IN THE DISTRICT COURT OF THE UNITED STATES WESTERN DIVISION
WESTERN DISTRICT OF MISSOURI

Donnelly Garment Company, a corporation, and Donnelly Sales Company, a corporation,

Plaintiffs,

-vs-

International Ladies' Garment Workers' Union, an Unincorporated Association, et al,

Defendants

Donnelly Garment Workers' Union, an Unincorporated Association, et al,

Interveners

In Equity No. 2924

Reed & Ingraham, Hogsett, Murray, Trippe and Depping for plaintiffs.

Mr. Frank P. Walsh, Mr. Roy W. Rucker and Mr. Jerome Walsh for defendant International Ladies' Garment Workers' Union, et al.

Mr. Clif Langsdale for resident defendants.

Gossett, Ellis, Dietrich and Tyler for Interveners.

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges.

VAN VALKENBURGH, Circuit Judge:

Plaintiffs are corporations, organized and existing under the laws of the State of Missouri, engaged in the manufacture and sale of ladies' garments and wearing apparel, under the trade-mark "Nelly Don". Said companies, as manufacturer and sales department, have built up a large market for said garments and a wide and profitable business throughout the States of the Union.

Plaintiffs in their amended bill have brought suit against the International Ladies' Garment Workers' Union, David Dubinsky, its president, several of its other officers, Meyer Perlstein, its southwest regional director, Wave Tobin, Manager of its Kansas City Joint Board, and various other members of the International Union, charging that said defendants are engaged in an unlawful confederation and conspiracy to force plaintiffs' employees to join the defendant Union, and to compel plaintiffs to force said employees to join defendant Union. That for years past the defendants, with other persons united with them, have been, and now are, engaged in a general combination and conspiracy to force all persons, firms, and corporations engaged in the manufacture and sale of ladies' garments in interstate commerce, including plaintiffs herein, to organize their employees into an organization to be art and parcel of the defendant Union with the intent thereby to control the employment of labor in, and the operation of, all said business, and to extort from said workers large sums of money by way of dues, fines, penalties and other

exactions; that, in order to carry out such conspiracy and scheme, it was and is the purpose to destroy the interstate trade and commerce of such persons, firms and corporations, their employees and customers in the several states, until such time as, from the damage and loss of business resulting therefrom, the said employers will yield to defendants' demands and force their employees to join the defendant Union and submit to the domination and control of the said Union and its officers, thereby denying to such employees the right to bargain for and fix their own wages and conditions of labor, in dealing with their employers, free from influence, domination and coercion.

It is further charged in the bill of complaint that defendants, in furtherance of said scheme and conspiracy, have organized bodies of lawless persons, not employees of the particular plant to be assaulted, and have caused said gangs to attack the employees of various plants, and to threaten them with great bodily harm if they continue to work and refuse to join the defendant Union; that said gangs have assaulted employees ho desired to continue their work, most of whom were women, with fists and weapons, tearing of hair, and stripping of clothing, and have threatened other physical harm t them and their families. Such employees have been assaulted on their way to and from work, and have, by violence and force, been prevented from, gaining ingress to and egress from their places of business. That in furtherance of said scheme and conspiracy defendants have published and circulated false and libelous reports about the plaintiff companies, and have taken steps to inaugurate secondary boycotts against their customers and their merchandise in various states of the Union; that unlawful acts of this nature have been done and perpetrated against several garment companies in Kansas City within the past few months, and similar reprisals against these plaintiffs have b an threatened.

The amended bill of complaint pleads that "this is a suit of a civil nature in equity, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000.00, and which suit arises under laws of the United States known as the Sherman Act and Clayton Act, including U. S. Code, sections 1, 4, 7, 8, 12, 15, and 26". It prays injunctive relief and protection from and against the alleged unlawful acts threatened.

For their protection the Donnelly Garment Workers' Union and employees of plaintiffs have filed a bill of intervention which is in full harmony with the relief prayed in the bill of complaint, but also seeks protection against coercion from any source, even against compliance of the Donelly companies with the demands of defendants, which would incidentally and necessarily impose upon these employees an association against their will. This bill of intervention challenges the constitutionality of the Norris-LaGuardia Act (29 U.S.C.A. 101 et seq.,), if it should be held to apply, in addition to asserting a denial of

its application.

Defendants generally have filed a motion to dismiss, and certain defendants have filed a motion to vacate the temporary restraining order, a plea in abatement and a separate answer. In this motion, plea and answer a number of grounds are stated; but it developed at the hearing, and was announced by counsel for defendants, that the real, if not the only, ground of defense relied upon was the contention that the Norris-LaGuardia Act applies, and deprives this district court of jurisdiction.

The injection of the constitutional issue by the petition of intervention required submission to a court composed of three judges; and the jurisdiction thus acquired must be extended to a complete determination of the questions presented.

The employees of the Donnelly Garment Companies, over thirteen hundred in number, have completed an organization known as the "Donnelly Garment Workers' Union". They have negotiated with their employers a contract which provides specifically for the wages, hours, terms, and conditions of their employment that are entirely satisfactory to both parties. So far as this hearing shows they are unanimous in this attitude, and have declared their opposition to affiliation with the defendant Union, or with any other unrelated organization. Among these employees there are no members of the defendant Union shown by the evidence, and no division exists among them. The proofs overwhelmingly establish that they are neither company inspired nor dominated. To insure their full independence of action, they have consulted able counsel of their own choosing, and have perfected their organization in full accord with the provisions of the National Labor Relations Act. In as much as no division exists in that organization, and since no complaint from any source has been lodged with the Labor Board, challenging the good faith of this union, the proper selection of its bargaining representatives, nor the terms and conditions of its contract of employment, no necessity exists for enlisting further the functions of any Labor Board, nor the provisions of the National Labor Relations Act. National Labor Relations Board vs Delaware-New Jersey Ferry Co., (C.C.A. 3) 90 F. (2) 520. (Certiorari denied).

In the cited case the National Labor Relations Board had taken cognizance of a complaint of unfair practices, and asked enforcement of its order commanding the Ferry company to desist from refusing to bargain collectively with the Marine Engineers' Beneficial Association as the exclusive representative of engineers-employees of the Ferry company. The court, declaring that the primary purpose of the National Labor Relations Act was to "obviate appeals to brute force which often accompany labor disputes", found that the employee engineers had unanimously entered into a contract with the company on terms acceptable to them, and declined to enforce the Board's order. In the course of this opinion Judge Dickinson said:

"There is now no controversy; no complaint; no grievance. * * * * There is in consequence nothing to negotiate".

This decision was made despite the fact that the matter had been before the Labor Board upon complaint of unfair practices, and that Board had found that the Marine Engineers' Beneficial Association had been, and still was, the representative of the licensed engineers for collective bargaining. Nevertheless, the unanimous action of the employees was made conclusive. In the case at Bar no complaint has been filed, and the employees of the plaintiff companies have acted unanimously in the selection of their representatives and in the negotiation of their contract.

The Donnelly companies do an aggregate annual volume of business of $5,000,000.00. Customers residing and doing business in many states outside the State of Missouri purchase more than eighty percent of the "Nelly Don" garments manufactured in Kansas City, and commitments for hundreds of thousands of dollars worth of raw materials used in such manufacture have already been made, and are recurringly made, in the conduct of the business. The combination charged will interrupt the free flow of raw materials from foreign countries and states outside the State of Missouri, and the free flow of such manufactured garments from the State of Missouri to states an points outside. Therefore the National Labor Relations Act applies to plaintiffs under the authority of National Labor Relations Board vs Tones and Laughlin, 301 U. S. 1, as held in National Labor Relations Board vs Briedman-Harry Marks Clothing Co., 301 U. S. 58, where a manufacturer of garments had its factory in Virginia, but imported its cloth from other states and sold almost all of the finished products in other states. The Anti-Trust Act "prohibits any combination which essentially obstructs the free flow of commerce between states, or restricts, in that regard, the liberty of a trader to engage in business; and this includes restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes". Loewe vs Lawlor, 208 U. S. 274. It was further held that:

"A combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other states, to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in states other than his own until such time as the resulting damage forces him to comply with their demands, is, under the conditions of this case, a combination in restraint of interstate trade or commerce within the meaning of the AntiTrust Act of July 2, 1890, and the manufacturer may maintain an action for threefold damages under sec. 7 of that Act". That was an action for damages, but the situation would call for injunctive relief in a case of irreparable injury, and inadequate remedy at law. The case of Apex

Hosiery Company, a garment company similarly situated with respect to interstate commerce, is aptly in point. Apex Hosiery Co. vs Leader, et al, (C.C.A. 3) 90 F. (2) 155.

The bill sets out with particularity he acts of defendant union through its officers and members which have been committed or threatened in furtherance of the conspiracy charged. It cites a wide campaign of publicity through public meetings, publications and pamphlets charging that the Donnelly Company was in effect a sweat shop, enforcing age scales far below those essential to proper standards of living, much lower than those existing generally in the industry, oppressive hours of work, denial of collective bargaining, and so-called "speed-up" methods injurious to health. These charges are branded as fraudulent. Certain it is that they have been shown to be wholly unfounded by the great weight of the evidence. The plaintiff companies are among the foremost in this industry in working conditions. Such is the testimony of hundreds of the present employees, and is shown by comparison with conditions existing in other garment shops in this industrial district. In furtherance of this campaign, the defendant Perlstein, Regional Director of the defendant Union, on or about June 9, 1937, caused to be published a full page statement announcing a drive to organize the workers in the Donnelly plant; that a large fund, approximating $100,000 had been appropriated for that purpose, and that these workers would ultimately be forced to join the defendant Union. Pursuant to this plan a number of women, agents of the Union, were sent i to several states to contact the Donnelly customers there, to urge them to cease their patronage, and in some cases threatening a secondary boycott, and picketing if such customers failed to comply.

In support of their contention that physical violence was contemplated, in addition to the other acts recited, plaintiffs produced evidence of the methods employed by this same Union, its officers and agents, in Dallas, Texas, in St. Louis, and elsewhere, particularly in Kansas City. Lets of violence, including beatings, tearing of hair, removal of clothing, and the like, were pleaded and proved. In Kansas City, strikes against Garment Companies on Broadway were accompanied by such methods. In the spring of 1937, a strike was inaugurated against three Garment Companies located on different floors of the same building near 26th Street and Grand Avenue. It started with a "sit-down” in the hall and on the stairway to prevent entrance to the work rooms. This phase was subsequently discontinued only because of the resulting unsanitary conditions. Thereafter a large number of so-called pickets, composed of striking employees and sympathizers from other industries, assembled in mass at the entrances of the building and sought, with a large measure of success, to prevent access and egress by employers and employees who desired to continue their work. In the course of these efforts the acts of violence charged were committed. Moving pictures and photographs

were exhibited to the court and were more eloquent than the spoken testimony. Police were almost in constant attendance and strove to keep the mob under control, but with indifferent success. At last resistance was broken down, and the companies were compelled to contract with the defendant union.

Throughout this strike, as in those on Broadway, the defendant Perlstein was in command. The defendant Wave Tobin was in charge of the pickets. The campaign against plaintiffs is organized by the same management, the same affiliation, and the same personnel. It is flatly asserted that the same methods will be employed, and plaintiffs and interveners are seriously threatened with the same acts of violence. The defendant Tobin insists violence is not contemplated, but her testimony in her deposition is significant:

"Q. Who had charge of the strike activities in connection with the G-ernes, Gordon, and Missouri strikes?

A. I had charge of the picket line.

Q. How many pickets did you have at each plant?

A. They varied. I don't know.

Q. Was there any violence?

A. Yes, there was some.

Q. Were you there pretty constantly?

A. Yes, I was.

Q. Is there always violence in such strikes, or, rather, not always; is there usually violence in such strikes?

A. We never intend that there should be violence. When you have two, or three, or four hundred girls out on the street, things will happen that you have no control over.

Q. What kind of things?

A. Well, I mean trying to get in to work, girls trying to keep them out. They may lose their temper, either side."

This blandly ignores the obvious fact that the mere physical act of preventing employees from entering upon their work is in itself an act of violence. The moving pictures disclosed Mrs. Tobin in constant attendance, as she says she was, while these violent occurrences were taking place - in charge of the pickets, and making no attempt, over a period of many days, to control these unlawful methods. She claims she could not control such a large body, but her testimony, as well as her conduct, implies approval of this physical interference with ingress to the plants.

These local strikes to which reference has been made and this threatened action against plaintiffs were and are initiated and financed by the defendant Union, its officers and respresentatives. United Mine Workers vs Coronado Co., 259 U. S. 344.

As heretofore stated, counsel for defendant announced that the real, if not the only, ground of defence relied upon was the contention that the Norris-La Guardia Act deprives this court of jurisdiction. This contention is based entirely upon the definitions of terms and words contained in Section 113 of the Act. The public policy of the United States declared in Section 102 of the Act is that the individual worker shall have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their sgents, in the designation of such representatives, or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. In the course of the substance of this declaration these significant modifying words are inserted: "He (the worker) should be free to decline to associate with his fellows". The general provisions of the Act must be construed and interpreted in conformity with the public policy thus declared. It will be seen that, although in Section 113 a "labor dispute" is defined as including controversies in which the disputants may not stand in the proximate relation of employer and employee, nevertheless the relationship of employer and employee is of the essence of the purpose and policy declared. That purpose is to protect employees in their freedom of association and action in the designation of bargaining representatives, in negotiating the terms and conditions of their employment, and in their right to decline to make associations against their will. The specific employment, in which the freedom of association and negotiation is guaranteed is the unit. Interference and coercion on the part of employers is prohibited; and, if the employee is to be assured of actual liberty of contract, and freedom of association, coercion from any source must likewise be prohibited. The definitions of labor disputes embraced in Section 113 of the Act must, therefore, be confined' to cases which involve and concern such exercise of freedom of action on the part of employees with which the declared public policy deals, otherwise a substantial provision of that declaration must be ignored.

The Court of Appeals of the Seventh Circuit has held that the term " 'labor dispute', as used in this statute, comprehends disputes growing out of labor relations, and implies the existence of relation of employer and employee". United Electric Coal Companies vs Rice, 80 F. (2) 1. In this case the real controversy was between two Mine Workers' Unions. Appellant had no dispute with its employees. The struggle was between the two unions over who should represent the employees. An injunction was granted, and certiorari was denied. In Newton, et al vs LaClede Steel company, 80 F. (2) 636, the same court adhered to the conclusion expressed in the Rice case, and held that the extent to which an injunction may go in such cases depends upon the facts in each case.

Later, in Lauf vs Shinner & Co., 82 F. (2) 68, the same court reaffirmed its conclusion in the Rice case, and held that acts and attempts to coerce an employer to compel employees to join a defendant union were unlawful under federal and state statutes, involved no labor dispute within the Norris-LaGuardia Act and were properly enjoined. A number of district court decisions are to the same effect - others to the contrary.

In Levering and Garrigues Co. vs Morrin, (C.C.A. 2) 71 F. (2) 284, the Norris-LaGuardia Act was held to apply to the situation there presented. In this case also the Supreme Court denied certiorari. Judge Manton's opinion was occupied largely with a discussion of the power of Congress to limit the jurisdiction of inferior federal courts, and the constitutional exercise of that power. The Seventh Circuit, in the Lauf case, considered this and other cases upon which defendants herein especially rely, and did not feel justified in following the conclusions there reached for the reasons stated - either that the facts were not closely analogous, or that proper consideration and heed had not been given to the public policy defined in the act.

Counsel for defendants stress the case of Senn vs Tile Layers'Protective Union, 301 U. S. 468. The controlling consideration in that case is stated in the first paragraph of the syllabi:

"The questions of what constitutes a 'labor dispute' within the meaning of Wisconsin Labor Code par. 103.62, and what acts done by a labor union are among those declared lawful by par. 103.33, are questions of state law."

In the opinion Justice Brandeis emphasizes the rule that upon such questions the judgment of the highest court of the state is conclusive. It is repeatedly stated that the acts done and contemplated were peaceful, and without violence, threats, or intimidation directed against customers and employees. A secondary boycott was prohibited by the Act. Certain methods of this nature, at first employed, had been discontinued, and the court treated an agreement of counsel on this point as disposing of the claim for relief on this ground. We do not find that this decision, with the significant reservations contained in the opinion, aids the contention of defendants' counsel.

There is here presented no bonafide dispute as to wages, hours, terms and conditions of employment. Stripped of all extraneous matter, the sole actual demand is that the Donnelly Company shall unionize (and thereby compel the unionization of its employees) as an affiliate of the C. I. 0. which appears to have succeeded the A. F. of L. as the patron and supervisor of the defendant Union. This is part of an avowed plan to compel all industries, irrespective of local conditions, to be placed on the same footing, thereby creating combinations and monopolies, resulting necessarily in higher costs of production and in restraint of trade. This was made evident at the hearing by statements of counsel for defendants, through the contract between the St. Louis Affiliated Industries

and this Garment Union, and by proceedings incidental to the fixing of a garment code under the N. R. A. which were introduced in evidence by defendants at this earing. This campaign contemplates the establishment of absolutely uniform hours and wages throughout the nation, regardless of differences in living and working conditions and the efficiency of labor in different sections.

No law of the United States confers upon the defendant Union the right, power, or authority to compel affiliation with a specific union against the will of employees. If appropriate at all as an economic measure, its propriety is addressed, not to private associations, but to the Congress, there to be announced in no uncertain terms. This involves no criticism of labor unions as such. They have long been recognized by the courts to give laborers opportunity to deal on equality with their employers. From this arose the theory of the strike. Employees united to exert influence upon their employer and to leave him in a body in order, by this inconvenience, to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. Such activities, however, should not go beyond the use of lawful and peaceful propaganda to enlarge membership. American Steel Foundries vs Tri-City Central Trades Council, et al, 257 U. S. 184, 209. The employment of force and coercion is in direct conflict with the declaration of public policy in the Norris-La Guardia Act, which guarantees to each individual worker freedom to decline to associate with his fellows. Refusal to accede to any unauthorized and unwarranted demand can in no sense be termed a "dispute". In the instant case that demand is sought to be enforced by strong-arm physical methods. That the contemplated acts of defendants, charged and proved, are unlawful, as declared by federal courts, by the Supreme Court of Missouri, and generally, admits of no doubtt. Hitchman Coal & Coke Co. vs Mitchell, 245 U. S. 229; Duplex Co. vs Deer- ing, 254 U. S. 443, 466; American Steel Foundries vs Tri- City Central Trades Council, 257 U. S. 184; Truax vs Corrigan, 257 U. S. 312; United Electric Coal Companies vs Rice (C.C.A.7) 80 F. (2) 1; Lauf vs Shinner & Co., (C.C.A.7) 82 F. (2) 68; Fierce vs Society of Sisters, 268 U. S. 510; Hughes vs Motion Picture Machine Operators, 282 Mo. 304; and where the injury threatened is present and real, and will become irreparable if relief be postponed, the protection of a court of equity is properly invoked. In their sworn bill plaintiffs have alleged that the unlawful acts charged have been threatened, that substantial and irreparable injury to their property will follow, and that they have no adequate remedy at law. It is obvious that the denial of relief, in any case, would inflict greater injury upon plaintiffs than its granting would inflict upon defendants; and it is pleaded and proved that, in the similar cases recited, the public officers of the city have been unable to furnish adequate protection.

The hearing before this court was an extended one in which both parties were

permitted to introduce all desired material evidence and testimony written or oral. The Supreme Court has commented adversely upon objections and contentions which are "based on strained and unnatural constructions of the words of the Norris-LaGuardia Act", and which "conflict with its declared purpose, Par. 2, that the employee 'shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection'." Virginia Railway Co. vs Federation, 300 U. S. 515,

There is here presented no division of opinion among employees upon which could be based evena plausible or colorable right on the part of defendants to act as bargaining representatives. But more than that no such claim is in fact asserted. The frank objective is the unionization of plaintiffs as affiliates of the defendant Union, thereby automatically unionizing the employees, in order that the control of this defendant Union may be nation-wide and all embracing, and this in the face of the declared public policy invoked. It is unthinkable that the rejection of such a demand, as against the will of these employees, and in conflict with obligations freely entered i to, can be tortured into the conception of a "dispute".

Interveners have organized under the National Labor Relations Act and invoice the protection that must flow from its provisions. For the months intervening since their organization no complaint has been filed with the National Labor Relations Board, and no challenge to that organization has been made. Such action was open to defendants, if desired, but has not been availed of, presumably because no tenable ground was found to exist. They have elected to coerce plaintiffs to join their association by the employment of methods denounced by all courts, by the terms of the Norris-La Guardia Act itself, and in conflict with the declaration of public policy therein contained. By strained and unnatural constructions of the definitions contained in that Act, thus made to conflict with its declared aim and purpose, they seek to deprive this court of jurisdiction to grant the relief prayed. The Norris-La Guardia Act has no application to the controversy here presented. In such case, jurisdiction being clear, courts of equity will grant relief in accordance with their inherent powers and established procedure. A delicate question is presented when the jurisdiction of the court is challenged upon the ground here urged. However, when that jurisdiction is apparent, the duty remains to grant relief, if demanded and justified, under the established rules and usages of courts of equity.

The conclusion we have reached renders it unnecessary to resolve the constitutional question presented. In general we may say that this statute, limiting the power of inferior federal courts to grant injunctions in cases of. labor disputes is a valid exercise of the power of Congress. United Electric Coal Companies vs Rice, et al, (C.C.A. 7) 80 F. (2) 1.

This case, however, does not involve such a dispute.

It follows that the temporary injunction prayed will be granted and findings of fact will be filed in harmony herewith,

FILED

DEC 31 1937

A. L. ARNOLD, Clerk.

E. O. Keefe, Deputy