing said musicians, and other members of the Chicago Federation of Musicians, not to accept employment at said radio station. 3) By placing a picket in front of the radio station.

> Pertinent section of the act — 506 (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee —
>
> "(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services;

Defendant moved to dismiss on the ground that the Lea Act, on which the information was based, (a) Abridges freedom of speech in contravention to the First Amendment; (b) Is repugnant to the Fifth Amendment, because it defines a crime in terms that are vague, and denies equal protection of the law; (c) Imposes involuntary servitude in violation of the Thirteenth Amendment. The district court held for the defendant on the above stated grounds, holding the Lea Act violative of the First, Fifth, and Thirteenth Amendments. *Held:* Reversed. (1) The language of the Act is not too vague and does provide an adequate warning as to what conduct falls under its ban. (2) The contention that the Lea Act denies equal protection of the laws to radio employees as a class cannot prevail, as it is not within the court's province to say that because Congress has prohibited some practices within it's power to prohibit, it must prohibit all within it's power. (3) The contention that the statute abridges freedom of speech, by making peaceful picketing a crime, is not properly before the court since the District Court ruled on the statute as it was proposed to be applied, by the information as it then read, rather than holding the statute as written to be an unconstitutional violation of the First Amendment. *"United States v. Petrillo* 67 S. Ct. 1538 U. S. 1947."

It must be noted that the instant case passed only on the constitutionality of the statute on it's face. The court indicated however, that the information as worded by the plaintiff could cause the statute to

[1] 60 Statute 89.47 U.S.C.A. Section 506.

be applied so as to violate the constitutional rights of the defendant The act itself is not unconstitutional for this reason as a rule of statutory construction,[2] and because the plaintiff can amend the information to bring it within the scope of the defendant's constitutional guaranties.[3] Nor does the statute mention picketing, peaceful or violent, and objection to the statute on the ground that the information charges coercion by picketing does not reach the question of the constitutionality of the statute.

The constitutionality of the statute was put in issue by the motion to dismiss on the ground that the statute was repugnant to the due process clause of the Fifth Amendment because its words, "Number of employees needed by such licensee," are so vague that persons of ordinary intelligence cannot in advance tell whether a certain action, or course of action, would be within its prohibition. In holding the statute sufficiently definite, the court reaffirmed its position that the possibility of marginal cases, in which it is difficult to determine the side of the line on which a particular fact situation falls, is insufficient reason to hold the language too ambiguous to define a criminal offense.[4] A standard of what constitutes "needed employees" was not set down, it being held that this must be decided in light of all the evidence.

In holding that the statute does not violate equal protection, the court held as previously held,[5] that if Congress believes that there are employee practices in the radio industry which injuriously affect interstate commerce, and directs its prohibition against those practices, the court cannot set aside its legislation even if it was persuaded that employer practices also required regulation.

The decision of the case leaves the determination o fthe number of persons needed to operate a radio station to be decided by the evidence. It is respectfully submitted that justice would be more ably served and vagueness avoided, if a norm or scale of the necessary operating staff would be established. As the law stands, a difference of opinion between employer and labor leader, as to the number of necessary personnel, and an attempt by the labor leader to act on his opinion subjects him to the penalty of a criminal offense. The alternative is to allow the employer's estimate, of needed personnel to be conclusive. The court has stated that the employer's estimate is not conclusive, but has left no alternative to the defendant but to submit to such estimate or to subject himself to criminal liability by acting in disagreement of said estimate.

It is interesting to note that the so-called Taft Hartley bill became law while the instant case was being decided. The two laws are similar

[2] Rescue Army v. Municipal Court 67 S.Ct. 130 (1947).
[3] Rules of Criminal Procedure, 7 (D), 18 U.S.C.A.
[4] Robinson v. U.S. 324 U.S. 282 (1944).
[5] National Labor Relations Board v. Jones & Laughlin Steel Corp. 301 U.S. 1.

in many respects, the Lea Act a bit more drastic as it exposes a violator to criminal liability whereas the Taft-Hartley law[6] makes the coercion of an employer to employ men not needed, an unfair labor practice. The Lea Act applies only to the radio industry whereas the later Taft law purports to cover all industries. It further appears that the later law will affect the radio industry also, especially the union practice of requiring standby employees to be paid to standby while an amateur unit is performing. The applicable section of the later law states: "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed, or not to be performed." The violation of the foregoing section is considered an unfair labor practice, and this would appear more equitable than the Lea Act in that a union head could make an attempt to have more men employed without risking criminal liability. In this way, the employers theory of the number of employees necessary would not be the only determining factor as to that number.

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[6] Labor Management Relations Act 1947-8 (b) (6).