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## Labor Law—Federal Preemption of State Jurisdiction in Labor Cases

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not determine the meaning of a word or phrase in an insurance policy. Insurance law is largely statutory. More often than not, a case involving an insurance policy will be determined not by reference to the principles of contract law but by reference to applicable provisions of the New York insurance statutes. The instant case is a reminder however that insurance law is not governed entirely by statute—that, when there is not an applicable provision of the insurance statute that solves a given case, resort must be had to common-law contract law because an insurance policy is fundamentally a contract. Such resort was held in the instant case in order to determine the meaning of the word “employee.”

## LABOR LAW

### FEDERAL PREEMPTION OF STATE JURISDICTION IN LABOR CASES

The New York courts have in the past applied the doctrine that in an alleged labor dispute they will resolve all doubts about jurisdiction in favor of state courts and against NLRB jurisdiction.<sup>1</sup> The ostensible reason for this policy was that if relief was denied by the state court, and it was later decided that the state in fact had jurisdiction, then irreparable harm may have been done to the plaintiff, or possibly a just grievance may have been foreclosed from judicial or administrative correction altogether. If the United States Supreme Court decided that in a particular case the state had over-stepped its jurisdictional limits, it could set the case aright, and in the process illumine that area of the law for future state guidance.

Without going into the merits of the above policy or its rationale, the Court of Appeals dramatically and unequivocally reversed itself in *Dooly v. Anton*.<sup>2</sup> The facts of the Dooly case are relatively simple. Two minority unions were engaged in peaceful picketing (found by the lower court to be recognition) of plaintiff's meat purveying establishment at the same time that plaintiff recognized and had a contract with an independent union which represented a majority of the employees. The employer sought and obtained an injunction in the Supreme Court, Special Term, permanently restraining such picketing by the defendant minority unions, which injunction was affirmed by the Appellate Division.<sup>2a</sup>

The lower courts relied upon *Pleasant Valley Packing Co. v. Talarico*,<sup>3</sup> a case with a similar factual situation except that there the majority union was certified by the National Labor Relations Board. The Court of Appeals in the *Pleasant Valley* case held that such activity was neither an unfair labor practice under Section 8(B)(4)(C), nor protected under Section 7, of the

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1. *Pleasant Valley Packing Co. v. Talarico*, 5 N.Y.2d 40, 177 N.Y.S.2d 473 (1958).

2. 8 N.Y.2d 91, 202 N.Y.S.2d 273 (1960).

2a. 7 A.D.2d 880, 182 N.Y.S.2d 314 (4th Dep't 1959).

3. *Supra* note 1.

Taft-Hartley Act.<sup>4</sup> Although admitting there was a possibility that Section 8(B)(4)(C), which makes it an unfair labor practice for a minority union to picket an employer seeking recognition as exclusive bargaining agent where another union is certified as the bargaining representative of the employees, might apply to make the minority unions activity an unfair labor practice under the federal act, the Court nevertheless held that any doubt must be resolved in favor of state jurisdiction. The Court reasoned that since there was no strike within the meaning of 8(B)(4)(C) the Section did not apply and the state courts were not preempted. An extended analysis of the above conclusion would serve no useful purpose in view of its reversal by *Dooly v. Anton*, but reference to a few Supreme Court cases will reveal its doubtful validity in the light of Section 13.<sup>5</sup>

In the *Dooly* case the Court of Appeals, while noting that the factual situation was almost identical with *Pleasant Valley*, declined to follow it and instead rested its decision upon a major Supreme Court case in state-federal labor matters, *San Diego Building Trades Council v. Garmon*,<sup>6</sup> decided subsequent to the *Pleasant Valley* case. The *Garmon* case laid down the doctrine that when conduct is the subject of reasonable argument whether it is regulated by either Section 7 or Section 8 of the Federal Act, then the National Labor Relations Board is the exclusive tribunal to resolve such issues. This was required, the Supreme Court stated, ". . . if the danger of state interference with national policy is to be averted."<sup>7</sup> The Court of Appeals admitted that in *Pleasant Valley* the question whether section 8(B)(4)(C) proscribed the minority unions picketing was arguable, indicating that if *Garmon* had been decided at the time of *Pleasant Valley* that the Court would have deferred to the exclusive jurisdiction of the NLRB.

The Court of Appeals was not quite sure, however, if the instant case was regulated by either Section 7 or Section 8 of the Federal Act in the light of a very recent Supreme Court decision in *NLRB v. Drivers, Chauffeurs, Helpers, Local Union (Curtis Bros.)*.<sup>8</sup> In the *Curtis* case a minority union was enjoined

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4. Labor Management Relations Act, U.S.C.A. § 158:

(B) It shall be an unfair labor practice for a labor organization or its agents . . .

(4) to engage in, or induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, where an object thereof is: . . . (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title.

5. Nothing in this act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

(Following the requirement of Section 13 picketing has been equated with striking. See *N.L.R.B. v. International Rice Milling Co.*, 341 U.S. 665 (1951).)

6. 359 U.S. 236 (1959).

7. *Id.* at 246.

8. — U.S. —, 80 Sup. Ct. 706 (1960).

by the NLRB for peaceful recognitional picketing where 6 months previously, in a Board conducted election, the employees voted no union. The Board held this was peaceful recognitional picketing proscribed by Section 8(B)(1)(A), which prohibits a union from engaging in activity that "restrains or coerces" employees in their exercise of Section 7 rights.<sup>9</sup> But the Supreme Court held in the *Curtis* case, reversing the Board, that Section 8(B)(1)(A) does not prohibit peaceful recognitional picketing. They stated ". . . Rather it seems clear, and we hold, that Congress in the Taft-Hartley Act authorized the Board to regulate peaceful recognitional picketing only when it is employed to accomplish objectives specified in Section 8(B)(4); and that Section 8(B)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof—conduct involving more than the general pressures on persons employed by the affected employers implicit in economic strikes."<sup>10</sup> Following the reasoning of the Supreme Court in the *Curtis* case the Court of Appeals in *Dooly* concluded that defendant unions did not violate Section 8(B)(1)(A).

The Court next faced the issue of whether the picketing was protected by Section 7. While feeling that it might not be protected by Section 7 because conducted for an unlawful objective, i.e. to induce the employer to breach a contract with an independent majority union, the Court nevertheless held it was arguably within the protection of Section 7 and hence preempted by the Board under the *Garmon* doctrine.

The decision was also rested upon the additional ground that the Landrum-Griffin Amendments to the National Labor Relations Act<sup>11</sup> made moot the question in this case by the addition of Section 8(B)(7), which makes it unlawful to picket for recognition in the face of a majority union recognized by the employer, there being no issue of representation under Section 9 existing. In any event, the Court felt that it was the Board's prerogative to decide whether Section 8(B)(7) had been violated in the first instance.

The Court clearly interpreted the *Garmon* case correctly and appropriately applied it to the instant case. Under any reasonable interpretation of the *Curtis* case, it is arguable that the picketing involved here was protected by Section 7. Whether the picketing involved here was violative of some other provision of Section 8(B) which the Court overlooked is not germane to the real significance of this case. This is so because the same result would follow, for any other violation of Section 8(B) would, under *Garmon*, still preempt the state court and remain in the exclusive province of the Board. The Court,

9. § 8(B)(1)(A):

(b) It shall be an unfair labor practice for a labor organization or its agents . . .  
 (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title. . . .

(Section 157 gives employees the right to bargain collectively through representatives of their own choosing.)

10. *Supra* note 8 at 715.

11. Labor-Management Reporting and Disclosure Act of 1959, § 707, 73 Stat. 549, 29 U.S.C.A. § 158B(7).

perhaps incorrectly, stated the criterion to be used when picketing is carried on for an unlawful objective or by unlawful means, thus losing its protection under Section 7.<sup>12</sup> This does not, however, detract from the Court's achievement of its main objective in establishing and expounding the *Garmon* case doctrine as the guiding principle for preemption cases in labor disputes involving interstate commerce in New York.

## MUNICIPAL CORPORATIONS

### MUNICIPALITY CAN WAIVE A CONTRACTUAL LIMITATION ON BRINGING ACTION

In a contract action by a building contractor against a municipal corporation, *Planet Construction Corp. v. Board of Education of The City of New York*,<sup>1</sup> for extra labor and materials allegedly furnished in connection with a construction contract, the Court of Appeals in a four to three decision held, that even though the contract contained a provision limiting time for commencement of action on the contract to one year, and although the action was not brought within that time, the judge at Special Term erred in granting summary judgment for the defendant, Board of Education. Defendant's issuing of a change order after the one-year period of the contract limitation and deducting from the amount due under the contract at a time when it claimed plaintiff had lost its right to sue presented triable issues as to waiver of the contract limitation or estoppel to assert the contract limitation.

By statute,<sup>2</sup> a municipal corporation is forbidden to waive the *defense* of the Statute of Limitations.<sup>3</sup> In erroneously granting summary judgment, Special Term, and the Appellate Division,<sup>4</sup> held that because of defendant's unique position as a municipal corporation, it could not waive the *contract* provision limiting action on the contract to one year and hence defendant could

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12. The Court of Appeals states that the conduct involved in the instant case might lose its protection under § 7 if it was carried on for an unlawful objective, and hence be subject to a state court injunction. The Court felt that the attempt on the part of the minority union to force recognition and thus to cause the employer to break his contract with the majority union was conduct that a state might enjoin. This would be erroneous for the state may only act where such conduct involves violence, (*N.L.R.B. v. Fansteel*, 306 U.S. 240—sit down strike) or an unlawful objective (*Southern S.S. Co. v. N.L.R.B.*, 316 U.S. 31—mutiny). This is not the type of conduct involved in the instant case nor even approaching it. These are areas for the proper exercise of the police power, not labor regulation.

1. 7 N.Y.2d 381, 198 N.Y.S.2d 68 (1960).

2. N.Y. General City Law § 20(5) authorizes a municipality:

To spend money for any public or municipal purpose; to pay or compromise claims equitably payable by the city, though not constituting obligations legally binding on it, *but it shall have no power to waive the defense of the statute of limitations* or to grant extra compensation to any public officer, servant or contractor. (Emphasis added.)

3. Six years is the ordinary limit for bringing an action on a contract [N.Y. Civ. Prac. Act § 48(1)].

4. 8 A.D.2d 781, 187 N.Y.S.2d 979 (1st Dep't 1959).