

Youngstown Sheet & Tube Company v. Sawyer

MR. JUSTICE BURTON, concurring in both the opinion and judgment of the Court.

My position may be summarized as follows:

The validity of the President's order of seizure is at issue and ripe for decision. Its validity turns upon its relation to the constitutional division of governmental power between Congress and the President. [343 U.S. 579, 656]

The Constitution has delegated to Congress power to authorize action to meet a national emergency of the kind we face. [1](#) Aware of this responsibility, Congress has responded to it. It has provided at least two procedures for the use of the President.

It has outlined one in the Labor Management Relations Act, 1947, better known as the Taft-Hartley Act. The accuracy with which Congress there describes the present emergency demonstrates its applicability. It says:

"Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. . . ." [2](#) [343 U.S. 579, 657]

In that situation Congress has authorized not only negotiation, conciliation and impartial inquiry but also a 60-day cooling-off period under injunction, followed by 20 days for a secret ballot upon the final offer of settlement and then by recommendations from the President to Congress. [3](#)

For the purposes of this case the most significant feature of that Act is its omission of authority to seize an affected industry. The debate preceding its passage demonstrated the significance of that omission. Collective bargaining, rather than governmental seizure, was to be relied upon. Seizure was not to be resorted to without specific congressional authority. Congress reserved to itself the opportunity to authorize seizure to meet particular emergencies. [4](#) [343 U.S. 579, 658]

The President, however, chose not to use the Taft-Hartley procedure. He chose another course, also authorized by Congress. He referred the controversy to the Wage Stabilization Board. [5](#) If that course had led to a settlement of the labor dispute, it would have avoided the need for other action. It, however, did not do so.

Now it is contended that although the President did not follow the procedure authorized by the Taft-Hartley Act, his substituted procedure served the same purpose and must be accepted as its

equivalent. Without appraising that equivalence, it is enough to point out that neither procedure carried statutory authority for the seizure of private industries in the manner now at issue. [6](#) The exhaustion of both procedures fails to cloud the [\[343 U.S. 579, 659\]](#) clarity of the congressional reservation of seizure for its own consideration.

The foregoing circumstances distinguish this emergency from one in which Congress takes no action and outlines no governmental policy. In the case before us, Congress authorized a procedure which the President declined to follow. Instead, he followed another procedure which he hoped might eliminate the need for the first. Upon its failure, he issued an executive order to seize the steel properties in the face of the reserved right of Congress to adopt or reject that course as a matter of legislative policy.

This brings us to a further crucial question. Does the President, in such a situation, have inherent constitutional power to seize private property which makes congressional action in relation thereto unnecessary? We find no such power available to him under the present circumstances. The present situation is not comparable to that of an imminent invasion or threatened attack. We do not face the issue of what might be the President's constitutional power to meet such catastrophic situations. Nor is it claimed that the current seizure is in the nature of a military command addressed by the President, as Commander-in-Chief, to a mobilized nation waging, or imminently threatened with, total war. [7](#) [\[343 U.S. 579, 660\]](#)

The controlling fact here is that Congress, within its constitutionally delegated power, has prescribed for the President specific procedures, exclusive of seizure, for his use in meeting the present type of emergency. Congress has reserved to itself the right to determine where and when to authorize the seizure of property in meeting such an emergency. Under these circumstances, the President's order of April 8 invaded the jurisdiction of Congress. It violated the essence of the principle of the separation of governmental powers. Accordingly, the injunction against its effectiveness should be sustained.