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COMMENT

LABOR UNIONS AND THE FEDERAL ANTI-RACKETEERING ACT

In a recent decision¹ the United States Supreme Court had occasion to construe the provisions of the Federal Anti-Racketeering Act of June 18, 1934,² in respect to their application to labor organization. If the reasoning of the decision had been limited to the precise requirements of statutory construction, it is quite likely that the attention it provoked would have been correspondingly limited. The Court, however, proceeded to elaborate upon the issues there involved and the result has been a highly interesting study of the judicial temperament that may prevail in similar and allied situations as they arise in the future. The corollaries which flow from this decision, and which go to the very heart of our crucial labor problem today, are deserving of comment.

The facts can be briefly stated. The defendant labor union and twenty-six individuals were indicted, tried and convicted on charges of conspiracy to violate the Anti-Racketeering Act.³ The proof established that the individual defendants and the defendant union (which included in its membership nearly all of the motor truck drivers in New York City) by use of violence and threats obtained from out-of-state truck owners certain stipulated amounts for each

1. *United States v. Local 807, of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al.*, 314 U. S. , 62 Sup. Ct. 642 (1942). (Hereinafter referred to as *Local 807*.)

2. 48 STAT. 979, 18 U. S. C. A. § 420-a (Supp. 1934). The Statute provides that *any person* who, in connection with or in relation to any acts affecting trade or commerce, obtains or attempts to obtain by use of or threat to use force, violence or coercion, the payment of money or other valuable considerations, not including, however, *the payment of wages of a bona fide employer to a bona fide employee*, shall, upon conviction thereof, be guilty of a felony. (Italics added.) (Hereinafter referred to as the Act.)

3. See note 2 *supra*.

truck entering the city. Such amounts represented the regular union rates for a day's work of driving and unloading. In some cases the defendants rendered services for the money received; in other cases the money was demanded and obtained but the defendants' proffer of services was rejected; and in still other cases it appeared that the defendants either failed to offer or refused to work for the money when asked to do so.⁴ The Circuit Court of Appeals reversed the conviction⁵ on the ground that the trial court had failed to instruct the jury properly with respect to the exemption provision of the Act,⁶ and the case was heard by the United States Supreme Court on cross petitions of *certiorari* to review the judgment.

The Government contended that the proper test of the defendants' guilt under the Act⁷ was whether, under all the circumstances, the money had been paid for *labor or protection*. In rejecting this construction of the Act,⁸ the Supreme Court, speaking through Justice Byrnes,⁹ held that "the state of mind of the truck owners cannot be decisive of the guilt of these defendants . . . their guilt is determined by whether or not their purpose and objective was to obtain 'the payment of wages by a bona fide employer to a bona fide employee.'"¹⁰ The Court further held that the statutory exemption "is not restricted to a defendant who has attained the status of an employee prior to the time at which he obtains or attempts or conspires to obtain the money."¹¹

4. Local 807, at 644.

5. *United States v. Local 807*, 118 F. (2d) 684 (C. C. A. 2d 1941). Hand, J., dissented, in part, on the ground that the money received by the defendants was not in "payment of wages" and hence did not fall within the exceptions of the Statute. *Id.* at 690.

6. See note 2 *supra*.

7. *Ibid.*

8. *Ibid.*

9. The court voted five to one for affirmation of the judgment of the Circuit Court of Appeals, Stone, Ch. J., dissenting. Roberts, J., and Jackson, J., took no part in the consideration or decision of the case.

10. Local 807, at 646. In his dissenting opinion, Chief Justice Stone wrote: "It is no answer to say that the guilt of a defendant is personal and cannot be made to depend upon the acts and intentions of another. Such an answer if valid would render common law robbery an innocent pastime." *Id.* at 650. The majority answered this criticism by asserting that "this objection mistakes the significance of this requirement of proof in the case of robbery . . . The prosecutor must first establish a criminal intent upon the part of the defendant and he must then make a further showing with respect to the victim's state of mind." *Id.* at 647.

It is difficult to accept the majority's argument unless one is willing to concede that a *bona fide* employer-employee relationship can come into existence when one of the parties actively resists its formation, but is compelled to yield not through the use of peaceful economic sanctions but as a result of threats of violence to his employees and destruction of his property. In the absence of a contractual intent on the part of the so-called employers to hire the defendants in the instant case, it follows that any payments made to them cannot be called wages, and it was for the jury to determine their object and nature, as the dissent contends. *Id.* at 651.

11. *Id.* at 646.

It was the Court's opinion that a contrary holding would place too narrow a construction upon the Act,¹² as, "it does not except '*a bona fide employee* who obtains or attempts to obtain the payment of wages from a bona fide employer,'" but "rather, it excepts '*any person* who . . . obtains or attempts to obtain . . . the payment of wages from a bona fide employer to a bona fide employee.'"¹³ In adopting this view the Court expressed agreement with the Circuit Court of Appeals¹⁴ that "'practically always the crux of a labor dispute is who shall get the job and what the terms shall be . . .'"¹⁵

It will be observed that the Court's decision rests upon three basic premises: (1) that there was a labor dispute;¹⁶ (2) that there were jobs available for the defendants; and (3) that employees who secure such jobs in the manner disclosed by the evidence are "bona fide" employees as required by the exemption provisions of the Act.¹⁷ In respect to the first premise, while it may appear extreme to hold that the unilateral activities of the defendants, in the principal case, constituted a "labor dispute", there exist precedents which broaden the definition of that term to an even greater degree.¹⁸ The second premise is rendered of doubtful validity in view of the proof that the services imposed upon the unwilling employees were rejected by them.¹⁹ The third

12. See *supra*, note 2.

13. Local 807, at 646. (Italics by the Court.)

14. *United States v. Local 807*, 118 Fd. (2d) 684, 686 (C. C. A. 2d, 1941).

15. Local 807, at 646.

16. In reference to this question, the Court said that "to exclude this entire class of disputes from the protection of the exception would be unjustifiably to thwart the purpose of Congress as we understand it." Local 807, at 646.

17. See note 2, *supra*.

18. In *Fur Workers Union, Local No. 72 v. Fur Workers Union, No. 21238*, 105 F. (2d) 1 (C. C. A. D. C. 1939), the U. S. Court of Appeals for the District of Columbia held that a labor dispute existed where an employer's place of business was picketed by the appellant labor union to coerce employers and workers to rescind their contract with the appellee labor union to which every employee belonged although no influence had been exerted by the employer in favor of the appellee labor union. See also, *American Furniture Co. v. I. B. of T. C., et al.*, 222 Wis. 338, 268, N. W. 250 (1936); *Stillwell Theatre, Inc. v. Kaplan*, 259 N. Y. 405, 182 N. E. 63 (1932).

19. Local 807, at 644. A somewhat analogous, although clearly distinguishable, situation is presented by the cases arising under the Compulsory Pilotage Act (46 U. S. C. A. § 211). This Act grants authority to the various states to compel owners of incoming and outgoing vessels to take on a duly qualified pilot at a fixed rate of compensation irrespective of whether such pilot's services are desired by the owner or utilized by the Master of the vessel. By statutory fiat there is thus created an employer-employee relationship between the pilot and employer-owner without reference to the real contractual intent of the latter, and the former is permitted to recover his compensation for services rendered in *quasi* contract. *Steamship Co. v. Joliffe*, 2 Wall. 450 (U. S. 1864). The procedure here involved, being purely regulatory in nature, issues from sound public policy, the reasonableness of which is evidenced by its purpose, namely to promote the security of life and property.

premise is completely unacceptable when one recalls the infinite connotations of moral comportment which the term "bona fide" enjoys in the law.²⁰ Its acceptance would require one to affix such a label to any person who by illegal tactics succeeds in intimidating an employer to the extent of exacting from him a tribute in the form of compensation for unnecessary labor.

It is difficult to deny that the Court's decision might be used to protect activities not unlike those of "predatory criminal gangs of the Kelly and Dillinger types" at which the Act²¹ was aimed," or to agree that such activities are "among those practices of labor unions which were intended to remain beyond its ban."²² It is further difficult to believe that it was the purpose of Congress to clothe such conduct, as here shown, with statutory immunity and thus permit such practices to flourish unmolested.²³ The dissenting opinion by Chief Justice Stone is clearly right on principle when it asserts that, under the circumstances, the extorted money was not paid as wages but for protection.²⁴

In respect to the activities of those defendants who obtained the payment of money and thereafter refused to perform services, the Court brought them within the exemption provision of the Act²⁵ by likening their position to that of the "stand-by" musician who receives pay without rendition of services when relieved by a visiting musician.²⁶ As to this, the Court said in part: "If, as

20. For other definitions of the term "*bona fide*" see *Atlas Realty Corporation v. House*, 120 Conn. 661, 183 Atl. 9, 13 (1936); *M. Lowenstein & Sons v. British American Mfg. Co.*, 7 F. (2d) 51, 53 (C. C. A. 2d, 1925); *Stevens v. Union Graded School Dist. No. 2 of Canadian County*, 136 Okl. 10, 275 Pac. 1056, 1057 (1929). In these cases the Court required a showing of *honesty* and *good faith* on the part of one who sought to avail himself of the privileges accorded by the law to a *bona fide* litigant.

21. See *supra*, note 2.

22. Local 807, at 648. The reference by the Court to the Kelly and Dillinger types of gangs finds its origin in a report submitted to the Senate by Senator Copeland [SEN. REP. No. 1440, 73d Cong., 2d Sess. (1933)] in which he stated that the purpose of the Act was "to close gaps in existing Federal laws and to render more difficult the activities of predatory criminal gangs of the Kelly and Dillinger types." *Id.* at 645, 646.

23. In construing the legislative intent, the Court relied in part upon Sec. 420 d of the Act which provides that no Court of the United States shall construe the provisions of the Act so as to affect the rights of *bona fide* labor organizations in lawfully carrying out legitimate objectives. Local 807, at 648.

24. See note 10, *supra*. The rationale of the argument advanced by the dissenting opinion is set forth in the following excerpt: "Even though the procuring of jobs by violence is not within the Act, . . . the granted immunity, unless its words be disregarded, does not extend to the case where the immediate objective is to force the payment of money regardless of the victim's willingness to accept and treat the extortioner as an employee. It was for the jury to say whether such was the objective of respondents and whether they were aware that the money was paid because of their violence and not as wages." Local 807, Stone, Ch. J., dissenting at 650.

25. See note 2 *supra*.

26. The majority opinion of the lower court also referred to the analogy, but did not

it is agreed, the musician would escape punishment under this Act even though he obtained his 'stand-by job' by force or threats, it is certainly difficult to see how a teamster could be punished for engaging in the same practice."²⁷ It is submitted that the analogy offers little in support of the majority's reasoning, as actually the "stand-by" musician does not *obtain* a job in the sense that his employment is forced upon a reluctant employer who is a stranger to him; rather, is it that he seeks to *preserve* a job which belonged to him under a prior contract of employment. It will be perceived that this element is lacking in the instant case.

Directly opposed to the majority's reasoning in the *Local 807* case is the opinion of the New York Court of Appeals in *Opera on Tour, Inc. v. Weber*.²⁸ In that case, plaintiff was engaged in the presentation of operatic productions with the aid of orchestral music mechanically reproduced. The defendant union, in an effort to force plaintiff to employ live musicians, caused the members of the theatrical stage employees alliance to refuse services to plaintiff who thereupon brought injunction proceedings to restrain this interference in its business. It appeared that plaintiff had never employed live musicians. Special Term granted the injunction and the Appellate Division reversed.²⁹ Judge Finch, speaking for the Court of Appeals in a decision from which Lehman, Ch. J., and Loughran, J., dissented,³⁰ held that, in the absence of a labor dispute,³¹ it was an unlawful labor objective to coerce an employer to hire members of a union whose services were not required in the employer's business,³² and further that "when the labor objectives are illegal, the courts must control, otherwise there are bodies within our midst which are free from the provisions of the Penal Law."³³

Considered from both a legal and a social viewpoint, the principle announced by the Court of Appeals appears to be the more desirable.³⁴ By refusing to grant approval of coercive tactics by aspiring employees, there is upheld the right to freedom of contract on the part of the employer. Unfortunately, this result does not follow from the opinion in the *Local 807* case.

attempt to pass under its legality. *United States v. Local 807*, 118 F. (2d) 684, 687 (C. C. A. 2d, 1941).

27. *Local 807*, at 648.

28. 285 N. Y. 348, 34 N. E. (2d) 349 (1941).

29. 258 App. Div. 516, 17 N. Y. S. (2d) 144 (1st Dep't 1940).

30. The dissenting opinion held that the defendants' activities were within the "allowable area of economic conflict". *Opera on Tour, Inc. v. Weber*, 285 N. Y. 348, 372, 34 N. E. (2d) 349, 360 (1941).

31. In construing N. Y. CIV. PRAC. ACT § 876-a, the test of legality of objective, as laid down by the Court, is a showing by the defendants that their acts have a "reasonable connection with wages, hours of employment, health, safety, the right of collective bargaining, or any other condition of employment or for the protection from labor abuses." *Supra*, note 28 at 355.

32. *Supra*, note 28 at 356.

33. *Ibid.*

34. For a criticism of this decision, see (1941) 41 COL. L. REV. 1266.