DOWNLOAD PDF THE MACHINERY OF THE NATIONAL LABOR RELATIONS BOARD

Chapter 1 : F2d National Labor Relations Board v. Underwood Machinery Co | OpenJurist

The National Labor Relations Board is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

The National Labor Relations Act makes it an unfair labor practice for an employer to refuse to bargain in good faith with the representative of his employees. During the ensuing months agents of the union and of the respondent met on several occasions for the supposed purpose of working out a collective bargaining contract. By May 20, , several such meetings had taken place, but no agreement had been reached. On that date the union filed a charge with the Regional Director of the Board, alleging that the respondent had violated s 8 a 5 of the Act by refusing to bargain collectively with the union. No real progress towards reaching an agreement was made. In October, while negotiations were still going on, the respondent unilaterally put into effect a general wage increase without prior notice to the union. A few weeks later the respondent advised the union that it was withdrawing recognition and that it would refuse any further bargaining conferences. All further inquiries with respect to the 8 a 5 allegation should be addressed to the Regional Director. Moreover, its finding of a refusal to bargain was largely influenced by this specific conduct on the part of the respondent. National Labor Relations Board, U. Whatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings by the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. The violations alleged in the complaint and found by the Board were but a prolongation of the attempt to form the company union and to secure the contracts alleged in the charge. All are of the same class of violations as those set up in the charge and were continuations of them in pursuance of the same objects. Its purpose is merely to set in motion the machinery of an inquiry. National Labor Relations Board v. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. Thi wo uld be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest in eliminating obstructions to interstate commerce, as this Court has recognized from the beginning. Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power 8 in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge. For these reasons we adhere to the views expressed in National Licorice Co. National Labor Relations Board.

Chapter 2 : F2d National Labor Relations Board v. Swinerton | OpenJurist

National Labor Relations Board for the year ended June 30, , and, under separate cover, lists containing the names, salaries, and duties of all employees and officers in the employ or under the supervision.

National Labor Relations Board, Ashmus, argued, Gregory A. Marx, Cleveland, Ohio, for petitioner-cross respondent. Truesdale, Executive Secretary, N. CCH p 19, , which concluded that Van Dorn had violated sections 8 a 5 and 1 of the National Labor Relations Act by unilaterally changing the paid lunch period offered to specific union employees and ordered Van Dorn to pay back wages as a result of this violation. The NLRB, respondent-cross petitioner, has applied to this court for enforcement of its decision and order. Van Dorn Plastic Mach. CCH p 15, , cert. Prior to certification but after the election Van Dorn eliminated paid lunch periods for approximately 35 employees without offering to bargain on this issue with the Union. However, it takes the position that the stipulation brought it within a recognized exception to the bargaining requirement, which permits unilateral changes based on "compelling economic considerations. The ALJ construed the stipulated reason for the change in lunch policy--"business ecessity"--as the equivalent of "compelling economic considerations. The Board found that the stipulation did not satisfy the "compelling economic considerations" exception. On appeal Van Dorn argues that the stipulation was binding, and giving the words their ordinary meaning, clearly brought its action within the exception. It is not clear from this record what the parties intended when they entered into the stipulation. However, a stipulation once entered into should be construed to give it legal effect. National Audubon Society, Inc. A remand is necessary to determine the correct interpretation of the stipulation. Van Dorn proceeded on the assumption that the stipulation relieved it of the duty to justify its failure to bargain on the change in lunch periods. The ALJ so construed the stipulation. If the stipulation is found to be ambiguous the Board must consider extrinsic evidence of the intention of the parties in entering into it. If the Board finds from such evidence that no agreement was actually reached and that the stipulation is a nullity, then fairness requires that Van Dorn be given an opportunity to establish "compelling economic considerations. The case was submitted for remand disposition by the Board. Van Dorn moved for summary judgment, arguing that the term "business necessity" was the equivalent of "compelling economic considerations" and, accordingly, it was entitled to judgment as a matter of law. After conducting hearings and considering the evidence presented by the parties, the ALJ determined that Van Dorn had proved no "compelling economic considerations" which would have justified its decision to eliminate the paid lunch policy of its thirty-five affected employees. The Board adopted the findings of the ALJ and concluded that Van Dorn had violated its duty to bargain by unilaterally altering its paid lunch policy. The Board further directed Van Dorn to reimburse the involved thirty-five employees their back wages accrued from October 7, , the date it had implemented the controversial lunch policy, until such time as Van Dorn had bargained in good faith with the union to resolve the issue. The order also required Van Dorn to post an appropriate notice detailing the above described violation. On appeal, Van Dorn has argued that the Board erred in concluding that the stipulation between Van Dorn and the General Counsel interpreting the term "business necessity" was a nullity because there had been no meeting of the minds. The intent of the parties in turn is a question of fact to be determined by the district court based on the evidence before it. See generally 3 A. Corbin, Corbin on Contracts, Sec. Statements by one party to the other as to the meaning of words or as to the terms of agreement, made in the course of their preliminary negotiation, are relevant and admissible to show what each of them had reason to understand by the words eventually embalmed in the "integration" If they show that no common meaning was given to the words Corbin, Corbin on Contracts Sec. Compare In re Nicholson Industries, Inc. Ohio Where the evidence presented indicated "that the parties had different intentions regarding the effect of the stipulation," the court concluded that "the parties did not have a meeting of the minds," and that " [t]he stipulation [was] not Furthermore, because Van Dorn had failed to timely file a motion with the Board for reconsideration of its decision that the stipulation was a nullity, it failed to preserve

that issue for appellate judicial review. Respondent did not suggest any "extraordinary circumstances" [and, accordingly,] [t]he objection therefore may not be considered. Van Dorn has responded by charging that a motion for reconsideration with the Board would have been futile because the Board was unlikely to have granted it. The argument is also without merit. Although the sua sponte decision did prevent presentation of the objections to the Board before its decision, it did not prevent their presentation to the Board in a petition for rehearing or reconsideration. Because the Company did not so move, we are precluded from considering its objections now. As this court noted in its earlier decision, " [a] unilateral change with respect to a mandatory bargaining subject is a violation of section 8 a 5. Pittsburgh Plate Glass Co. The Court therefore concluded that "a desire to reduce labor costs" did not necessarily constitute a matter which could be altered unilaterally. Therefore, to require the employer to bargain about the matter would not significantly abridge his freedom to manage the business. Accordingly, the Board did not err in concluding that Van Dorn was mandated to bargain with the union before it elected to make a modification of the paid lunch policy. Compare Plymouth Stamping Div. Production Molded Plastics, Inc. Van Dorn has also charged that the Board erroneously concluded that it had failed to satisfy its burden of demonstrating that the elimination of the paid lunch period was excluded from bargaining procedures because the policy was adopted as a result of "compelling economic considerations. CCH p 26, , enforcement denied on other grounds, F. Sandpiper Convalescent Center, F. Great Dane Trailers, U. The evidence proffered by Van Dorn during the hearing before the ALJ indicated that it had made the decision to eliminate the controversial paid lunch policy for the affected thirty-five workers in an effort to reduce operating costs, and for safety reasons, arguing that it had been cited by the Occupational Safety and Health Administration OSHA for failure to keep the aisles in various work areas clear and free from refuse and debris. CCH p 26, quoting Fleming Mfg. BNA emphasis added footnote omitted. The Board has filed a cross petition, requesting enforcement of its order. The National Labor Relations Act specifically "charges the Board with the task of devising remedies to effectuate the policies of the Act. A remedial order of the Board will not be disturbed "unless This argument ignores the fact that under the paid lunch program, the employees were scheduled to be at the plant for eight hours and were paid for eight hours, which included seven and three quarter hours of actual work and one quarter hour of paid lunch break. In contrast, the remaining employees were scheduled to be at their work assignments for eight and one half hours, but were compensated for only eight hours at work. Accordingly, it was within the authority of the Board to order back pay under the circumstances presented by the instant case. Master Slack, F. CCH p 18, See generally Strong, U.

Chapter 3 : Electra-Food Machinery, Inc., () - Case Law - VLEX

The National Labor Relations Board (NLRB) is an independent US government agency with responsibilities for enforcing US labor law in relation to collective bargaining and unfair labor practices.

Boire, Regional Director, N. We hold that the National Labor Relations Board properly exercised its statutory authority in concluding that reinstatement is necessary to protect the right of employees to engage in concerted activities. Furthermore, we find that the circumstances of this case justify the imposition of a back pay award even though at the time of the activities in question the Board had not adopted its present view that replaced economic strikers have the right to reinstatement. Since negotiations were deadlocked, all fifty-one employees in the unit went on strike on October 17, November 14, , the Company notified each striker by mail that he had been "permanently replaced". The Company questioned the majority status of the Union and refused to bargain on that ground. Although the Union then filed unfair labor practice charges, the Regional Director refused to issue a complaint. His action was sustained on appeal. That same day, the Union notified the Company by registered letter, received March 14, that all the strikers unconditionally offered to resume work and requested reinstatement. The letter stated that if there were no openings, the strikers would be available for employment when openings should occur. The Company replied by letter dated March 21, , that no job openings were currently available and that when they did occur, the strikers would be treated as if they were new applicants, provided that they applied for employment and kept their applications current. Nine others made oral requests. Most of them were told that they would receive no seniority credit and would return as new employees. No one kept his application current in the sense that the Company used the term â€" at least weekly checkups â€" nor did the Company notify the strikers what keeping their applications "current" required the strikers to do. The President of the Company did tell two strikers who applied that he would notify them of openings. None of the persons hired were strikers. Although the Company maintained a list of the names, addresses, and telephone numbers of the strikers, it did not inform any of them of openings. Some of the persons hired were less skillful than some of the strikers. As of the date of the hearing, there were at least twenty strikers whose former positions were not occupied by the original replacements. The Board issued a complaint against the Company in August for its failure to offer reinstatement to replaced economic strikers. In Laidlaw the Board held that "economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: Furthermore, he found violations of the same section in that the failure to reinstate the strikers had the discriminatory purpose of preventing the Union from regaining representative status. Consequently, the Trial Examiner ordered reinstatement for all but three 3 of the strikers listed in the complaint, with seniority and back pay as of the date upon which they should have been reinstated. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them. The assurance by respondent to those who accepted employment during the strike that if they so desired their places might be permanent was not an unfair labor practice nor was it such to reinstate only so many of the strikers as there were vacant places to be filled. Adams Brothers Manifold Printing Co. Thereafter, the established position of the Board with respect to an economic strike was that an employer who hires replacements intended to be permanent thereby cuts off all employment rights of the replaced strikers; the employer could treat the replaced strikers as if they were new applicants. Atlas Storage Division, N. The Supreme Court in upholding a Board decision, ruled that an employer could not refuse to rehire striking employees simply because at the date they applied he had not yet resumed full production and their jobs had not yet been reactivated. The Board proceeded from Fleetwood to a new principle enunciated in Laidlaw: When job vacancies arise as a result of the departure of permanent replacements, striking employees whose applications are outstanding are entitled to preference over new applicants. It is this principle which the Board seeks to have us approve in this case as the Seventh Circuit has done in Laidlaw Corp. The basic question at issue here is the scope of protection afforded employees in the

exercise of this right. Great Dane Trailers, Inc. Second, if the adverse effect of the discriminatory conduct on employee rights is "comparatively slight," an antiunion motivation must be proved to sustain the charge if the employer has come forward with evidence of legitimate and substantial business justifications for the conduct. Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him. In terms of Great Dane, then, the burden falls on the employer to establish "legitimate and substantial business justifications" for his conduct. The Court categorically rejected the contention that strikers lose their right to reinstatement because no jobs are available on the date they apply to return to work. It relies on the Mackay dictum cited earlier and on the reference to that dictum in Fleetwood, that "[o]ne [of the recognized legitimate and substantial business justifications] is when the jobs claimed by the strikers are occupied by workers hired as permanent replacements during the strike in order to continue operations". But these premises, even if accepted, 8 do not justify the extension of the dictum to permit the complete termination of the statutory rights of a striking employee when he is replaced. In Mackay the Court concluded only that an employer could offer replacements permanent position in order to attract them and thus keep his plant in operation, and that he need not dismiss the replacements when the striking employees offered to return to work. Or, on the other hand, that the Court specifically conditioned the Mackay justification on the fact that the jobs were "occupied" by workers and that in Mackay the Court said the strikers would have to "wait" rather than that their rights were terminated. But the principle of Fleetwood is made of sterner stuff than these distinctions. We cannot say that the Board has wrongfully discharged its responsibility to enforce the Act in concluding that American Machinery has offered no legitimate and substantial business justification to sustain its actions. The Company exercised fully the right to offer permanent positions to new employees in order to keep open its business during the strike, and the Board has not challenged that right. Furthermore, while the resolution is ultimately for the Board subject to limited judicial review under the Act, a concerned employer will find means to cope with this burden. For example, he might notify the strikers when they request reinstatement of a reasonable time during which their applications will be considered current and at the expiration of which they must take affirmative action to maintain that current status. It argues that the Board, therefore, should have followed the rulemaking provisions of section 4 of the Administrative Procedure Act, 5 U. Consequently, we must look not only to the consequences for American Machinery, but to the statutory scheme and to the effects on the strikers if we do not enforce the order. As we have already demonstrated, the Act and the principles enunciated in Fleetwood show that the Board reached a proper resolution in Laidlaw and in this case. And to vacate the back pay order would deny a remedy to these employees who were refused reinstatement. The Supreme Court has held that "the Board could properly conclude that backpay is not only punishment for an unfair labor practice, but is also a remedy designed to restore, so far as possible, the status quo which would have obtained but for the wrongful act". We cannot say that the Board should have refused to give redress to these employees. The Board decided, however, that the new requirement was purely prospective and would not be applied in the Excelsior case itself. Although no opinion commanded a majority, six Justices agreed that the Board had erred in attempting in an adjudicatory proceeding to lay down a broad prospective rule, binding upon the affected public generally, but not adjudicating the rights and obligations of the parties before it. It has been suggested that "the Excelsior rule would have been approved if it had been applied to the parties before the Board in that case". The Supreme Court, Term, 83 Harv. Accordingly, the Board was not engaged in rulemaking within the meaning of the Administrative Procedure Act, and was therefore not obligated to follow the procedures set forth therein for rulemaking. Wyman-Gordon did not hold that the Board is obligated to follow the rulemaking procedures of the Administrative Procedure Act whenever it announces new policies. Indeed, the Court specifically recognized that "[a]djudicated cases may and do, of course, serve as vehicles for the formulation of agency policies, which are applied and announced therein". We cannot say that here the Board abused its discretion or violated the Administrative Procedure Act. Under our limited

standard of review, there is ample evidence to sustain the finding that the Company was attempting to prevent the Union from regaining majority status. American Machinery refused to hire even those strikers who filed as new applicants and who made separate oral and written applications. Some of the applicants were more capable than those new employees the Company hired and who later left or were let go. It was reasonable for the Board to conclude that refusal of a back pay order in this case would indeed discourage concerted activities by the employees at the American Machinery plant.

Chapter 4 : National Labor Board - Wikipedia

National Licorice Co. v. National Labor Relations Board, U.S. , at page , 60 theinnatdunvilla.com , at page , 84 theinnatdunvilla.com It follows in the present case that the October wage increase was a proper subject of the Board's complaint and was properly considered by the Board in reaching its decision.

Diamond, Attorney, all of Washington, D. Maurice Epstein, Boston, Mass. Advertisement 1 The National Labor Relations Board filed its petition for enforcement of two orders issued against respondent, here consolidated for argument. The orders required respondent to cease and desist from refusing to bargain collectively with a designated union; from discouraging membership therein; and from interfering with, restraining, or coercing its employees in the exercise of their right to self-organization. Their duties are to machine the products ordered from respondent, a substantial portion of which goes to the plate shop for further assembly. Occasionally men from the other departments of the plant go with the crew from the erection and maintenance department to assist in the erection and installation of the machinery, and sometimes additional men are hired to supplement the crew. At the hearing, respondent company contested the unit requested by the union, asserting that the employees of the erection and maintenance department should be excluded from the unit embracing the production employees of the machine shop and plate shop. After a consideration of the facts, the Board found that the appropriate unit for the purpose of collective bargaining would be either: The Board, therefore, decided to ascertain the wishes of the erection and maintenance employees in the matter before making its final unit determination. In its decision and direction of elections, the Board ordered separate elections among the two employee groups, and stated that it would await the results of the elections before determining the appropriate unit. The Board further declared that if the union secured a majority of the votes cast by the production group only, it would find that that group, excluding the employees in the erection and maintenance department, constituted the appropriate bargaining unit; but that if, in addition, a majority of the employees in the erection and maintenance department also selected the union as their representative, the Board would include them in the unit composed of the production and maintenance employees. Of fifty-one eligible employees in the production unit machine shop and plate shop , forty-nine voted: Of nine employees in the erection and maintenance group, eight voted for the union, and one was challenged by respondent. No objections to the conduct of the election having been filed, the Board decided that the employees of the erection and maintenance department should be included in the larger unit, and, accordingly, on November 27, , certified the union as the exclusive bargaining representative for all the employees in such unit. National Labor Relations Board, 7 Cir. The court held that the Board should have decided upon the unit or units appropriate for collective bargaining before holding the election, and that the subsequent designation of units by the Board, predicated upon employee elections, was illegal. An emphatic and forceful dissenting opinion was rendered by Judge Minton now Mr. The reasoning of the dissenting opinion seems persuasive. The facts in the instant case are, however, somewhat different from those in the Marshall Field case. Here, the Board definitely found that both the unit proposed by the union and the unit proposed by the respondent were appropriate for collective bargaining. There was nothing tentative about this finding. However, because the employees in both groups had a community of interest, the Board decided to determine from the employees themselves whether they desired the same representative for collective bargaining and notified them in advance what it had determined upon for an eventuality. At the same time, the Board carefully preserved the rights of the employees as members of each unit by having each unit decide separately what it desired. Pittsburgh Plate Glass Co. National Labor Relations Board, U. In this case, after considering all of the circumstances of the situation with reference to whether there should be one or two units selected as the appropriate collective bargaining agency, the Board came to the conclusion that the single factor that would tip the scales was the preference of the employees. It is doubtful whether an employer may complain of the activities of its supervisory employees in this regard. Such activities have been held unfair labor practices on

the complaint of a union on the theory that the supervisory employees act with the authority or knowledge of the employer, and that any anti-union activity on their part may be, therefore, attributable to the employer. The only activity charged against Bowser, one of the supervisory employees in question, is that he told Griffin, the other supervisory employee, that he would have to join the union. This was two months before the election, and was an isolated occurrence. No other union activity of Bowser appears in the case. As to Griffin, his vote was never counted, having been challenged by respondent. Griffin himself considered that he had no supervisory status, and all of the other employees also mistakenly assumed that he was not a supervisor. The Board found that the activities of these two supervisory employees did not influence any of the employees in their voting in the election, and this finding is supported by substantial evidence.

Chapter 5 : National Labor Relations Board - Wikipedia

before the national labor relations board division of judges local , international union of operating engineers (iuoe), afl-cio macallister machinery co.

A series of strikes overtook the country in the summer of Johnson had initially expressed the hope that the NIRA would be self-policing system. Three members represented labor: Three members represented industry: Teagle , president of Standard Oil of New Jersey. Wagnerâ€”who had been one of the primary authors of the NIRAâ€”was determined to make the board work along the self-policing lines previously announced by Gen. Initially, the NLB attempted to merely be a mediator in labor disputes. The NIRA protected the right of workers to form unions of their own choosing. And it required employers to engage in good-faith negotiations when a union had issued a demand for recognition and bargaining. Holding representation elections, much less establishing bargaining units or determining majority status, was not even considered by the Board. Large numbers of workers were summarily fired for striking. The employers refused to recognize the union, and 10, workers went on strike. On August 10, , the NLB mediated a settlement. Known as the "Reading Formula," the settlement consisted of four parts: In most cases, the union won the election. The NLB relied on enforcement of its orders through the NRA which only had the power to remove so-called Blue Eagle industrial code approval from a manufacturer or prosecution by the U. These weak enforcement powers encouraged employer resistance. The Budd Manufacturing Company established a company union, then refused to bargain with the AFL affiliate in the plant. The order also authorized the Board to "settle by mediation, conciliation or arbitration all controversies between employers and employees which tend to impede the purpose of the National Industrial Recovery Act. Roosevelt issued a new order, E. The order gave the Board explicit power to authorize, upon a showing by a substantial number of employees, representational elections to determine majority status. The order appeared to give the winning organization exclusive representation for employees in the bargaining unit, but this interpretation was widely contested. This caused a firestorm of discontent among business owners, who began an anti-Wagner campaign. His statement also rejected the concept of exclusive representation. The Board held that, where a union had obtained a majority of the votes cast in a government-sponsored representational election, any collective bargaining agreement would have to cover all employees in the bargaining unit. A union which represented only half the bus drivers in a company, for example, would bargain a contract only on behalf of its members. Another union could represent the other bus drivers. In many cases, several unions represented the same workers in one company, each union bargaining a different contract for however many members it represented. Denver Tramway was a major turning point in American labor law because it established the rule of exclusive representation. This rule said that a union which won the majority of votes in an election would win the right to represent all workers. Even when several unions competed against one another and no union won a majority of the votes, the union with the most votes still won the right to represent all workers. The United Auto Workers had organized more than 50, workers in the automobile industry in Roosevelt intervened personally in the dispute. On March 25, , Roosevelt announced a settlement that provided for proportional, rather than exclusive, representationâ€”thus giving the company unions equal footing with the Auto Workers. The agreement also stripped the NLB of its jurisdiction over the auto industry. Worse, the agreement provided no authority for holding elections, and thus no means of determining which organizations truly represented workers. Consulting with a key aide, Leon Keyserling , Wagner conceived of a "labor court" to hear cases involving labor disputes and fashion enforceable resolutions. Roosevelt evinced no interest in such a bill, so Wagner proceeded without him. Labor leaders were consulted in January , and a bill was drafted in February. The NLB was given the authority to hold elections, but it was also authorized to prohibit acts of coercion by the employer against employees and required employers to bargain in good faith with the duly elected representatives of workers. However, it did not require it, and left it up to the NLB to determine whether to apply the rule, given the facts of each case.

The press, too, was adamantly opposed to the legislation. Administration spokespersons were ambivalent about the bill, when they mentioned it at all. A wave of large strikes swept the country in April and May, and a significant number of them were over the recognition issue. The Walsh bill won almost unanimous support from the president, the cabinet, the Senate and even from Wagner himself. Wagner was unhappy with the number of provisions which had been watered down, but believed that passage of some legislation was preferable to inaction. He also resolved to draft much stronger legislation after the fall elections. Nevertheless, the Walsh bill faced an uncertain future in the Senate. Congress needed to adjourn and return home to campaign for the fall elections, and the bill promised a lengthy fight. Steelworker unions were threatening a nationwide strike. Robinson , Representative Joseph W. Byrns and several aides. After discussion, Roosevelt himself dictated Public Resolution No. The resolution authorized the president to create one or more new labor boards to enforce Section 7 a by conducting investigations, subpoenaeing evidence and witnesses, holding elections and issuing orders. Amended to expressly protect the right to strike, it passed both houses of Congress on unanimous voice-votes. Roosevelt signed the resolution on June 19, Roosevelt issued Executive Order on June 29, The new order abolished the NLB. In its place, it established the National Labor Relations Board. The new NLRB had only three members: Millis , professor of economics at the University of Chicago , and Edwin S. Smith , Commissioner of Labor and Industry for the state of Massachusetts, were its members. Roosevelt duly complied with business demands for these boards. Each board interpreted the law as it wished, and American labor law fragmented. Under this doctrine, the NLRB has emphasized and de-emphasized various aspects of the NLRA over time, weighing different parts of the law more heavily depending on the longevity of the collective bargaining relationship between the employer and union. Other Board decisions, such as Bee Bus Line Company decided May 10, and Eagle Rubber Company decided May 17, , laid down the stipulation that a properly conducted, government-monitored representational election required good-faith bargaining, and that collective bargaining must precede the decision to strike. Both decisions have had stabilizing influences on collective bargaining relationships. The doctrines laid down by the NLB continue to reverberate in , as the NLRB wrestles with the implications of card check and voluntary recognition.

Chapter 6 : NLRB Provides Refresher On Decision Bargaining Obligations | Hunton Employment & Labor P

This case is before us on the petition of Blaw-Knox Foundry & Mill Machinery, Inc. (the Company) to set aside an order of the National Labor Relations Board and the Board's cross-application for enforcement.

Counsel, Marcel Mallet-Prevost, Asst. Counsel, and Alice Andrews, Atty. Lewis and Frank J. Respondent employer, United Shoe Machinery Corporation, in order to test the establishment of what it believed to be an improper bargaining unit of its so-called technical employees as determined by the National Labor Relations Board regional director, refused to bargain and faced a section 8 a 1 and 5 charge. The Board upheld the director, and ordered respondent to bargain and to post the customary notices. On a petition for enforcement we declined to enforce, holding that it did not appear from the opinion of the Board that consideration had been given to an item we regarded as important. We remanded for further consideration. The Board, after review of the record, addressed itself to that issue, but again found against respondent. Respondent continued to refuse to comply, and the case is back before us. Respondent objects to the renewed order solely on the ground that, as a matter of due process, it should be given a free opportunity to bargain, with what it now accepts as an appropriate unit, without the opprobrium of an order. NLRB, , U. So far as appears, the Board was never apprised, even indirectly, of the contents of the letter, as distinguished from the basic fact that respondent non-acquiesced. Much effort has been wasted. Dallas City Packing Co. However, it has long been the fact that an employer takes the chances of whatever opprobrium there may be thought to be in not bargaining and then being faced with an order. As stated by Mr. Justice Rutledge, "It has been settled that he takes the risk of his error when he mistakenly judges that the unit is not appropriate or for other reason that the duly selected or certified union is not entitled to recognition. Western and Southern Life Ins. This is an appropriate case for the imposition of counsel fees under our decision in NLRB v. We will hear first from the Board as to the amount of a suggested fee, and then afford respondent an opportunity to reply. In the meantime, the order will be enforced, to become fully effective ten days from the date of this opinion, pursuant to our Standing Order of September 16,

Chapter 7 : AMERICAN LAUNDRY MACHINER | F.2d () | 4f2d | theinnatdunvilla.com

The National Labor Relations Act has never explicitly required political balance in the National Labor Relations Board's (NLRB or Board) appointment process. But the Eisenhower administration demonstrated that policy shifts could be initiated through changes in NLRB composition.

BNA , 25 Empl. P 31,, 91 Lab. P 12,, 91 Lab. Decided April 7, Allen, Acting Associate Gen. Finding that Jordan had not engaged in protected concerted activity, we deny enforcement. Jordan filed an unfair labor practice charge with the Board, alleging that he had been discharged for concerted activity protected by section 7 of the National Labor Relations Act, 29 U. Asher had worked for the Company for some time and was a member of the union with which the Company had a collective bargaining agreement. Jordan was a new, probationary employee and was not a member of the union. On August 17, , foreman Leonard Lewis encountered Asher and had a brief conversation with her. Although Lewis denies it, Asher claims that Lewis indecently touched her. Jordan asked Asher to identify the man who had touched her and Asher pointed to Lewis. Lewis and two other foremen who were present testified that Jordan threatened to kill Lewis if Lewis ever touched Asher again. Asher and Jordan both denied this. As Jordan recounted the incident to the administrative law judge: So far as he was concerned, any further action was up to Asher and Lewis. Section 7 of the Act, 29 U. The rationale for this rule, as expressed by the Board, is that "implementation of such agreement by an employee is but an extension of the concerted activity giving rise to that agreement. Construction Company, N. Reaching substantially the same result are NLRB v. Guernsey-Muskingum Electric Co-op, Inc. See Pelton Casteel, Inc. But there was no evidence that the employee involved in Krispy Kreme had contemplated group activity. Jordan was neither attempting to enforce a collective bargaining agreement, seeking to induce group action, nor acting on behalf of a group. His altercation with foreman Lewis manifested a purely personal concern. Such personal missions are not deemed concerted activity under any test. Joanna Cotton Mills Co. He made no reference to the collective bargaining agreement during the confrontation. Instead of seeking out a union representative or even his own supervisor, Jordan went directly to Lewis. The vague threat to "take some sort of action or steps necessary to get something done about it" does not evince reliance on any substantive rights guaranteed in the agreement. After thrusting himself upon the scene, Jordan disassociated himself from the incident and its principals. In so quickly eschewing any representative role, Jordan revealed not concern for the welfare of workers generally, but rather the personal object of his brief intervention. Newsletter Sign up to receive the Free Law Project newsletter with tips and announcements.

Chapter 8 : NATIONAL LABOR RELATIONS | F.2d () | 9f2d | theinnatdunvilla.com

*National Labor Relations Board v. Automotive Maintenance Machinery Co U.S. Supreme Court Transcript of Record with Supporting Pleadings [CHARLES S BAKER, Additional Contributors, U.S. Supreme Court] on theinnatdunvilla.com *FREE* shipping on qualifying offers.*

History[edit] â€" Section 7 a of the act protected collective bargaining rights for unions, [4] but was difficult to enforce. A massive wave of union organizing was punctuated by employer and union violence , general strikes , and recognition strikes. Johnson believed that Section 7 a would be self-enforcing, but the tremendous labor unrest proved him wrong. On August 5, , President Franklin D. Roosevelt announced the establishment of the National Labor Board , under the auspices of the NRA, to implement the collective bargaining provisions of Section 7 a. Each regional board had a representative designated by local labor unions, local employers, and a "public" representative. The public representative acted as the chair. The regional boards could hold hearings and propose settlements to disputes. Initially, they lacked authority to order representation elections, but this changed after Roosevelt issued additional executive orders on February 1 and February 23, The NLB, too, proved ineffective. Congress passed Public Resolution No. This includes the regional structure of the board; the use of administrative law judges and regional hearing officers to initially rule on cases; an appeal process to the national board; and the use of expert staff, organized into various divisions, at the national level. It was overseen by an Executive Secretary. Examining Division, national staff which conducted field investigations and assisted the regional boards with adjudications, hearings, and representative elections. Information Division, which provided the press and public with news. Legal Division, which assisted the Department of Justice in seeking compliance with board decisions in the courts, or in responding to suits brought about by board decisions. Wagner D â€" NY subsequently pushed legislation through Congress to give a statutory basis to federal labor policy that survived court scrutiny. Constitutionality, communism, and organizational changes[edit] J. Warren Madden left , Nathan Witt , and Charles Fahy right reviewing documents before a congressional hearing on December 13, The Administrative Division, which oversaw all administrative activities of the national and regional boards, as well as their finances. It was led by a Secretary. The Economic Division, which analzyed economic evidence in cases and made studies of the economics of labor relations for use by the board and the courts. It was supervised by a Chief Industrial Economist. The division was also known as the Technical Service Division. The position of General Counsel an individual hired by the board was created to oversee this division. There were two subdivisions: The Litigation Section, which advised the national and regional boards, prepared briefs, and worked with the Justice Department; and the Review Section, which analyzed regional hearings and decisions, issued interpretations of law, prepared forms, and drafted regulations. The Publications Division, which handled all press and public inquiries, and published the decisions of the national and regional boards and their rules and regulations. It was overseen by a Director of Publications. The Trial Examining Division, which held hearings before the national board. It was overseen by a Chief Trial Examiner. Fahy the first General Counsel, and David J. Saposs the first Chief Industrial Economist. Cause-and-effect was one of the fundamental assumptions of the National Labor Relations Act, and for the causes of labor unrest to be understood economic analysis was needed. It asked Madden to pair an economist with an attorney in every important case, [26] and prepared outline of the economic data needed to support each case in case it went before the courts. The Economic Division was deeply aware of employer use of labor spies , violence, and company unions to thwart union organizing, and quietly pressed for a congressional investigation into these and other tactics. The committee uncovered extensive evidence of millions of company dollars used to pay for spies and fifth columnists within unions, exposed the culpability of local law enforcement in acts of violence and murder against union supporters particularly in the Harlan County War , [33] revealed the wide extent of illegal blacklisting of union members, and exposed the use of armed strikebreakers and widespread stockpiling of tear gas, vomit gas, machine guns,

mortars, and armor by corporations to use against strikers. Subsequently, Madden strove to resolve minor cases before they could become court challenges, and worked to delay appeals as long as possible until the best possible case could be brought to the Court. Fahy, the Supreme Court reviewed only 27 cases between August and March , even though the board had processed nearly 5, cases since its inception. Additionally, the Board won all 30 injunction and all 16 representation cases before the lower courts, a rate of success unequalled by any other federal agency. National Labor Relations Board , U. A second investigation into the NLRB led to organizational changes at the board. On July 20, , Republicans and conservative Democrats formed a coalition to push through the House of Representatives a resolution establishing a Special Committee to Investigate the National Labor Relations Board the " Smith Committee " , chaired by conservative, anti-labor Rep. Thomas , chair of the Senate Committee on Education and Labor , to hold no hearings or votes on the bill, and the legislation died. Saposs had been surreptitiously assessed by members of the Communist Party USA for membership, and rejected as a prospect. As historian James A. It had a major tactical impact: Economic data helped the NLRB fulfill its adjudicatorial and prosecutorial work in areas such as unfair labor practices ULPs , representation elections, and in determining remedial actions such as reinstatement, back pay awards, and fines. It left the board unable to determine whether its administration of the law was effective or not. As labor historian Josiah Bartlett Lambert put it: It also left the board largely unable to engage in rule-making, forcing it to make labor law on an inefficient, time-consuming case-by-case basis. Millis , led the board in a much more moderate direction. The centralized structure meant that only the strongest cases made it to national board, so that the board could apply all its economic and legal powers to crafting the best decision possible. But Madden and Witt had held on to the centralized strategy too long, and made political enemies in the process. Millis substituted a decentralized process in which the board was less a decision-maker and more a provider of services to the regions. The NWLB was given the authority to "finally determine" any labor dispute which threatened to interrupt war production, and to stabilize union wages and benefits during the war. But these discussions proved fruitless, and Millis broke them off in June There were so many strike vote filings in the six months after the war ended that NLRB actually shut down its long distance telephone lines, cancelled all out of town travel, suspended all public hearings, and suspended all other business to accommodate the workload. Herzog was named his successor. Disruptions caused by strikes during World War II as well as the huge wave of strikes that followed the end of the war fueled a growing movement in and to amend the NLRA to correct what critics saw as a pro-labor tilt in federal law. Taft and the strongly anti-union Representative Fred A. Organizationally, the act made the General Counsel a presidential appointee, independent of the board itself, and gave the General Counsel limited powers to seek injunctions without referring to the Justice Department. It also banned the NLRB from engaging in any mediation or conciliation, and formally enshrined in law the ban on hiring personnel to do economic data collection or analysis. The loss of the mediation function left the NLRB unable to become involved in labor disputes, a function it had engaged in since its inception as the National Labor Board in The change left the NLRB as the only federal agency unable to coordinate its decision-making and legal activities, and the only agency exempted in this manner under the Administrative Procedure Act. Indeed, there was no basis for it at all in the public record. Douds , U. The issue again came before the court in Garner v. Board of Public Works , U. It came before the court yet a third time in Wieman v. This time, the outcome was radically different. The Supreme Court unanimously ruled that state loyalty oath legislation violated the due process clause of the Fourteenth Amendment. In , the Supreme Court held 5-to-4 that the anti-communist oath was a bill of attainder in United States v. Brown , U. Lack of quorum[edit] From December until June , the five-person Board had only two members, creating a legal controversy. Liebman and Member Peter Schaumber. Bush refused to make some nominations to the Board and Senate Democrats refused to confirm those which he did make. Circuit Court of Appeals did not. Supreme Court to immediately hear arguments concerning the dispute, given the high stakes involved. NLRB that the two-member Board had no authority to issue decisions, invalidating all rulings made by Liebman and Schaumber. Please help improve this article by adding citations

to reliable sources. Unsourced material may be challenged and removed. In broad terms, the General Counsel is responsible for investigating and prosecuting unfair labor practice claims and for the general supervision of the NLRB field offices. The General Counsel oversees four divisions: The Board, on the other hand, is the adjudicative body that decides the unfair labor practice cases brought to it. The Board has more than thirty regional offices. The regional offices conduct elections, investigate unfair labor practice charges, and make the initial determination on those charges whether to dismiss, settle, or issue complaints. On the other hand, in those parts of the private sector its jurisdictional standards are low enough to reach almost all employers whose business has any appreciable impact on interstate commerce. Processing of charges[edit] Charges are filed by parties against unions or employers with the appropriate regional office. The regional office will investigate the complaint. If a violation is believed to exist, the region will take the case before an Administrative Law Judge who will conduct a hearing. The decision of the Administrative Law Judge may be reviewed by the five member Board. Board decisions are reviewable by United States Courts of Appeals. For greater detail on this process see the entry for unfair labor practice. His nomination was sent to the U. Senate on January 5,

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Also created the National Labor Relations Board (NLRB) - provide the machinery for enforcing both these provisions. NLRB. National Labor Relations Board.

Acme Industrial Company Argued: In this case we deal with another-involving the obligation to furnish information that allows a union to decide whether to process a grievance. In April , at the conclusion of a strike, the respondent entered into a collective bargaining agreement with the union which was the certified representative of its employees. The agreement contained two sections relevant to this case. After this rebuff, the union filed 11 grievances charging the respondent with violations of the above quoted clauses of the collective agreement. The approximate dates when each piece of equipment was moved out of the plant. The place to which each piece of equipment was moved and whether such place is a facility which is operated or controlled by the Company. The number of machines or equipment that was moved out of the plant. What was the reason or purpose of moving the equipment out of the plant. Is this equipment used for production elsewhere. This refusal prompted the union to file unfair labor practice charges with the National Labor Relations Board. Accordingly, it issued a cease-and-desist order. It did not question the relevance of the information nor the finding that the union had not expressly waived its right to the information. The Court ruled, however, that the existence of a provision for binding arbitration of differences concerning the meaning and application of the agreement foreclosed the Board from exercising its statutory power. The court cited United Steelworkers v. We granted certiorari to consider the substantial question of federal labor law thus presented. There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. National Labor Relations Board v. Similarly, the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement. The two cases upon which the court below relied, and the third of the Steelworkers trilogy, United Steelworkers of America v. The relationship of the Board to the arbitration process is of a quite different order. But even if the policy of the Steelworkers Cases were thought to apply with the same vigor to the Board as to the courts, that policy would not require the Board to abstain here. For when it ordered the employer to furnish the requested information to the union, the Board was not making a binding construction of the labor contract. It was only acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. Thus, the assertion of jurisdiction by the Board in this case in no way threatens the power which the parties have given the arbitrator to make binding interpretations of the labor agreement. Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened. It would force the union to take a grievance all the way through to arbitration without providing the opportunity to evaluate the merits of the claim. Nothing in federal labor law requires such a result.