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LABOR LAW

Injunctions Against Stranger Picketing

The problem of federal pre-emption[1] in the labor area is a recurring one, the boundaries of which are not yet clearly defined.[2] Since the decision of the Supreme Court in *Garner v. Teamsters*[3] in 1953, however, it has ben clear that, to the extent that Congress provided systematic coverage by the Taft-Hartley Act, it pre-empted the state from regulating the activity concerned, with certain minor exceptions. This is true even though the result, caused by the failure of the National Labor Relations Board to hear all cases which it was empowered to hear, has been to create a "no-man's land" in which the federal agency will not operate and the states cannot.[4] In determining whether a particular controversy was pre-empted from state authority, the courts have generally asked whether the activity was either protected or proscribed by the Taft-Hartley Act, the doctrine of pre-emption applying in either case.[5]

The New York Court of Appeals had occasion during this term to consider the doctrine in a case involving stranger picketing. An independent union had for several years been certified by the NLRB as exclusive bargaining agent for the employees at the plaintiff meatpacking company. After an unsuccessful attempt by the stranger union to induce the employees to join it, the stranger union picketed the plaintiff's premises, with resulting serious reduction to plaintiff's business. The plaintiff in this action sought an injunction against the union to stop the picketing.[6]

Preliminary to considering whether the state courts were pre-empted from acting, the Court concerned itself with the problem whether an injunction could issue in any event. New York was one of the first states to adopt a "little Norris-LaGuardia Act" denying the power to state judges to issue injunctions in labor

1. International Ass'n. of Machinists v. Gonzales, 78 S.Ct. 923, 928 (1958). Warren, C.J., dissenting:

> When Congress, acting in a field of dominant federal interest, as part of a comprehensive scheme of federal regulation, confers rights and creates remedies with respect to certain conduct, it has expressed its judgment on the desirable scope of regulation, and state action to supplement it is as "conflicting," offensive, and invalid as state action in derogation.

2. *International Ass'n. of Machinists v. Gonzales,* 78 S.Ct. 923 (1958) and *International Union v. Russell,* 78 S.Ct. 932 (1958) are recent cases demonstrating the uncertainty in this area. Also, see Isaacson, *Federal Pre-Emption Under the Taft-Hartley Act,* 11 IND. AND LAB. REL. REV. 391 (1958).

3. 346 U.S. 485 (1953).

4. Guss v. Utah Labor Board, 353 U.S. 1 (1957). Also, see Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955).

5. Garner v. Teamsters, 346 U.S. 485 (1953); Weber v. Anheuser-Busch, *ibid.*

6. Pleasant Valley Packing Company v. Talarico, 5 N.Y. 2d 40, 177 N.Y.S.2d 473 (1958).

disputes in the absence of certain specified facts.[7] This was followed by the New York version of the Wagner Act,[8] declaring the policy of the state to be that all laborers should have the right to bargain collectively through leaders of their own choosing. The courts have synthesized these two statutes and concluded that the injunction could not be used in the area of labor disputes where there was a lawful objective of strike or picketing activity (such as picketing for the purpose of organizing employes[9]) but that picketing for the purpose of demanding recognition by an employer of a minority or stranger union was not immune from the injunction, it being considered an unlawful objective inasmuch as the pressure being exerted was designed to foist an unwanted union upon the employees without the free choice contemplated by New York law.[10] In the instant case, the Court of Appeals, on the express finding of the lower court that the purpose of the picketing was to compel recognition and not to organize the employees, had no difficulty in upholding the injunction.

A more serious question was presented by the problem of federal pre-emption, however. The majority of the Court contented itself with the conclusion that no unfair labor practice was involved under the federal labor statute and therefore that the activity did not come within the area of pre-emption. Only one possible federal unfair labor practice was considered, violation of §8(b) (4) (c) of the Taft-Hartley Act,[11] and this was dismised as not applicable because there was no strike by the employees, and the complaint did not allege an inducement to strike. Pointing to the uncertainty of pre-emption limits in the present state of federal law, the Court, concluded that, in the absence of a clear showing of pre-emption, it should presume that the state courts had jurisdiction in the premises "leaving it to the Supreme Court to finally resolve the matter."[12]

Judges Desmond and Fuld dissented in separate opinions, pointing out that under the *Garner* decision and United States Supreme Court cases following it, activity similar to that in the present case was held to be an unfair labor practice, Judge Fuld pointing out further that even though no strike was here involved, the broad definition of "induce or encourage" in §8(b)(4)(c) used by the

7. N. Y. CIV. PRAC. ACT §876-a.
8. N. Y. CONSTITUTION, Art. I, §17; N. Y. LABOR LAW §703.
9. Exchange Bakery & Restaurant, Inc. v. Rifkin, 245 N.Y. 260, 157 N.E. 130 (1927).
10. Goodwins, Inc. v. Hagedorn, 303 N.Y. 300, 101 N.E.2d 697 (1951); Wood v. O'Grady, 307 N.Y. 532, 122 N.E.2d 386 (1954).
11. 61 STAT. 140 (1947), 29 U.S.C. §158(b)(4)(C) (1952):
> It shall be an unfair labor practice for a labor organization or its agents . . . to engage in, or to induce or encourage the employees of any employer to engage in, a strike . . . where an object thereof is: . . . (C) forcing or requiring any employer to recognize or bargain with a particular labor organization . . . if another labor organization has been certified. . . .
12. Pleasant Valley Packing Company v. Talarico, *supra* note 6.

Supreme Court would cover the present facts. All of the justices agreed that the picketing would not have been *protected* under Taft-Hartley, designed as it was to compel the employer to repudiate NLRB certification.[13]

Whatever confusion may still obtain as to the exact limits of pre-emption, there would seem to be little doubt that the majority has misconstrued its application to the facts of the instant case. It has appeared to some observers that the effect of the Supreme Court decisions of recent years is that the determination whether activity is protected, proscribed, or neither must be made in the first instance by the NLRB and not by the states.[14] Whether or not future federal decisions bear this out, there was sufficient indication of an unfair labor practice to have required dismissal of this case from the New York courts. A year ago, the NLRB held that picketing by a union not representing a majority of the employees for the purpose of compelling employer recognition constitutes a violation of §8(b)(1)(A) of Taft-Hartley,[15] a section not even considered by the Court as being applicable. This holding should be all the more clear where, as here, there is a majority union which has received NLRB certification. It should be obvious that the state was pre-empted, under current doctrine, from acting.

Power of Court to Enforce Arbitrator's Injunction

A collective bargaining agreement provided that there should be no slowdown of employees and also established a "speedy arbitration" procedure whereby disputes could be submitted to arbitration within twenty-four hours and a decision rendered within forty-eight hours after conclusion of the arbitration hearing. The employers, charging a slowdown by the employees, utilized the "speedy arbitration procedure," and after hearing the cause, the arbitrator issued an order enjoining the unions bound by the agreement from continuing the slowdown and directing them to take steps to have it stopped by the employees. *Held,* by the Court of Appeals, the award of an injunction was within the power of the arbitrator under the contract and could be enforced by the County Court notwithstanding the statutory prohibition against the issuance of injunctions by courts in labor disputes.[16]

13. *Ibid.*

14. See Isaacson, *Federal Pre-Emption Under the Taft-Hartley Act, supra* note 2.

15. Curtis Bros., Inc., 119 N.L.R.B. 33 (1957). Section 8(b)(1)(A) [61 STAT. 140 (1947), 29 U.S.C.§158 (b)(1)(A) (1952)] provides:

> 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 7 of this title. . . . Section 7 [61 STAT. 140 (1947), 29 U.S.C. §157 (1952)] provides: Employees shall have the right to self-organization, . . to bargain collectively through representatives of their own choosing. . . .

16. In re Ruppert, 3 N.Y.2d 576, 170 N.Y.S.2d 785 (1958).