

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ivan C. McLeod, Regional Director of the Second Region of the
National Labor Relations Board, for and on Behalf of the National
Labor Relations Board v. Business Machine and Office Appliance
Mechanics Conference Board, Local 459, International Union of
Electrical, Radio and Machine Workers, AFL-CIO

300 F.2d 237 (2d Cir. 1962) · No. No. 243; Docket 27317 · Decided February 7, 1962

SUMMARY

The Second Circuit reversed a preliminary injunction issued under section 10(l) of the National Labor Relations Act against a union distributing handbills at businesses that leased and used equipment serviced by employees of the struck employer. The majority held that existing National Labor Relations Board precedent interpreting the publicity proviso made it unreasonable to expect the Board to find an unfair labor practice, and that granting relief would improperly intrude on the Board’s function. The court also held that the alleged falsity of the handbills was not properly before it in the section 10(l) proceeding, while allowing for a possible later petition based on that issue.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Marshall, Circuit Judge; Leonard P. Moore, Circuit Judge; Kaufman, Circuit Judge
JURISDICTION	Federal
DECIDED	February 7, 1962
DOCKET	No. 243; Docket 27317
DISPOSITION	reversed
PROCEDURAL POSTURE	The union appealed a district court order granting the Regional Director's petition for a preliminary injunction under section 10(l) of the National Labor Relations Act based on alleged secondary-boycott conduct violating section 8(b)(4)(ii)(B).
STANDARD OF REVIEW	Because the material facts were undisputed and the appeal presented only questions of law, the court reviewed whether the district judge was wrong, rather than whether the judge was clearly wrong. The dissent described the applicable inquiry as whether the district court

	reasonably concluded that the Regional Director had cause to believe the charges were true.
PRECEDENTIAL VALUE	Published federal appellate opinion; precedential
PARTIES	Business Machine and Office Appliance Mechanics Conference Board, Local 459, International Union of Electrical, Radio and Machine Workers, AFL-CIO v. Ivan C. McLeod, Regional Director of the Second Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board

TOPICS

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QUESTIONS PRESENTED

1. Whether a section 10(l) preliminary injunction may issue when existing NLRB decisions make it unreasonable to anticipate that the Board would find the challenged handbilling to be an unfair labor practice.
2. Whether the court could determine in the section 10(l) proceeding that the handbills were untruthful and grant relief on that ground when the Regional Director had not relied on that theory in the petition or argument.
3. Whether the district court's injunction should be reversed under the statutory allocation of authority between the courts, the Regional Director, and the NLRB.

HOLDINGS

1. A finding of reasonable cause under section 10(l) must be based on a reasonable possibility that the NLRB will sustain the unfair-labor-practice charge. Because existing Board decisions construed the publicity proviso to protect the challenged handbilling, the injunction could not properly issue.
2. The court could not grant section 10(l) relief based on the alleged falsity of the handbills because the Regional Director had not relied on that ground in the petition or argument. A further petition based on allegedly untruthful handbilling was not barred by the reversal.

KEY QUOTATIONS

"We believe the injunction should not have been granted because previous Board decisions construing the so-called "publicity proviso" would preclude it from finding an unfair labor practice in this case." (¶ 3)

"Section 10(l) was designed by Congress to provide a means by which temporary injunctive relief could be obtained "pending the final adjudication of the Board."" (¶ 6)

“a finding of "reasonable cause" must be premised on a belief there is a reasonable possibility of the Board sustaining the unfair labor practice charge.” (¶ 7)

“We must, therefore, defer to the clear purport of Board precedents, whether we believe them right or wrong,” (¶ 9)

“The courts are not free to roam at will over every aspect of a labor dispute upon the request of the charging party.” (¶ 10)

FACTUAL BACKGROUND

Members of Local 459 employed by Remington Rand's Univac Division as tabulating-service mechanics had been on strike since September 1961. During the strike, the union distributed handbills near businesses that leased tabulators and computers from Remington Rand and urged the public not to patronize those businesses. The handbills referred to businesses including Macy's, American Tobacco, Associated Lerner Shops, and Eastern Air Lines, and alleged that they used or permitted strikebreakers to service Remington Rand equipment.

PROCEDURAL HISTORY

Union members employed by Remington Rand went on strike and distributed handbills urging the public not to patronize businesses that leased equipment from Remington Rand. The district court found reasonable cause to believe the handbilling violated the Act and enjoined the union. The Second Circuit reversed, concluding that existing NLRB precedent protected the handbilling under the publicity proviso and that the district court could not grant section 10(l) relief absent a reasonable possibility that the Board would sustain the unfair-labor-practice charge.

DISPOSITION

reversed

CASES CITED

- *Empresa Hondurena de Vapores, S. A. v. McLeod*, 300 F.2d 222 (2d Cir. Jan. 12, 1962)
- *Lohman Sales Co.*, 132 N.L.R.B. No. 67
- *Golden Dawn Foods*, 134 N.L.R.B. No. 73
- *Northwestern Construction of Washington*, 134 N.L.R.B. No. 46
- *Middle South Broadcasting Co.*, 133 N.L.R.B. No. 165
- *Penello v. Local Union No. 59, Sheet Metal Workers*, 195 F. Supp. 458, 473 (D. Del. 1961)
- *Local 753, Milk Wagon Drivers v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, 61 S. Ct. 122, 85 L. Ed. 63 (1940)
- *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 58 S. Ct. 703, 82 L. Ed. 1012 (1938)
- *Marine Cooks v. Panama S.S. Co.*, 362 U.S. 365, 370 n. 7, 80 S. Ct. 779, 783, 4 L. Ed. 2d 797 (1960)
- *International Brotherhood of Electrical Workers v. N.L.R.B.*, 341 U.S. 694, 704, 71 S. Ct. 954, 95 L. Ed. 1299 (1951)

- Douds v. Milk Drivers & Dairy Employees Union, 248 F.2d 534, 537 (2d Cir. 1957)
- N.L.R.B. v. Waterman S.S. Corp., 309 U.S. 206, 60 S. Ct. 493, 84 L. Ed. 704 (1940)

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