

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**McLeod v. Business Machine & Office Appliance Mechanics
Conference Board**

300 F.2d 237 (2d Cir. 1962) · Decided February 7, 1962

SUMMARY

The Second Circuit reversed a district court injunction issued under section 10(l) of the National Labor Relations Act against Local 459's handbilling of businesses that leased or used equipment serviced by the primary employer. The court held that existing NLRB precedent concerning the publicity proviso made it unreasonable to anticipate that the Board would find an unfair labor practice based on the alleged secondary handbilling. The court also held that the district court could not consider the charging party's separate contention that the handbills were untruthful because that issue had not been raised by the Regional Director.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Marshall, Circuit Judge; Marshall; Moore
JURISDICTION	Federal
DECIDED	February 7, 1962
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a district court order granting a Regional Director's petition for a preliminary injunction under section 10(l) of the National Labor Relations Act.
STANDARD OF REVIEW	Because the material facts were undisputed and the appeal presented questions of law, the court reviewed whether the district judge was wrong, rather than whether the judge was clearly wrong.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Local 459 v. Regional Director of the National Labor Relations Board

TOPICS

- labor law
- administrative law
- judicial review of agency action
- remedies
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a section 10(l) injunction may issue when existing National Labor Relations Board precedent makes it unlikely that the Board would find the charged conduct to be an unfair labor practice.
2. Whether the court could grant injunctive relief based on the charging party's assertion that the handbills were untruthful when the Regional Director did not rely on that theory in seeking the injunction.

HOLDINGS

1. A section 10(l) injunction may not issue absent a reasonable possibility that the National Labor Relations Board will sustain the unfair-labor-practice charge. Existing Board precedent construed the publicity proviso to protect the handbilling at issue, so the district court could not properly grant the injunction.
2. The court could not grant relief based on the charging party's untruthfulness theory when the Regional Director had not relied on that theory in the petition or argument. A section 10(l) proceeding is limited to the Regional Director's asserted factual and legal basis.

KEY QUOTATIONS

“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.”” (300 F.2d at 240)

“We must, therefore, defer to the clear purport of Board precedents, whether we believe them right or wrong, and dismiss the petition.” (300 F.2d at 242)

“The courts are not free to roam at will over every aspect of a labor dispute upon the request of the charging party.” (300 F.2d at 243)

FACTUAL BACKGROUND

Members of Local 459 employed by Remington Rand Univac Division, Sperry Rand Corporation, had been on strike since September 1961. During the strike, the union distributed handbills at businesses leasing tabulators and computers from Rand, urging the public not to patronize those businesses. The district court found reasonable cause to believe the handbilling violated section 8(b)(4)(ii)(B), but the Second Circuit concluded that existing National Labor Relations Board decisions treated this type of publicity as protected by the statute's publicity proviso.

PROCEDURAL HISTORY

The Regional Director alleged that Local 459 was engaging in conduct violating section 8(b)(4)(ii)(B) by handbilling businesses that leased or otherwise dealt with equipment from the primary employer. The district court found reasonable cause to believe an unfair labor practice had occurred and granted injunctive relief. The Second Circuit reversed and directed dismissal of the petition.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The petition for injunctive relief was to be dismissed. The opinion states that any existing injunction must be dissolved forthwith if the Board determines that the conduct does not constitute an unfair labor practice.

CASES CITED

- *Empressa Hondurena de Vapores, S. A. v. McLeod*, 300 F.2d 222 (2d Cir. 1962)
- *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)
- *Penello v. Local Union No. 59, Sheet Metal Workers*, 195 F. Supp. 458, 473 (D. Del. 1961)
- *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