Text of Decision Revoking Steel Mill Seizure

(Editor's note: Because of the widespread interest in the Supreme Court's decision reversing President Truman's seizure of the nation's steel mills, the majority opinion, as delivered by Justice Black, is herewith printed in full.)

Washington — Mr. Justice Black delivered the opinion of the Court.

We are asked to decide whether the President was acting within his constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills.

The mill owners argue that the President's order amounts to lawmaking, a legislative function which the Constitution has expressly confided to the Congress and not to the President.

The Government's position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe which would inevitably result from a stoppage of steel production, and that in meeting this grave emergency the President was acting within the aggregate of his constitutional powers as the Nation's Chief Executive and the Commander in Chief of the Armed Forces of the United States.

Basis of Issue

The issue emerges here from the following series of events:

In the latter part of 1951, a dispute arose between the steel companies and their employees over terms and conditions that should be included in new collective bargaining agreements. Long-continued conferences failed to resolve the dispute. On December 18, 1951, the employees' representative, United Steelworkers of America, CIO, gave notice of an intention to strike when the existing bargaining agreements expired on December 31.

Thereupon the Federal Mediation and Concilliation Service intervened in an effort to get labor and management to agree. This failing, the President on December 22, 1951, referred the dispute to the Federal Wage Stabilization Board (1) to investigate and make recommendations for fair and equitable terms of settlement. This board's report resulted in no settlement.

Union Gave Notice

On April 3, 1952, the union gave notice of a nationwide strike called to begin at 12:01 a.m., April 9.

The indispensability of steel as a component of substantially all weapons and other war materials led the President to believe that the proposed work stoppage would immediately jeopardize our national defense and that governmental seizure of the steel mills was necessary in order to assure the continued availability of steel. Reciting these considerations for his actions, the President, a few hours before the strike was to begin, issued Executive Order No. 10,340, a copy of which is attached at the end of this opinion as an appendix. The order directed the Secretary of Commerce to take possession of and operate most of the steel mills throughout the country.

Orders Issued

The secretary immediately issued his own possessory orders, calling upon the Presidents of the various companies to serve as operating managers for the United States. They were directed to carry on their activities in accordance with regulations and directions of the Secretary.

The next morning the President sent a message to Congress reporting his action. Cong. Rec., April 9, 1952, p. 3,962. Twelve days later he sent a second message. Cong. Rec., April 21, 1952, p. 4,192 Congress has taken no action.

Obeying the Secretary's orders under protest, the companies brought proceedings against him in the district court. Their complaints charged that the seizure was not authorized by an act of Congress or by any constitutional provisions. The district court was asked to declare the orders of the President and Secretary invalid and to issue preliminary and permanent injunctions restraining their enforcement.

Opposing the motion for preliminary injunction, the United States asserted that a strike disrupting steel production for even a brief period would so endanger the well-being and safety of the Nation that the President had "inherent power" to do what he had done—power "supported by the Constitution, by historical precedent, and by court decisions." The Government also contended that in any event no preliminary injunction should be issued because the companies had made no showing that their available legal remedies were inadequate or that their injuries from seizure would be irreparable.

Holding against the Government on all points, the district court on April 30 issued a preliminary injunction restraining the Secretary from "continuing the seizure and possession of the plant . . . and from acting under the purported authority of Executive Order No. 10,340." 103 F. Supp. 659. On the same day the court of appeals stayed the district court's injunction. Deeming it best that the issues raised be promptly decided by this court, we granted certiorari on May 3 and set the cause for argument on May 12.

Crucial Issues

Two crucial issues have developed. First, should final determination of the Constitutional validity of the President's order be made in this case which has proceeded no further than the preliminary injunction stage? Second, if so, is the seizure order within the Constitutional power of the President?

It is urged that there were non-constitutional grounds upon which the district court could have denied the preliminary injunction and thus have followed the customary practice of declining to reach and decide constitutional questions until compelled to do so. On this basis it is argued that Equity's extraordinary injunction relief should have been denied because (a) seizure of the companies' properties did not inflict irreparable damages, and (b) there were available legal remedies adequate to afford compensations for any possible damages which they might suffer.

Closely Related

While separately argued by the Government, these two contentions are here closely related, if not identical. Arguments as to both rest in large part on the Government's claim that should the seizure ultimately be held unlawful, the companies could recover full compensation in the court of claims for the unlawful taking. Prior cases in this court have cast doubt on the right to recover in the court of claims on account of properties unlawfully taken by Government officials for public use as these properties were alleged to have been. See E. G., Hooe v. United States, 218 U. S. 322, 335-336; United States v. North American Co., 253 U. S. 330, 333. But see Larson v. Domestic & Foreign Corp., 337 U. S. 682, 701-702. Moreover, seizure and government operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement.

Viewing the case this way, and in the light of the facts presented, the District Court saw no reason for delaying decision of the Constitutional validity of the orders. We agree with the District Court and can see no reason why that question was not ripe for determination on the record presented. We shall therefore consider and determine that question now.

No Authority Statute

The President's power to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such power can fairly be implied. Indeed, we do not understand the government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President to take both personal and real property under certain conditions. (2) However, the government admits that these conditions were not met and that the President's order was not rooted in either of them. The government refers to the seizure provisions of one of these statutes (Section 201 (B) of the defense production act) as "much too cumbersome, involved, and time consuming for the crisis which was at hand."

Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes.

Rejected

When the Taft-Hartley act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency. (3) Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining. (4) Consequently, the plan Congress adopted in that act did not provide for seizure under any circumstances. Instead, the plan sought to bring about settlements by use of the customary devices of mediation, conciliation, investigation by boards of inquiry, and public reports. In some instances temporary injunctions were authorized to provide cooling-off periods. All this failing, the unions were left free to strike if the majority of the employees, by secret ballot, expressed a desire to do so. (5)

It is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under Article II of the Constitution. Particular reliance is placed on the provisions which say that "the executive power shall be vested in a President . . ;" that "he shall take care that the laws be faithfully executed;" and that he "shall be commander-in-chief of the Army and Navy of the United States."

No Such Power

The order cannot properly be sustained as an exercise of the President's military power as Commander-in-Chief of the armed forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander-in-chief of the armed forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "all legislative powers herein granted shall be vested in a Congress of the United States . . ." After granting many powers to the Congress, Article I goes on to provide that Congress may "make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Rule Denial

The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a Government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution.

The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authroize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution did not subject this law-making power of Congress to presidential or military supervision or control.

It is said that other Presidents without congressional authority have taken possession of private business enterprises in order to settle labor disputes. But even if this be true, Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution "in the Government of the United States, or any department or officer thereof."

Cannot Stand

The founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

The judgment of the District Court is affirmed.

Mr. Justice Frankfurter.

Although the considerations relevant to the legal enforcement of the principle of separation of powers seem to be more complicated and flexible than may appear from what Mr. Justice Black has written, I join his opinion because I throughly agree with the application of the principle to the circumstances of this case. Even though such differences in attitude toward this principle may be merely differences in emphasis and nuance, they can be reflected by a single opinion for the court. Individual expression of views in reaching a common result is therefore important.

Appended to the majority opinion was the text of President Truman's order of April 8 directing seizure of the steel industry.

Footnotes:

1—This board was established under executive order 10,233, 16 Federal Register 3,503.

2—The Selective Service Act of 1948, 62 Stat. 604, 625-627, 50 U.S.C. App. (Supp. IV) Section 468; the Defense Production Act of 1950, Tit. II, 64 Stat. 798 as amended, 65 Stat. 138.

3—93 Congressional Record 3637-3645.

4—93 Congressional Record 3835-3836.

5—Labor Management Relations Act, 1947, 61 Stat. 136, 152-156, 29 U.S.C. (Supp. IV) Sections 141, 171-180.

The best reel in the world won't work well with the wrong line. Match the two well, and it would take a mighty poor rod to spoil your casting. But this relationship does not apply to fly casting.—Sports Afield.

Court Records

DISTRICT COURT

Gene Ray Renfro, possession of alcoholic liquor, $10.

Roland D. Miller, overload, $16.

James F. Keeton, 1168 Biddle lane, driving while intoxicated, $100.

Alfred R. Bird, angling prohibited methods, $30.

Alvin A. Alexander, overload, $33.

Walter Alfred Pelican, angling without a license, $30.

Frank Camera Rose, no PUC permit, $15.

Roy Lee Newsom, failure to stop at stop sign, $5.

Thomas Glen Parker, failure to operate on right side of highway, $6.

Thomas Jennings Oaks, no chauffeur's license, $5.

Glenn Logan Stewart, overload, $44.

CIRCUIT COURT

Howard K. Marriott vs. Georgann Marriott, complaint for annulment of marriage.

Dead line Sunday Classifieds is at noon Saturdays.

Oregon High Court Rules On Death Sentence; Upholds Legality of Death Penalty

Salem — (U.P.) — The Oregon Supreme Court has upheld the death sentence of Frank Oliver Payne, who shot a Portland merchant while attempting a holdup, and at the same time upheld the constitutionality of Oregon's death penalty.

Convicted of Shooting

Payne was convicted of shooting to death H. Nathan Butler, who operated a small store in Portland on the evening of Jan. 9, 1951. Payne ordered a pack of cigarettes. While Butler was ringing up the sale, Payne took a revolver from his pocket and told Butler it was a holdup. When Butler apparently resisted, Payne shot him five times. Payne left the store but was later caught and confessed.

Among legal points presented in the appeal from the verdict in the Multnomah county Circuit Court was the constitutionality of the amendment to the constitution of 1920 restoring the death penalty. The opinion of the high court, written by Justice Earl C. Latourette, upheld the amendment and declared it did not contravene section 1 of article XVII of the constitution.

Defendant Said Rational

On the question of granting a new trial for alleged "newly discovered evidence" concerning Payne's past life and mentality, Justice Latourette said: "It is our opinion that defendant was rational to such a degree that he could enlighten his attorney concerning his past life. He thoroughly covered his whole life's history in his testimony to the jury. A party will not be permitted to withhold evidence, speculate on the outcome of the trial and, if it turns adversely to him, later seek to employ the withheld evidence." Finding no error in the record, the high court affirmed the trial court.

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