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RECENT DECISIONS

Labor Law: Filing Requirements of Taft-Hartley Act—Federal Pre-Emption

A local union refused to file with the Secretary of Labor any of the financial or organizational data required by the National Labor Relations Act, 61 STAT. 146, 29 U. S. C. 9(f), (g) (1947), and, with the National Labor Relations Board, any of the non-communist affidavits described in section 9(h) of that Act. In an appeal by the union to set aside an injunction issued by a state court prohibiting peaceful picketing, held (7-1): a union not in compliance with the filing requirements of the Act, did not violate the Act by striking for recognition since Congress has not required such filing as a condition precedent to the obligation of an employer to bargain collectively. The employer would be guilty of an unfair labor practice upon failure to bargain collectively with the employees' chosen representatives. L. M. R. A. §8(a)(5). *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U. S. 62 (1956).

The Supreme Court reversal was not unexpected in that such an interpretation of the filing sections in the Act (§9f, g & h) has been recognized in the federal circuits for several years. A non-complying union suffers only in that it is prohibited recourse to the N. L. R. B. for a representation election or to file an unfair labor practice complaint. *N. L. R. B. v. Pecheur Lozenge Co.*, 209 F. 2d 393 (2d Cir. 1953); *N. L. R. B. v. Tenn. Egg Co.*, 201 F. 2d 370 (6th Cir. 1953); *West Tex. Utilities Co. v. N. L. R. B.*, 184 F. 2d 233 (D. C. Cir. 1950); *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. 2d 131 (1st Cir. 1953). These same cases held that the union can, however, take other lawful action such as a strike and may peacefully picket the premises.

It appears to be the gravamen of the decision that because of the basic right to picket peacefully, inherited from the spirit of the Wagner Act and reiterated in Taft-Hartley (§7), federal pre-emption in this area of labor-management relations must prevail. In fairness to the decision, this writer does not find the state deprived of a concurrent right to require similar reports and affidavits as those pronounced in section 9, L. M. R. A. However, the rationale appears to be that a non-complying union may not be restrained from picketing by a Federal Court under the Act, and therefore a state may not restrict peaceful picketing under Taft-Hartley or by any state filing statute.

Federal pre-emption in labor relations has been a constant issue since the inception of Congressional legislation affecting unionism. Although the states have been severely restricted, they have not been precluded from acting in every area involving interstate industrial and labor relations. A state may exercise its police power to prevent breaches of the peace on picket lines. *Allen-Bradley v. W. E. R. B.*, 315 U. S. 740 (1942); *United Auto Workers v. W. E. R. B.*, 351 U. S. 266 (1956). For an interesting discussion concerning federal pre-emption

in relation to picketing, see Comment, *Jurisdiction and Free Speech Problems in Peaceful Picketing*, 4 BUFFALO L. REV. 232 (1955). A state may also exercise jurisdiction to decide civil damage suits based upon common law torts, although the tortious conduct constituted an unfair labor practice under the Act. *United Construction Workers v. Laburnum Corp.*, 347 U. S. 656 (1954). In conjunction with this principle, it is recognized that a state court may hear damage suits instituted under section 303 (a) of the Act respecting secondary boycotts and unlawful combinations. See Brody, *Federal Pre-emption Comes of Age in Labor Relations*, 5 LAB. L. J. 743 (1954). Injurious conduct which the N. L. R. B. is without power to prevent can be a permissive area wherein the state may act. Thus, it was held that a state may enjoin the union from calling numerous and irregular union meetings during working hours which materially interfered with production. *United Auto Workers v. W. E. R. B.*, 336 U. S. 245 (1949). It has also been held that where a state has acted in respect to a separable segment of matter not covered by nor in conflict with the expressed or implied powers reserved under the federal statute, it may validly exercise jurisdiction. For example, in *Algoma Plywood Co. v. W. E. R. B.*, 336 U. S. 301 (1949), a clause in the labor agreement was held invalid because a Wisconsin statute forbade enforcement of a maintenance-of-membership clause unless the contract containing it was approved by two-thirds of the employees in a referendum conducted by the state labor board.

However, the scope of state jurisdiction is, in reality, a narrow one. Exclusive federal authority over interstate industrial and labor relations has become an emphatic doctrine embraced by the Supreme Court. Where the pre-emptive issue arises, it was held that the state must defer jurisdiction to the N. L. R. B. whose duty it is to interpret Taft-Hartley. *Weber v. Anheuser-Busch Inc.*, 348 U. S. 468 (1955); See *LaCrosse Tel. Corp. v. W. E. R. B.*, 336 U. S. 18 (1949).

It is evident that if a state's action conflicts with the Federal Act, the Board will deny the state's authority—such as where provisions of a state statute impinge upon the employees' federal right to select their union. *Hill v. Florida ex. rel. Watson*, 325 U. S. 538 (1944). It has been further held that the exercise of concurrent powers by the state, as distinguished from conflicting action, must generally fall for the reason that there can be no reason for duplication between state and federal boards. In *United Automobile Workers v. O'Brien*, 339 U. S. 454 (1949) the state was not permitted concurrent regulation of peaceful strikes for higher wages. The power of certification by a state labor board was held invalid in *Bethlehem v. N. Y. S. N. L. R. B.*, 330 U. S. 767 (1947). Another landmark decision disallowed a state's duplicate regulation of unfair labor practices. *Garner v. Teamsters Union*, 346 U. S. 485 (1953); *Accord, Plankinton Packing Co. v. W. E. R. B.*, 338 U. S. 953 (1950).

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Some states have assumed jurisdiction where the N. L. R. B. refused it due to self-imposed limitations. See 16 U. PITT. REV. 376 (1955); 34 L. R. R. M. 75 (1954). And in New York, some proponents of state regulations cling to an early decision, *Davega City Radio v. N. Y. S. L. R. B.*, 281 N. Y. 13, 22 N. E. 2d 145 (1939), holding that the state board may act until ousted by the N. L. R. B.'s exercise of its jurisdiction. See also *Natelson Bros. v. N. Y. S. L. R. B.*, 194 Misc. 635, 88 N. Y. S. 2d 129 (Sup. Ct. 1949). However, as the Supreme Court and N. L. R. B. declare greater breadth to federal pre-emptive powers under Taft-Hartley, these state policies are reduced to innocuous obscurity. The *Oak Flooring Case* extends the implied federal pre-emptive doctrine to protect a non-complying union's coercive and economic practices that are designed to force management's compliance with lawful union demands viz—peaceful picketing.

It is to be noted that the consequences of non-compliance may, in some instances, have a serious and detrimental effect upon a union seeking representation. Providing an election bar does not exist, an employer or rival union may request an N. L. R. B. certification wherein the non-complying union will not be allowed a place on the ballot. See *U. M. W. v. N. L. R. B.*, 38 L. R. R. M. 2711, 2713 (1956).

As to the judicial attitude afforded pre-emptive rights under Taft-Hartley, one finds an obvious substantiation of federal direction and control over labor relations. In the 84th Congress, a bill was introduced in the Senate that would have prevented federal laws, such as the Taft-Hartley Act, from taking precedence over consistent state laws dealing with the same subject except where specifically provided. See 38 L. R. R. M. 122 (1956). The bill failed to receive appreciable support from the legislators. Until such time as Congress should specify otherwise the federal pre-emptive powers will remain broadly construed.

Donald N. Roberts

Workmen's Compensation—Lunch-Time Injuries On Employer's Premises

Plaintiff, an employee of defendant company, having commenced her lunch hour, proceeded to a company-sponsored cafeteria located on defendant's property a short distance from the building where plaintiff worked. As she walked across defendant's driveway, she slipped on the ice, sustaining an injury for which the Michigan Workmen's Compensation Department awarded compensation. Held (5-3): award set aside on the grounds that the injury did not arise out of and in the course of the employment as plaintiff was not actively engaged in the