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"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."—OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS (1920) 269.

Comments

JURISDICTION OF THE COURTS TO DECIDE QUESTIONS ARISING OUT OF COLLECTIVE BARGAINING AGREEMENTS

Prior to the National Labor Relations Act[1] individual rights under collective bargaining agreements were enforced by courts.[2] Since enactment of that statute

1. 49 STAT. 457 (1935), 29 U.S.C. § § 151-166 (1940).
2. *See* Hamilton, *Individual Rights Arising from Collective Labor Contracts,* (1938) 3 Mo. L. REV. 252.

there has been some doubt as to whether or not jurisdiction over all questions arising under collective bargaining contracts made pursuant to rights established by that Act had been vested in the National Labor Relations Board to the exclusion of the courts.

JURISDICTION IN ACTIONS TO ENFORCE RIGHT CREATED BY THE NATIONAL LABOR RELATIONS ACT

What is the nature of the rights vested in the National Labor Relations Board by the National Labor Relations Act? No private rights are vested in the board and the procedure which the Act authorizes the board to employ is for the adjudication of public, not private, rights. In *National Licorice Co. v. National Labor Relations Board*[3] the board brought a proceeding to enforce an order which it had entered pursuant to its findings that the *Licorice* company was guilty of unfair labor practices and that contracts made by the company with its employees were made in violation of the National Labor Relations Act. The court below enforced the order and the company brought the case to the Supreme Court on *certiorari,* claiming, among other things, that the board had no authority to make any order with respect to the contracts because the individual employees were not parties to the proceeding. The board's order was held valid, the Court saying:

> "The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights. No. 342, Amalgamated Utility Workers, U.W.O.C. v. Consolidated Edison Co. decided this term, [309 U.S. 261, ante, 738, 60 S. Ct. 561], H. Rept. No. 1147, 74th Cong., 1st Sess., Committee on Labor, p. 24; cf. Federal Trade Commission v. Klesner, 280 U.S. 19, 74 L. Ed. 138, 50 S. Ct. 1, 68 A.L.R. 838. It has few of the indicia of a priviate litigation and makes no requirement for the presence in it of any private party other than the employer charged with an unfair labor practice. The Board acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining and by protecting the 'exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment.' . . . § 1. The immediate object of the proceeding is to prevent unfair labor practices which, as defined by §§ 7, 8, are practices tending to thwart the declared policy of the Act. To that end the Board is authorized to order the employer to desist from such practices, and by § 10 (c) it is given authority to take such affirmative remedial action as will effectuate the policies of the Act. National Labor Relations Board v. Pennsylvania Greyhound. . . .
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> "In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights. . . .
>
> "As the National Labor Relations Act contemplates no more than

3. 309 U.S. 350, 362, 366, 60 Sup. Ct. 569 (1940).

the protection of the public rights which it creates and defines, and as the Board's order is directed solely to the employer and is ineffective to determine any private rights of the employees and leaves them free to assert such legal rights as they may have acquired under their contracts, in any appropriate tribunal, we think they are not indispensable parties for purposes of the Board's order and the statute does not require their presence as parties to the present proceeding and there was no abuse of the Board's discretion in its failure to make them parties."

To the same effect is *Amalgamated Utility Workers v. Consolidated Edison Co. of New York*,[4] where it was held that a labor union could not maintain a proceeding to have the *Edison* company adjudged in contempt for failure to comply with parts of a decree entered by the circuit court of appeals enforcing an order of the National Labor Relations Board. The Court held that no private rights were created by the National Labor Relations Act and that the board was the proper party to institute contempt proceedings.

In *National Labor Relations Board v. Newark Morning Ledger Co.*,[5] the employer, the *Ledger* company, after bargaining collectively with the *Newark Newspaper Guild,* a labor union, entered into a contract with the *Guild* acting for the employees. The contract, among other things, provided that the *Ledger* company would not discharge or otherwise discriminate against any employee because of membership or activity in the *Guild. Fahy,* president of the Guild, later was discharged. A complaint was filed with the National Labor Relations Board. After a hearing the board ordered the *Ledger* company to cease and desist from discouraging membership in the Guild and to reinstate *Fahy.* This is a proceeding in the circuit court of appeals to enforce that order. Evidently (although the report of the case does not specifically so state) the employer contended the board had no jurisdiction for the reason that the facts constituted merely a breach of the agreement between the *Ledger* company and the Guild and that, therefore, the jurisdiction was in the courts, rather than the board. Originally the court held that the Board had no jurisdiction. On rehearing, however, it changed its views and held that jurisdiction was in the board. The court said:

"We are thus not called upon to determine whether Miss Fahy has an individual right to secure redress for her wrongful discharge or whether the law of New Jersey affords her a forum for the appropriate redress of her grievance. The existence of such a private right in Miss Fahy in no way affects the public right or the exclusive jurisdiction of the Board to enforce it. This is clear from the express provision of Section 10(a), 29 U.S.C.A. § 160(a), that the power of the Board to prevent unfair labor practices 'shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.' A misconception of the nature of the Board's process may arise from the fact that in the enforcement of the public right to have the channels of interstate commerce freed from obstructions resulting from unfair labor practices a private right of an

4. 309 U.S. 261, 60 Sup. Ct. 561 (1940).
5. 120 F. (2d) 262, 268 (C.C.A. 3d, 1941).

employee may incidentally be protected or enforced. Even though private relief is thus afforded it nevertheless remains true that the *Board's powers may be invoked only when there is a public right to be protected and that its processes are never available to a private suitor.*

"It is apparent that the jurisdiction of the Board to prevent unfair labor practices is very broad. It is, we think, equally clear that the exercise of this jurisdiction in any particular case, is ,under the language of Section 10, discretionary with the Board. The jurisdiction is not to be exercised unless in the opinion of the Board the unfair labor practice complained of interferes so substantially with the public rights created by Section 7 as to require its restraint in the public interest. As we have seen ,the mere fact that a private right of an employee has been infringed by the act of an employer is not of itself sufficient to bring the Board's powers into play. The Congress, has, however, reposed in the Board complete discretionary power to determine in each case whether the public interest requires it to act. With appropriate exercise of that discretion we may not interfere." (Italics added.)

It appears, therefore, that the rights or powers vested in the board are public rights to be exercised only where the public interest or welfare is concerned—that public interest as set forth in the National Labor Relations Act; and that the board's powers are to be exercised to protect the interest which the public has in the right of employees as individuals to organize and bargain collectively and to safeguard that right from any infringement by employers through actions declared by the Act to be unfair labor practices. It should follow, therefore, that jurisdiction over all other questions of a justiciable nature arising out of labor agreement resulting from collective bargaining is in the courts.

In the fact that the National Labor Relations Board is vested with public rights only and empowered to protect and enforce such rights to the exclusion of private rights, it is somewhat similar to the Federal Trade Commission. In *National Licorice Co. v. National Labor Relations Board, supra,* the Court, in its opinion, cited *Federal Trade Commission v. Klesner,*[6] in which it was held that an action brought by the trade commission to enforce an order which it had entered against *Klesner* should have been dismissed because the proceeding, as originally instituted by and before the commission, was not in the public interest. It is true, of course, that the Federal Trade Commission Act[7] contains an express provision that a complaint may be filed by the commission only "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public," and that no such provision is incorporated in the National Labor Relations Act. But the decision in the *National Licorice Co.* case, *supra,* is essentially the converse of that in *Federal Trade Commission v. Klesner, supra.* That is to say, in the *Licorice* case the private rights of the employees under contracts made with the employer were not affected by the proceeding before or the order of the board because the proceeding was one in the public interest and,

6. 280 U.S. 19, 50 Sup. Ct. 1 (1929).
7. 38 STAT. 717 (1914), 52 STAT. 111 (1938), 15 U.S.C. §§ 41-51 (1940).

as the Court said, "the Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices."[8]

So far no case has been dismissed by a court for the reason that a proceeding before the National Labor Relations Board was not in the public interest. The closest approach to that question was reached in *Amalgamated Utility Workers v. Consolidated Edison Co. of N. Y., supra,* in which the Court held that a private party could not assert public rights the enforcement of which was left, by the Act, exclusively to the board.

If the language found in *National Labor Relations Board v. Newark Morning Ledger Co., supra,* is a safe criterion, it is unlikely that it will be held that a proceeding before the board was not in the public interest provided the board has made an affirmative finding on that question. Note the language used by the court: "The Congress, has, however, reposed in the Board complete discreionary power to determine in each case whether the public interest requires it to act. With appropriate exercise of that discretion we may not interfere."[9] A discussion of what is "appropriate exercise of that discretion" will not be here attempted.

By way of contrast and illustration of the different congressional intent in the enactment of the two statutes, there are no provisions in the National Labor Relations Act comparable to those of the Railway Labor Act[10] found in Section 3(i) thereof.[11] As stated in that section, jurisdiction is given to the National Railroad Adjustment Board to hear "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions," . . . And Section 5 Second[12] authorizes either party to an agreement reached through mediation as provided for by the Act, in case a controversy arises over the meaning or application of the agreement, to apply to the National Mediation Board for an interpretation of the meaning or application of such agreement and authorizes the board, after hearing, to give its interpretation of such agreement.

If Congress, therefore, had desired to provide the National Labor Relations Board with comparable jurisdiction, there existed precedent therefor, as the Railway Labor Act was first enacted in 1926 and put, for the most part, in its present form in 1934. The National Labor Relations Act was not enacted until 1935.

Notwithstanding the later decisions in which the Supreme Court, by *dicta* at least, clearly indicated that the private rights of the parties to collective bargaining agreements remained subject to adjudication by appropriate courts, one of the first such cases to come before a federal district court caused it no little trouble. In *M and M Wood Working Co. v. Plywood & Veneer Workers Local Union*

8. 309 U.S. 350, 364, 60 Sup. Ct. 569, 577 (1940).
9. 120 F. (2d) 262, 268, 269 (C.C.A. 3d, 1941).
10. 45 U.S.C. §§ 151-188 (1940).
11. 45 U.S.C. § 153(i) (1940).
12. 45 U.S.C. § 155 Second (1940).

No. 102,[13] the plaintiff employer had entered into a collective bargaining agreement with a labor union affiliated with the American Federation of Labor, and had agreed to employ only members of such union. Thereafter, a majority of the members of the union withdrew from the organization and organized a new union which became affiliated with the Congress of Industrial Organizations. The Congress of Industrial Organizations union then claimed the rights under the labor agreement made by the employer with the American Federation of Labor union and, upon the employer's attempts to operate its plant with American Federation of Labor men, resirted to violence to prevent such action. The employer then brought an action to enjoin the violence and picketing by the Congress of Industrial Organizations union, claiming that under its contract it could employ only American Federation of Labor workers. The question of the employer's rights and obligations under the agreement was thus indirectly presented to the court even though it is not clear, from the report of the case, whether the other contracting party (American Federation of Labor union) was a party to the suit. The case is complicated by considerations of the application of the Norris-LaGuardia Act[14] but the court held that Act inapplicable. It was not at all sure, however, whether it or the National Labor Relations Board had jurisdiction of the controversy, saying:

> "The court is not grasping of jurisdiction. If the National Labor Relations Board has the power to act, this court will not interfere with or hamper its action no matter how long delayed. The Congress of the United States has written the laws and the court will meticulously follow the limitations."[15]

In an earlier case[16] based on a conspiracy to prevent the operation of plaintiff's factory and destroy its business, rather than on the fact of a collective bargaining contract between plaintiff and its employees, the court found its jurisdiction to issue a temporary restraining order in the terms of the National Labor Relations Act itself.

Jurisdiction of Federal Courts to Enforce Rights Not Dependent Upon the National Labor Relations Act

But even though the National Labor Relations Act is a federal enactment and creates certain rights in employees, such fact does not confer on federal courts jurisdiction to enforce those rights as arising under the Constitution or laws of the United States, absent action by the National Labor Relations Board to determine what the rights are. In *Blankenship v. Kurfman*,[17] Blankenship and others, who were the plaintiffs, were members of *Local 702 of International Brotherhood of Electrical Workers*. *Kurfman* and others, defendants, were members of *Local 165*

13. 23 F. Supp. 11 (D. Ore. 1938).
14. 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.* (1940).
15. 23 F. Supp. 11, 19 (D. Ore. 1938).
16. Oberman & Co., Inc., v. United Garment Workers of America, 21 F. Supp. 20 (W.D. Mo. 1937).
17. 96 F. (2d) 450, 453, 454 (C.C.A. 7th, 1938).

of International Hod Carriers Building & Common Laborers Union. Both were affiliated with the American Federation of Labor. The plaintiffs were all employed in the gas department of the *Central Illinois Light Company* and all the employees of this department were members of *Local 702.* The company made a contract with *Local 702.* Subsequently, the defendants and other members of *Local 165* demanded that praintiffs stop work and threatened them with physical violence in an attempt to compel plaintiffs to join *Local 165* and to compel the company to make a contract with the latter. Plaintiffs brought this suit to enjoin defendants individually and as members of *Local 165* from interfering with, threatening or exercising violence against plaintiffs while in the course of their employment. Plaintiffs contended that the court had jurisdiction because defendants' acts deprived them of rights and privileges secured to them by the National Labor Relations Act. But the court thought otherwise, saying:

> "The proposition of the plaintiffs that the effect of National Labor Relations Act, especially sections 157 and 159(a) of title 29 U.S.C.A., is to create a federal right, the violation of which by the defendants entitles plaintiffs to injunctive relief, is untenable.
>
> "The general purpose of the National Labor Relations Act is to provide methods of preventing or eliminating certain 'unfair practices' which have heretofore characterized the relation of employer and employee, and which have obstructed, or tended to obstruct, the free flow of commerce. The act creates certain rights and duties as between employer and employee and provides the procedure necessary to give effect thereto. *It seems clear that the only rights which are made enforceable by the act are those which have been determined by the National Labor Relations Board to exist under the facts of each case; and when these rights have been determined, the method of enforcing them which is provided by the Act itself must be followed.* And we find no provision in the act which can be construed as intending to create rights for employees which can be enforced in federal courts independently of action by the National Labor Relations Board. Consequently, we hold that the contract in the instant case between the plaintiffs and their employer did not, by force of the National Labor Relations Act, create a right in the plaintiffs which was secured to them 'by the Constitution or laws of the United States.' Consequently, the alleged unlawful interference by the defendants with the plaintiffs' contractual rights did not give a cause of action of which a federal court would have jurisdiction in the absence of diversity of citizenship." (Italics added.)

If the Act conferred no rights on employees enforceable in federal courts in the absence of action by the board, it is not surprising to find a federal court holding the same to be true of employers. In *Lund v. Woodenware Workers Union,*[18] a majority of the employer *Lund's* employees had elected representatives for collective bargaining and he had made an agreement with them covering terms and conditions of employment. A minority had gone on strike and were, by acts of violence and intimidation, preventing the majority from working. *Lund*

18. 19 F. Supp. 607, 609, 611 (D. Minn. 1937).

sued to enjoin the minority from interfering with the contract he had made with the majority, contending that under Section 159(a), Title 29 U.S.C.A. (the National Labor Relations Act) he was required to deal only with representatives of the majority and that he had no adequate remedy at law because, under the National Labor Relations Act, no provision was made for employers to petition the labor board. The court denied the injunction, saying:

> "Unquestionably, the contract that plaintiff contends he has entered into with the representatives of the majority of his employees may be entirely valid, but the mere fact that the employer has made a valid contract with his employees does not, of itself, give rise to any justiciable controversy in federal court under the act. There is no intimation in the act that, merely because an employer has entered into a contract with a majority union, Congress assumed to vest jurisdiction in United States courts to protect or safeguard the integrity of such contract.
>
> "The difficulty with the assumption of jurisdiction herein on the theory that plaintiff's case arises under the Wagner Act is due to the very apparent fact that the right that the plaintiff seeks to enforce is not created, either expressly or impliedly, by the federal statute in question, but by this proceeding he seeks to read into the act certain rights on behalf of the employer to proceed in a court of equity which Congress studiously refrained from giving to the employer. The courts cannot create a right that Congress did not see fit to grant."

So far as the decisions go at the present time, then, federal courts do not have jurisdiction of actions involving rights of employees (or employers) growing out of or conferred upon such employees by the National Labor Relations Act, unless some recognized ground of federal jurisdiction, such as diversity of citizenship, is present in the case. Such jurisdiction is centered exclusively in the National Labor Relations Board.

Jurisdiction of State Courts to Enforce Rights Not Dependent Upon the National Labor Relations Act

What of the jurisdiction of state courts over private, as distinguished from public, rights arising out of labor agreements resulting from the collective bargaining process? As heretofore indicated,[19] prior to the National Labor Relations Act the courts recognized rights of employees arising under such contracts. Since the passage of the Act an action by an individual on such a contract where the question of the court's jurisdiction was raised has apparently not, as yet, been presented to a state court.

That there is the theoretical, at least, possibility of maintaining such a suit is indicated by the *dicta* in the *National Licorice Co.* and *Newark Morning Ledger Co.* cases, *supra.* In the former the Court, in speaking of the board's order, related that it "does not foreclose the employees from taking any action to secure an adjudication upon the contracts, nor prejudge their rights in the event of such adjudication." And, again, the board's order "is ineffective to determine any private

19. Hamilton, *loc. cit. supra* note 2.

rights of the employees and leaves them free to assert such legal rights as they may have acquired under their contracts, in any appropriate tribunal, . . ." In the latter case the Court stated, "We are thus not called upon to determine whether Miss Fahy has an individual right to secure redress for her wrongful discharge or whether the law of New Jersey affords her a forum for the appropriate redress of her grievance. The existence of such a private right in Miss Fahy in no way affects the public right or the exclusive jurisdiction of the Board to enforce it."

These expressions of *dicta* are not advanced as decisions and certainly give no indication whatsoever that a state court, as such, would have jurisdiction of an action of the kind under consideration.

It seems clear that no court, state or federal, has jurisdiction over an action which would affect the right of employees to bargain collectively or any other public right created or guaranteed under the National Labor Relations Act.

Despite the absence of decision on the question it would seem to be equally clear that action by an employer or an employee on a labor agreement of the nature under discussion which sought an adjudication of any question arising therefrom which did not relate to the process of or right to collective bargaining on the part of the employees or their right to self organization or other public right given them by the Act should be cognizable by a state court under its common law jurisdiction of contracts generally.

That such a conclusion is warranted would seem to be indicated by decisions that Congress, by enactment of the National Labor Relations Act, has not excluded the states from regulation in the field of labor relations provided such state regulation does not conflict with that enacted by the federal act.

In *Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board*,[20] the Wisconsin Employment Relations Board, acting under the Wisconsin Employment Peace Act and on a complaint under that Act by the *Allen-Bradley* company, found *Allen-Bradley Local No. 1111* and fourteen individual defendants (members thereof) guilty of unfair labor practices under the Wisconsin act in certain actions such as mass picketing to prevent work at the *Allen-Bradley* plant, threatening employees desiring to work with bodily injury, obstructing entrance to and egress from the plant, etc. The board made an order requiring the union, its officers, agents and members, from doing the things constituting unfair labor practices. But the board made no determination, *in the order,* as to the fourteen individual defendants. The acts of the defendants were committed during a strike at the company's plant. The defendants contend the board's order is void as being repugnant to the National Labor Relations Act. It was admitted that the company was subject to the National Labor Relations Act. But the federal board had not undertaken in this case to exercise the jurisdiction conferred by the National Labor Relations Act. The court held, in an opinion narrowly based on the precise facts and only on those provisions of the Wisconsin act involved in the state board proceeding, that there was no conflict of those provisions or of the state

20. 315 U.S. 740, 749, 750, 62 Sup. Ct. 820, 825, 826 (1942).

board's order with the National Labor Relations Act. It said:

> "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board."

In discussing another case, the court said:

> "Therefore we were more ready to conclude that a federal act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. Maurer v. Hamilton, supra, and cases cited. Here we are dealing with the latter type of problem. We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard."

And the opinion further states:

> "Nor can we say that the control which Congress has asserted over the subject matter of labor disputes is so pervasive (Cf. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 62 S. Ct. 491, 86 L. Ed. ——) as to prevent Wisconsin under the familiar rule of Pennsylvania R. Co. v. Public Service Commission, 250 U.S. 566, 569, 40 S. Ct. 36, 37, 64 L. Ed. 1142, from supplementing federal regulation in the manner of this order. Sec. 7 of the federal Act, 29 U.S.C.A. § 157, guarantees labor its 'fundamental right' (National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33, 57 S. Ct. 615, 622, 81 L. Ed. 893, 108 A.L.R 1352) to self-organiation and collective bargaining. Sec. 8 affords employees protection against unfair labor practices of employers including employer interference with the rights secured by § 7. Sec. 9 affords machinery for providing appropriate collective bargaining units. And § 10 grants the federal Board 'exclusive' power of enforcement. It is not sufficient, however, to show that the state Act *might* be so construed and applied as to dilute, impair, or defeat those rights. Watson v. Buck, supra. . . . If the order of the state Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See Sinnot v. Davenport, 22 How. 227, 243, 16 L. Ed. 243."

Davega City Radio, Inc. v. State Labor Relations Board,[21] was a proceeding by the New York State Labor Relations Board charging the *Davega* company with unfair labor practices. The employer (*Davega*) moved to vacate an order of the board directing it to reinstate some employees and to take other action. *Davega* contended that it was engaged in interstate commerce and, therefore, it and its employees were subject to the National Labor Relations Act, but not the State Labor Relations Act. The court related that "the State and National Acts

21. 281 N.Y. 13, 21, 22 N.E. (2d) 145, 147 (1939).

are identical in aims and requirements, but the State Act adds requirements in addition to, but in harmony with, those of the National Act." "The two statutes are not only alike in their provisions but are almost identical in their language." The court stated the question to be whether by reason of Article VI of the Federal Constitution the mere existence of the National Labor Relations Act ousts the state board from jurisdiction, it being assumed that *Davega* is within the provisions of the National Labor Relations Act, and held the state board's order to be valid. The court said:

> "But where a State act is enforced in the absence of National legislation, or a State act is enforced where there co-exists consistent National legislation, then article VI is complied with since the supremacy of the laws of the United States is in no manner impaired. 'Since there is nothing in the State law which is inconsistent with, or could conceivably interfere with the operation or enforcement of, the Federal law, the statute of Missouri was not superseded.' Brandeis, J., Dickson v. Uhlmann Grain Co., 288 U.S. 188, 200."

In *United Baking Co. v. Bakery & Confectionery Workers Union, Local 221*,[22] it was held that the New York State Labor Relations Board which, as is seen in *Davega City Radio, Inc. v. State Labor Relations Board, supra,* has powers similar to the National Labor Relations Board, has no power to interpret, enforce or abrogate any contract made by employer and trade union, particularly where it is not a party to the contract.

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22. 257 App. Div. 501, 14 N.Y.S. (2) 74 (1939).

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