IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 744

THE YOUNGSTOWN SHEET AND TUBE COMPANY, ET AL., REPUBLIC STEEL CORPORATION, ARMCO STEEL CORPORATION and SHEFFIELD STEEL CORPORATION, BETHLEHEM STEEL COMPANY, ET AL., JONES & LAUGHLIN STEEL CORPORATION, UNITED STATES STEEL COMPANY, and E. J. LAVINO & COMPANY, *Petitioners*,

v.

CHARLES SAWYER, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

CHARLES SAWYER, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ or writs of certiorari issue to review the judgment of the United States District Court for the District of Columbia entered in the above-entitled cause on April 30, 1952.* The opinion of that Court (R.

*Separate actions were brought below by each of the petitioners; and in each a motion was made for a preliminary injunction. These motions were all heard and decided together.

66), announced on April 29, 1952, has not yet been reported. A copy is attached as an appendix to this petition. The United States Court of Appeals for the District of Columbia Circuit has not rendered any opinion on the judgment which is here sought to be reviewed.

JURISDICTION

The judgment of the District Court granting preliminary injunctions in favor of the petitioners was entered on April 30, 1952. (R. 76) The respondent docketed an appeal in the Court of Appeals on April 30, 1952. (R. 442) The Court of Appeals has not acted on that appeal. Jurisdiction of this Court is invoked under Title 28 of the United States Code, §1254(1), providing for the granting of a writ of certiorari upon the petition of any party before rendition of judgment by the Court of Appeals.

QUESTIONS PRESENTED

The questions presented, which were correctly resolved by the District Court, are:

(1) Whether the respondent Sawyer had any lawful right to seize the properties of the petitioners on April 8, 1952, to retain possession of those properties and, as an incident of that possession, to impose on petitioners, by executive fiat, new wage scales and terms of employment.

(2) Whether the Executive has "inherent power" under the Constitution to authorize seizure of private property on the claim of a "national emergency" when Congress has provided a different remedy—specifically excluding seizure —for just such a "national emergency."

(3) Whether petitioners, faced with irreparable injury and lacking any adequate remedy at law, are entitled to equitable relief in the form of the preliminary injunctions issued by the District Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions which are relevant to decision of this case are Articles I and II and Amendments IV, V, IX and X of the United States Constitution, Sections 206 through 210 of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C.A. §§176-180, Sections 1346(b) and 2680(a) of Title 28, United States Code, and Titles II and V of the Defense Production Act, as amended, 64 Stat. 798, 65 Stat. 132, 50 U.S.C.A. App. §§2081, 2121-2123. Since it is not the purpose or function of this petition to serve as a brief on the merits, those provisions are not set out herein.

STATEMENT

This petition seeks to review the judgment of the District Court which issued preliminary injunctions in favor of the petitioners restraining respondent from continuing the seizure and possession of the properties of the petitioners, which he had seized on April 8, 1952, and from acting under the purported authority of Executive Order No. 10340.

Executive Order No. 10340 (R. 6), issued by the President of the United States on April 8, 1952, directed the respondent to take possession of such plants of companies named in a list attached thereto, including petitioners, as he deemed necessary in the interest of national defense, to operate them or arrange for their operation and to prescribe the terms and conditions of employment under which they should be operated. By virtue of that Executive Order, respondent issued his Order No. 1 (R. 22), also dated April 8, 1952, in which he stated that he deemed it necessary in the interest of national defense to take possession of the plants of the companies named in a list attached to his order, including plants of petitioners, and that therefore he had taken possession of those plants, effective April 8, 1952. By the same order, he designated the president of each seized company as operating manager for the

United States until further notice, and directed him to operate the plants subject to the supervision of respondent.

The true nature of respondent's action enjoined by the District Court appears clearly when the background of the dispute which led to the respondent's seizure of the petitioners' properties on April 8, 1952, is reviewed. The petitioners' several contracts with the United Steelworkers of America, representing certain of the petitioners' employees, expired on December 31, 1951.* Negotiations between the Union and the petitioners looking to new contracts had been under way for five weeks prior thereto. On December 22, 1951, when it appeared that the parties had not made substantial progress toward the settlement of the disputed issues, the President submitted to the Wage Stabilization Board the questions at issue between the petitioners and other steel companies and the Union. That Board, following review of the report of an *ad hoc* panel appointed to inquire into the dispute, issued certain recommendations on March 22, 1952. These recommendations met in large measure most of the demands of the Union and were accepted by the Union. They were not acceptable to the steel companies, including these petitioners. On April 3, 1952, the Union called a nationwide steel strike to be effective at 12:01 A.M., April 9. On the evening of April 8 the President issued the Executive Order aforesaid, and the strike call was immediately cancelled.

At no time throughout this controversy did the President take any action under Sections 206-210 of the Labor Management Relations Act of 1947 which provide measures for dealing with industry-wide strikes which threaten the national health and safety, or under any other statute.

Following the seizure of their properties by respondent, petitioners brought actions for declaratory judgments and

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*The contract of petitioner E. J. Lavino & Company with the Union expired on a different date and there are other factual differences between that company and the other petitioners. See footnote, p. 5.

injunctive relief on the ground that the seizure of their properties was without authority of law and constituted an illegal invasion of their rights. At the same time, threatened by respondent's repeated announcements of his intention to make changes in terms and conditions of employment to the irreparable damage of petitioners, as fully set forth in the affidavits filed in the District Court (R. 14, 16, 96, 99, 123, 130, 140, 159, 163, 192), petitioners sought preliminary injunctions to restrain the respondent from taking any action to impair their possession, control and management of any of their properties. The questions involved were thoroughly argued and briefed in a hearing before the District Court over a period of two days, following which that Court issued its opinion holding that the action of respondent in seizing the properties of petitioners was completely without authority of law, that Congress has provided a remedy (not followed in this case) to meet just such an emergency as was here claimed, that irreparable injury would result to petitioners if preliminary injunctions were not issued, and that petitioners did not have any adequate remedy at law. The court entered judgment issuing the preliminary injunctions prayed for.* Respondent docketed his appeal on April 30, 1952. This petition is sought in advance of the rendition of any judgment on that appeal by the Court of Appeals. By the

*In the case of petitioner E. J. Lavino & Company, further grounds for the relief sought in the District Court were pleaded in its complaint and established in the affidavits of its vice presidents, Andrew Leith and George B. Gold. For example, it is not engaged in the manufacture or fabrication of steel; its labor classifications and their content are substantially different from those of the steel industry; it was not a party to the controversy before the Wage Stabilization Board; and so forth (R. 193, 201). Because, however, of the all-inclusive grounds upon which the decision and judgment of the District Court were based, that Court did not have occasion to consider those further grounds in detail, but it did refer to them in its opinion (R. 67). For the reasons set forth herein, petitioner Lavino joins in this petition but reserves its right to develop further those grounds, either in connection with any stay or in argument on the merits.

narrow division of five judges to four the Court of Appeals has granted a stay of the judgment of the District Court. See *infra,* pages 9-10.

SPECIFICATION OF ERRORS TO BE URGED

The decision of the District Court, on thorough consideration, dealt fully and correctly with all issues involved. Petitioners urge that the District Court correctly stated the law in all respects and in no way erred.

REASONS FOR GRANTING THE WRIT

1. We understand that respondent's counsel expect shortly to present a petition for certiorari to review the judgment here involved. Of the nature and scope of that petition we are not presently advised. Petitioners nevertheless, both in their own interests and in the interests of the Nation, feel it incumbent upon them to submit this petition on their own behalf, to the end that the vital questions here presented should be resolved at the earliest possible moment by this Court.

2. Although the District Court necessarily and correctly decided the fundamental constitutional questions involved in this proceeding, the issues are of such vital importance to the Nation that the public interest requires that this Court authoritatively confirm the judgment of the District Court. The present situation is seriously confused—to the detriment of all parties to the dispute and, above all, in conflict with the basic welfare and interests of the Nation. Despite the invalidation by the District Court of respondent's seizure of petitioners' properties, respondent remains in unlawful possession of those properties. His interference with petitioners is unabated. There remains his announced intention to supplant petitioners at the collective bargaining table and to impose, unilaterally, changes in the terms and conditions of employment of petitioners'

employees. Such action would irreparably and permanently impair the bargaining position of petitioners in the further negotiations with the Union which must take place before a final settlement of the underlying dispute can be reached. If respondent puts into effect the recommendations of the Wage Stabilization Board, this would impose on petitioners for an indefinite period changes in employee-employer relationships and increased employment costs of several hundreds of millions of dollars annually to their irreparable damage. This dangerous and irreparable interference—the effects of which can never be undone—can only be resolved by decision of this Court of the vital constitutional questions here presented.

3. It is inescapable that the public interest requires the prompt settlement by this Court of the grave constitutional questions involved in this case. It is for this reason primarily that petitioners seek review by this Court of the judgment below in their favor, before rendition of judgment by the Court of Appeals. The identical procedure followed in *United States* v. *United Mine Workers,* 329 U. S. 708, 709, 710 (1946), 330 U. S. 258 (1947), in which certiorari was granted at the petition of the successful party below prior to judgment of the Court of Appeals, is equally appropriate in this case. See also *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240, 243, 294, 295 (1935); *Ex parte Quirin,* 317 U. S. 1, 19, 20 (1942); *H. P. Hood & Sons* v. *United States,* 307 U. S. 588 (1939); *Railroad Retirement Board* v. *Alton Railroad Co.,* 295 U. S. 330 (1935). While the petition in this case is addressed to a judgment granting injunctions, preliminary in form, the matter nevertheless is ripe for and requires final determination. The case was fully briefed and argued in the District Court. In view of the irreparable injury to which petitioners were exposed, the District Court considered the fundamental issues presented by the controversy in great detail and finally disposed of them. The empty formality of proceeding to a final hearing could have no effect on the basic posture of the

constitutional questions presented and would decidedly not serve the public interest.

IMMEDIATE HEARING

An early determination of the ultimate questions presented by this case is of vital importance to all concerned. The urgency of the matter caused respondent on the afternoon of April 30, 1952, to accede to the inclusion in the stay issued by the Court of Appeals of a provision that he file a petition for a writ of certiorari in this Court by 4:30 P.M. on May 2, 1952. A similar recognition of the critical and urgent importance of the issues has caused petitioners to file this petition at the earliest possible moment following the conclusion of the proceedings in the Court of Appeals. To the same end, petitioners hereby waive their rights under the rules of this Court for time to file a reply to respondent's expected petition and undertake to file their response, if any, by 12:00 Noon on May 3, 1952. Also, petitioners are prepared to file briefs on the merits promptly following any grant of certiorari. (The case has already been extensively briefed in the District Court.)

PRESERVATION OF THE STATUS QUO

Throughout this proceeding petitioners have sought the aid of the courts to prevent respondent from taking irrevocable action which would inflict on them irreparable damage. When respondent announced his intention promptly to put into effect changes in the terms and conditions of employment, petitioners brought on for hearing their motions for preliminary injunction. On the basis of the substantially undisputed proof submitted by the parties, the District Court found as a fact that the continuation of the seizure of petitioners' properties was subjecting and would subject petitioners to immediate and irreparable damage.

Thereupon the District Court entered an order enjoining respondent from continuing the seizure of petitioners' properties and from acting under the purported authority of Ex-

ecutive Order 10340. Respondent immediately sought a stay of this order from the District Judge. This was denied. Thereafter, respondent docketed his appeal in the Court of Appeals for the District of Columbia Circuit. On the same day respondent sought a stay of broad scope from the Court of Appeals, announcing his intention immediately to seek review of the District Court's judgment in this Court.

The Court of Appeals refused to grant a stay on the terms sought and of the scope requested. The Court of Appeals recognized that the application sought only to deal with the situation pending a determination by this Court of whether or not to grant certiorari. The Court of Appeals, recognizing the urgency of the issues, granted a stay of the District Court's injunction upon condition that respondent file a petition for a writ of certiorari in this Court by 4:30 P.M. on Friday, May 2, 1952.

The stay granted by the Court of Appeals further provides that it will remain in effect until this Court can act on respondent's petition. Should respondent's petition be granted, the stay will cease. Should the petition be denied, the stay is to continue in effect in order to protect the jurisdiction of the Court of Appeals pending its further order. Thus, the stay is specifically designed to protect the jurisdiction of the appellate court pending review of the District Court's decision.

Immediately following the issuance of the stay by the Court of Appeals, petitioners applied to that Court to preserve the *status quo* by attaching a condition to the stay. Specifically, petitioners asked that if respondent were permitted under the stay (and contrary to the injunction of the District Court) to remain in possession of the seized properties, he should not be allowed to cause irreparable injury to petitioners by unilaterally imposing changes in the terms and conditions of employment pending a decision by this Court. An immediate hearing before the Court *en banc* was granted on this application. The application was denied by a five to four vote on May 1, 1952.

At this hearing the Solicitor General assured the Court that respondent would take no action to change the terms and conditions of employment until such time as he had filed a petition for certiorari in the Supreme Court. But the Solicitor General made it very clear that this voluntary restraint would continue only until respondent had filed a petition for certiorari.

The explicit undertaking of respondent's counsel given to the Court of Appeals not to alter the terms and conditions of employment terminates on his filing a petition for certiorari in this Court, while the stay issued by the Court of Appeals will continue until this Court acts upon respondent's petition. Unless the Court acts upon the respondent's petition forthwith, the steel companies are exposed to irreparable injury should respondent carry out his announced intention and put into effect changed terms and conditions of employment.

There will be, in the first place, the immediate monetary damage involved in the use of the petitioners' funds to pay increased wages and other benefits. A final decision in this case that the respondent's actions are illegal will leave the petitioners no remedy against the United States.* The right to just compensation in the Court of Claims for a "taking" by the United States would be unavailable, for an *illegal* taking is not a taking by the United States. *Hooe* v. *United States,* 218 U. S. 322, 335-336 (1910); *United States* v. *North*

*Respondent's counsel argued below that, if the seizure were unlawful, petitioners would have a remedy by action under the Federal Tort Claims Act, Title 28, United States Code, §§1346(b), 2671 et seq. Any such contention is plainly unwarranted. In the first place, the Federal Tort Claims Act applies only to suits based on the negligent or wrongful act of a Government employee "while acting within the scope of his office or employment." Moreover, the Act specifically provides that it is not applicable to "any claim based upon an act or omission of an employee of the Government, exercising due care, *in the execution of a statute or regulation, whether or not such statute or regulation be valid . . .* " Cf. Old King Coal Co. v. United States, 88 F. Supp. 124 (S.D. Iowa 1949); Jones v. United States, 89 F. Supp. 980 (S.D. Iowa 1949).

American Transportation & Trading Company, 253 U. S. 330 (1920); *Larson* v. *Domestic and Foreign Commerce Corp.,* 337 U. S. 682, 695 (1949). This proposition of law was conceded by respondent in the District Court where, after respondent's counsel had argued that there would be a remedy for damages in the Court of Claims, the following colloquy occurred between his counsel and the Court:

> "The Court: Does not that presuppose the legality of the taking?
> "Mr. Baldridge: That is correct, your Honor." (R. 380)*

Needless to say, the respondent individually could not make reparation to the petitioners. His liability would be for hundreds of millions of dollars which he would never be able to pay.

Moreover, if respondent is allowed to change the terms and conditions of employment as he threatens, severe and irremediable damages not susceptible of monetary measurement will be inflicted upon petitioners. They will be deprived in practical effect of their right to the collective bargaining processes, assured them by statute. The relative bargaining position of petitioners and the Union will be fundamentally changed to the permanent prejudice of petitioners. By any definition, such injury is irreparable. *American Federation of Labor* v. *Watson,* 327 U. S. 582, 593-595 (1946).

The only means for the protection of the petitioners from such injury is immediate action by this Court to preserve the *status quo.* By such action this Court will also protect its jurisdiction to deal with *all* the issues presented in this case.

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*The case of United States v. Pewee Coal Co., Inc., 341 U. S. 114 (1951) is not to the contrary. In that case, as specifically pointed out in the Court of Claims (88 F. Supp. 426, 430 (1950)), the legality of the taking was neither raised nor considered. Moreover, the taking there involved, although originally made under executive order, was in effect ratified very shortly thereafter by the passage of the War Labor Disputes Act.

Respondent will undoubtedly renew in his petition for certiorari his prayer for a stay of the judgment of the District Court during the pendency of the case before this Court. Petitioners oppose the grant of any such stay. But if any such stay is issued, it should include a provision preventing the respondent from imposing changes in the terms and conditions of employment prevailing in the petitioners' plants at the time of the seizure, pending final disposition of the case. A similar condition was favored by the 4-judge minority of the Court of Appeals.

It is respectfully requested that such a condition be forthwith required if the stay of the District Court's injunction is to remain in effect.

CONCLUSION

For the foregoing reasons, it is respectfully submitted:

1. This petition for a writ of certiorari should be granted.

2. This case should be set down for argument at the earliest practicable time, if possible during the latter part of the week of May 5.

3. An order should be issued which will preserve the *status quo* and protect petitioners from irreparable injury pending final decision by this Court.

Respectfully submitted,

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APPENDIX.

The Opinion of the District Court referred to in the text appears at page 66 of the printed record.