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facts to mean that the contract by which vendor agreed to pay $90,000 to B was made for B being the procuring cause of the sale and not in consideration of the indemnity agreement. Adopting this interpretation, which allows substance to prevail over form, the claims of both A and B would then be based purely on commissions earned; they would be mutually exclusive; interpleader could be allowed. See dissent, *Norman v. Oakland Golf Club, supra* at 961, 125 N. Y. S. 2d at 861.

Donald J. Holzman

LABOR LAW — STATE JURISDICTION PRE-EMPTED

In order to induce an interstate trucker's employees to join it, defendant union posted pickets at petitioner's loading platform, though there was no labor dispute or strike in progress. Petitioner, whose business fell off by as much as 95% as a result of the refusal of other unionized carriers to cross the line, obtained an injunction under state law prohibiting such picketing. *Held,* unanimously affirming the Pennsylvania Supreme Court's vacating of the injunction, jurisdiction of such practices is vested exclusively in the National Labor Relations Board. *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (A. F. L.),* 74 Sup. Ct. 161 (1953).

The instant decision is another in a long line of cases which has taken up the task of defining the respective areas of state and federal jurisdiction in the field of concerted labor activities, beginning with the proposition that where "federal administration has made comprehensive regulations effectively governing the subject matter of the statute, . . . state regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the federal agency." *Bethlehem Steel Co. v. New York State Labor Relations Board,* 330 U. S. 767 (1947). As to certain areas of labor relations, federal action is in terms exclusive; *e. g.,* representation proceedings, 29 U. S. C. A. § 159. In others, state action is in terms permitted; *e. g.,* union shop agreements, 29 U. S. C. A. § 164(b). Problems arise in that area where federal law has not completely occupied the field.

The wholesale extension of federal power over the field of union unfair labor practices, an area which, prior to the enactment of the Taft-Hartley Act, was solely a state concern, has resulted in a considerable amount of litigation. States may not promulgate a policy contrary to that of the federal act, *International Union, U. A. W. A., C. I. O. v. O'Brien,* 339 U. S. 454 (1950), even in the exercise of their police powers, *Amalgamated Ass'n of Street, Electrical Ry. & Motor Coach Employees v. Wisconsin Employment Relations Board,* 340 U. S. 383 (1951). On the

other hand, state jurisdiction is not pre-empted where the activities in question are neither protected nor prohibited in the federal act. *International Union, U. A. W. A., A. F. L. v. Wisconsin Employment Relations Board,* 336 U. S. 245 (1949) (repeated unannounced work stoppages), *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board,* 336 U. S. 301 (1949) (discharge of employee under union shop agreement). *Cf. Plankington Packing Co. v. Wisconsin Employment Relations Board,* 338 U. S. 953 (1950).

As to the precise problem presented in the instant case, the status of an otherwise protected activity being used in such a way as to constitute a possible unfair labor practice, state courts are in conflict, some holding that federal jurisdiction is exclusive, *Gerry of California v. Superior Court in and for Los Angeles County,* 32 Cal. 2d 119, 194 P. 2d 689 (1948), *Norris Grain Co. v. Nordaas,* 232 Minn. 91, 46 N. W. 2d 94 (1950), *Garner v. Teamsters Union,* 373 Pa. 19, 94 A. 2d 893 (1953); others, that state jurisdiction remains. *Goodwins, Inc. v. Hagedorn,* 303 N. Y. 300, 101 N. E. 2d 697 (1951), *Kincaid-Webber Motor Co. v. Quinn,* 362 Mo. 375, 241 S. W. 2d 886 (1951).

In *Goodwins v. Hagedorn, supra,* the leading New York case on the subject, the union picketed customer entrances to petitioner's retail store in an effort to compel the management to recognize it as bargaining agent for the store employees despite the fact that representation proceedings involving this and a competing union were pending before the N. L. R. B. In a 4-3 decision, the Court of Appeals upheld state jurisdiction to issue an injunction on the ground that the conduct in question was not in terms prohibited by the federal act.

The instant case leaves *Goodwins* in some doubt. Though the picketing situation in *Garner* was similar, the Court rested its decision on that clause of the Taft-Hartley Act which makes it an unfair labor practice for a union to bring pressure on an employer to discriminate against employees as a means toward encouraging or discouraging membership in a labor union rather than that clause which outlaws secondary boycotts, which would seem to be more clearly applicable. But *Garner* is susceptible of two interpretations. Narrowly interpreted, the opinion may be read as holding that as to peaceful picketing which is designed to bring pressure on the employer to break the law, state jurisdiction remains where the picketing is not specifically prohibited by the federal act. Broadly interpreted, the opinion states that all state jurisdiction in the field of peaceful picketing is pre-empted. Under its broad holding, *Garner* clearly overrules *Goodwins;* even under its narrow holding, it may be argued that *Goodwins* is, on its facts, overruled (the picketing there has the same coercive

effect as in *Garner,* for purposes of § 8(b)(1) and (2)) though its rationale is not (once it is determined that the activity is neither prohibited nor protected by the federal act, it may be dealt with by the states).

The case illustrates the continuing trend of removing labor controversies from the sphere of state action. To the argument that it is desirable that labor relations be governed by a uniform law, it may be answered that in many cases involving small, predominantly local businesses, conduct such as that in the principal case is likely to cause irreparable harm within too short a space of time for federal procedures to be effective. It is suggested that state action rather than federal is more appropriate where such is the case. Congressional action in the direction of clarifying legislative intent as to these jurisdictional problems seems warranted.

John J. Cooney

WILLS — EFFECT OF TAXES ON ELECTIVE SHARE

A widow elected to take against the will of her deceased husband. *Held* (4-1): The maximum limitation on her elective share is calculated before deducting estate taxes, and not after as contended by the principal legatee. In re *Wolf's Will* 282 App. Div. 1018, 126 N. Y. S. 2d 302 (1st. Dep't 1953), *affirming per curiam,* 204 Misc. 356, 121 N. Y. S. 2d 412 (Surr. Ct. 1953).

N. Y. Decedent Estate Law § 18(1)(a) grants the widow her share of the estate as in intestacy, but "in no event . . . [is she] entitled to take more than one half of the net estate of the decedent, after the deduction of . . . any estate tax."

If the testator makes no provision for the payment of estate taxes, as in the instant case, the burden of the tax is apportioned among the beneficiaries and "any exemption or deduction allowed under the law imposing the tax by reason of the relation of any person to the decedent . . . shall inure to the benefit of the person bearing such relationship." N. Y. DECEDENT ESTATE LAW § 124(3). Thus to the extent that a marital deduction results in a tax saving to the estate, the widow is to receive its full benefit.

The conflict with § 18(1)(a), which literally read imposes a tax burden on the widow by requiring deduction of taxes on the estate as a whole before calculating the maximum limitation on the elective share, was resolved by allowing the apportionment statute to control.

The surrogate reached his decision primarily on authority of an Appellate Division case, not directly in point as the maximum limitation was not litigated, which stated that "the term 'any estate tax' used in section 18 subdivision 1(a), Decedent Estate