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Labor Law: Federal v. State Jurisdiction to Enjoin Unfair Labor Practices

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medial processes; whereas, any employee who engaged in self-help against such conduct would be subject to summary dismissal irrespective of the employer's conduct. Furthermore, the employees would lose their right to strike against unfair practices during the critical contract renegotiation period when the strength of their bargaining agent is most important, even though they admittedly have such right prior to the sixty-day period, and at any time if they are not covered by a collective agreement. Thus the union, by bargaining at all, is precluded from protecting its very existence during the bargaining period.

Conceding that the Eightieth Congress had set a high value on peaceful settlement of labor disputes, it does not necessarily follow that this enactment was intended to adopt the extremes that might be enacted in furtherance of such policy. It appears to the writer that the result reached by the dissent is incongruous and unreasonable, and the majority view is to be preferred, in light of the declared legislative policy underlying the NLRA, as amended, namely:

“. . . to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association . . .” 61 STAT. 136 (1947) 29 U. S. C. §151 (1952).

John Stenger

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Appellant union was enjoined by the Wisconsin Employment Relations Board from committing unfair labor practices within the Wisconsin Employment Peace ACT WISCONSIN STAT. c. 111, §§111.04, 111.06, 111.07 (1953). The conduct subject to the cease and desist order consisted of mass picketing, violence and overt threats of violence and as such constituted coercion and was therefore within the jurisdiction of the National Labor Relations Board. 61 STAT. 140-143 (1947), 29 U.S.C. §§157,158 (b)(1)(A) (1952). *Held* (6-3): the state board could enjoin violent conduct as a valid exercise of its police power. *United Automobile Workers, CIO v. W.E.R.B.*, 351 U. S. 266 (1956).

While the boundary between exclusive federal jurisdiction and state jurisdiction in the field of labor relations has not been clearly delineated, it cannot be questioned that rigid restrictions have been impressed upon the jurisdiction of the states over industrial controversies. A state may not, in furtherance of its labor policy, enjoin unfair labor practices in areas where the NLRB would accept jurisdiction. *Garner v. Teamsters Union*, 346 U. S. 485 (1953). Nor may a state, in furtherance of policies not associated with labor, enjoin such conduct as, e.g., a restraint of trade. *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468 (1955). Yet

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the fact that conduct may fall within the NLRA, as amended, does not automatically prevent state action of any type. Undoubtedly a violation of law and order could result in the valid infliction of criminal sanctions. *Allen-Bradley v. W.E.R.B.*, 315 U. S. 740 (1942). A common law tort action for damages, based on conduct constituting an unfair labor practice within the NLRA, as amended, but outside the scope of its remedies, was upheld in *United Construction Workers, UMW v. Laburnum Construction Corp.*, 347 U. S. 656 (1954). However, it must be remembered that neither the imposition of state criminal power nor compensation under *Laburnum* involves a duplication or conflict of remedy with the NLRA, as amended. Thus, in the instant case, the Court was squarely faced with the question whether or not a state labor board could issue a valid cease and desist order with respect to conduct, admittedly violent, but which nevertheless could have been subject to a similar order by the NLRB.

The majority, in upholding the action of the state board, based its decision on the obligatory interest of the states as "the natural guardians of the public against violence." 351 U. S. at 274. They reasoned that the fact that a union commits a federal unfair labor practice while engaging in violent conduct should not prevent the state from taking any steps to stop the violence. 351 U. S. at 274, 275. Reliance was also had on the pre-Taft-Hartley decision in *Allen-Bradley v. W.E.R.B.*, 315 U. S. 740 (1942), not only because there an injunction against similar conduct was upheld, but further because the Congressional awareness of that case was indicative of the legislative intent, in enacting the Taft-Hartley amendments of 1947, not to foreclose state action in matters of "genuine local concern." 351 U. S. at 273, 274.

The union argued that since the state can exercise its criminal power to avert emergencies, it should not be allowed to exercise this police power through an agency that is concerned only with labor relations and thereby create a conflict with federal policy as developed by the NLRB. The Court's answer was direct and unequivocal. Since the conduct here involved was admittedly within the police power of the state, it is obvious that the NLRA, as amended, was not to be the exclusive method of controlling such conduct. 351 U. S. at 272.

The recognition of this injunction imposed by a state board ostensibly represents a deviation from the "conflict of remedies" test postulated in the *Garner* case. There the Court pointed out that the NLRA, as amended, did not represent a substantive rule of law to be administered by various judicial or administrative bodies, since a multiplicity of tribunals and diverse procedures have a natural tendency to produce conflicting adjudications. 346 U. S. 485, 490-491. Had the Court stopped there, the divergence in the instant case would have been manifest. However, by way of dictum, the Court in the *Garner* case declared that it was not deciding a case involving conduct constituting a breach of the state's peace calling

for extraordinary police measures. Thus the decision in the instant case might have been foreseen by the juxtaposition of the decisions in *Allen-Bradley, Laburnum*, and the dictum in the *Garner* case.

The dissenters were concerned solely with the departure from *Garner* and the probability of federal-state conflict. 351 U. S. at 276. Since the character of such conflict was not articulated in the dissent, one can only speculate as to the nature of their fears. It would seem that the danger does not lie in direct conflicts with the NLRA, as amended, such as the issuance by a state board of an order affecting, for example, the status of employees, foreclosure of rights to collective bargaining or the equation of peaceful picketing as violent, since such action would eventually be struck down as irreconcilable with the purposes of the federal statute. *United Construction Workers, UMW v. Laburnum Construction Corp.*, 347 U. S. 656 (1954); *Garner v. Teamsters Union*, 346 U. S. 485 (1953). Thus, to them, the danger must be indirect and arise from the nature of the administrative and judicial processes. Should a state labor board erroneously issue injunctive relief against conduct within the prohibitory or protective scope of the NLRA, as amended, the consequent injury to an opposing party might well be irreparable and the delay incident to appellate litigation could make reparation ineffectual. It is submitted that since any erroneous adjudication is productive of some delay and consequent injury, the dissent's point may be that as a result of this decision the door is opened to an increase in the instances of such delay and injury. If so, the point seems well taken.

Although the point was not raised by either majority or dissent, it is interesting to note that Wisconsin has a provision similar to section 876(a) New York Civil Practice Act, which permits an injunction to issue from a court upon a finding that, *inter alia*, the conduct, incident to a labor dispute, is beyond the protection of local law enforcement officers. WISCONSIN STAT. c. 103, §103.56 (1945). The writer believes that the existence of the above statute casts doubt on the validity of the majority's statement that to deny the state labor board power in this instance would leave the state "powerless to avert emergencies." 351 U. S. at 275. Such remedy by court action is clearly within the ambit of the NLRA, as amended. *See* H. R. Rep. No. 510, 80th Con., 1st Sess. 52. However, the fact that this additional remedy exists was not apparently decisive of the question whether or not a state may exercise its police power through a labor board.

In any event, the decision, being confined to the narrow ground of violence in industrial controversies, does not represent a major inroad on the federal pre-emption doctrine but yet may prove a troublesome concession in area already fraught with difficulty.

George M. Gibson