Michigan Law Review

Volume 54 | Issue 8

1956

Labor Law - LMRA - Substantive Application by a State Court of Section 8(b)

George E. Ewing S.Ed.
University of Michigan Law School

LABOR LAW—LMRA—SUBSTANTIVE APPLICATION BY A STATE COURT OF SECTION 8 (b) (2)—The defendant unions peacefully picketed the Valley Lumber Company to force the adoption of a closed shop agreement. The employees had indicated that they did not desire union affiliation or representation and the employer had not recognized any union. The NLRB Regional Director refused to assert jurisdiction over the company for certification purposes because the employer's interstate business was below the Board's jurisdictional yardsticks. The trial court asserted jurisdiction to award damages and an injunction against the picketing. On appeal, *held,* affirmed, three justices dissenting. Not only was the trial court's jurisdiction proper but it could apply section 8 (b) (2) of the

amended National Labor Relations Act[1] to proscribe picketing not otherwise unlawful under California law.[2] *Garmon v. San Diego Building Trades Council,* (Cal. 1955) 291 P. (2d) 1.

The recurrent problem of state court jurisdiction over controversies in the "tidelands"[3] of labor relations has arisen because Congress did not clarify the precise degree of pre-emption it intended in the labor field.[4] The Supreme Court has left the problem unanswered.[5] The resulting confusion has generated three basic theories of pre-emption: (1) total pre-emption of industries in interstate commerce with exclusive jurisdiction in the NLRB;[6] (2) exclusive federal jurisdiction of certain phases of the labor relations of industries of a prescribed size and effect upon commerce with state jurisdiction in the remaining areas;[7] and (3) concurrent state and federal jurisdiction where there is no actual conflict between state and federal law.[8] The second theory is the basis for the decision in the principal case. This theory has been rejected by those courts which refuse to imply any jurisdictional abdication in the absence of specific compliance with section 10 (a) of the amended NLRA, which provides for cession of jurisdiction by the NLRB to state agencies in certain instances.[9] State courts and boards which have adopted this second theory have either required an actual NLRB declination of jurisdiction over the specific controversy[10] or have merely taken judicial notice of the NLRB's jurisdic-

1 61 Stat. L. 140 (1947), 29 U.S.C. (1952) §158 (b) (2).

2 In a companion case, Benton v. Painter's Union, (Cal. 1955) 291 P. (2d) 13, the court refused to assert jurisdiction because the NLRB had not expressly refused to take jurisdiction when it dismissed an employer representation petition on other grounds. See also Holman v. Industrial Stamping & Mfg. Co., 344 Mich. 235 74 N.W. (2d) 322 (1955).

3 Section 10 (a) of the amended NLRA gives the NLRB jurisdiction over all controversies "affecting commerce." However, the NLRB, for policy reasons, has established "yardsticks" which indicate the practical limits of its exercise of that jurisdiction. NLRB Press Release R-449, July 15, 1954, as reported in 34 L.R.R.M. 75 (1954). The area between the potential and actual extent of NLRB jurisdiction is the "tidelands." See Feldblum, "Jurisdictional 'Tidelands' in Labor Relations," 3 LAB. L. J. 114 (1952).

4 The few sections of the amended NLRA and the LMRA which indicate congressional consideration of the pre-emption question show that Congress did not anticipate the "tidelands" problem. See §§8 (d) (3), 10 (a), 13, 14 (a), 14 (b) of the amended NLRA and §§202 (c), 203 (b) and 303 of the LMRA.

5 Bethlehem Steel Corp. v. NYSLRB, 330 U.S. 767 at 774, 67 S.Ct. 1026 (1947); Garner v. Teamsters Union, 346 U.S. 485 at 488, 74 S.Ct. 161 (1953); Building Trades Council v. Kinard Constr. Co., 346 U.S. 933, 74 S.Ct. 373 (1954).

6 See Ratner, "Problems of Federal-State Jurisdiction in Labor Relations," 3 LAB. L. J. 750 (1952).

7 See Cox & Seidman, "Federalism and Labor Relations," 64 HARV. L. REV. 211 (1950).

8 See, e.g., Milwaukee Boston Store Co. v. American Federation of Hosiery Workers, 269 Wis. 338, 69 N.W. (2d) 762 (1955).

9 Retail Clerks v. Your Food Stores, (10th Cir. 1955) 225 F. (2d) 659; NYSLRB v. Wags Transportation System, 284 App. Div. 883, 134 N.Y.S. (2d) 603 (1954). Compare principal case at 6.

10 Hammer v. Local No. 211, Textile Workers, 34 N.J. Super 34, 111 A. (2d) 308 (1954); Universal Car Co. v. Intl. Assn. of Machinists, (Mich. Cir. Ct. 1954) 27 CCH Lab. Cas. ¶68,825.

tional "yardsticks" before asserting their jurisdiction.[11] The majority in the principal case attempts a compromise between these views by utilizing the declination of jurisdiction by an NLRB Regional Director over a representation controversy as the criterion for asserting jurisdiction over unfair labor practices.[12]

State court application of a federal statute is not unprecedented. A state court has the duty to apply the provisions of any federal law, penal or civil, if Congress has expressly extended enforcement jurisdiction to state courts,[13] either alone or in conjunction with the federal courts.[14] State courts have also been allowed to enforce federal statutes where Congress has neither expressly granted nor prohibited concurrent state jurisdiction.[15] Although neither the original NLRA nor the amended NLRA expressly deny the authority of state courts to enforce the unfair labor practice provisions, such a denial could be "implied from the nature of the legislation and the subject matter."[16] However, unfair labor practice provisions of the Wagner Act were utilized in conjunction with similar provisions of a state act to determine the lawfulness of union conduct.[17] In addition, the Taft-Hartley Act has been used by a state court as the basis for granting a temporary injunction while awaiting expected NLRB action.[18] However, the court in the principal case is the first state court to take jurisdiction of a labor controversy and then apply section 8 (b) (2)

11 Driver's Union v. Jax Beer, (Tex. Civ. App. 1955) 276 S.W. (2d) 384; School District v. Trades Council, (Mich. Cir. Ct. 1955) 37 L.R.R.M. 2232; Fairlawn Meats, Inc. v. Meat Cutters, Local 427, (Ohio Com. Pl. 1954) 29 CCH Lab. Cas. ¶69,629; Raisch Motors, (N.Y.S.L.R.B. 1955) 35 L.R.R.M. 1631. One of the most effective arguments in support of these decisions is that the NLRB has promulgated its yardsticks to prevent large numbers of litigants from coming to the board to be told individually what they have already been told as a class.

12 The majority relied primarily upon Screw Machine Products Co., 94 N.L.R.B. 1609 (1951), to equate NLRB declination of jurisdiction in representation and unfair labor practice cases. The NLRB in that case, however, had emphasized the reliance factor resulting from their declination before as well as after the commission of the alleged unfair labor practices. The dissent in the principal case (at p. 12) relied upon In re DeSilva, 33 Cal. (2d) 76, 199 P. (2d) 6 (1948), to show there should be no such equation, especially when the only action was by a regional director, not the NLRB itself. If this is correct, then the principal case could simply be included with those cases in which the state court took judicial notice of NLRB "yardsticks."

13 Claflin v. Houseman, 93 U.S. 130 (1876); Mondou v. New York R. Co., 223 U.S. 1, 32 S.Ct. 169 (1912); Testa v. Katt, 330 U.S. 386, 67 S.Ct. 810 (1947).

14 Dice v. Akron C. & Y. R. Co., 342 U.S. 359, 72 S.Ct. 312 (1952) (Federal Employer's Liability Act); Adams v. Maryland, 347 U.S. 179, 74 S.Ct. 442 (1954) (Witness Immunity Statute).

15 A.T. & S.F. Ry. v. Scarlett, 300 U.S. 471 (1936) (Federal Safety Appliance Act); California v. Zook, 336 U.S. 725, 69 S.Ct. 841 (1949) (Federal Motor Carrier Act).

16 Bethlehem Steel Co. v. NYSLRB, note 5 supra, at 771.

17 Park & Tilford v. Intl. Union, 27 Cal. (2d) 599, 165 P. (2d) 891 (1946). Since the court was enforcing local law, substantive federal labor law was not utilized as the sole means of outlawing union conduct.

18 Oregon v. Dobson, 195 Ore. 533, 245 P. (2d) 903 (1952). But see Dyer v. Intl. Brotherhood of Teamsters, 124 Cal. App. (2d) 778, 269 P. (2d) 199 (1954). The implica-

of the amended NLRA to proscribe conduct not otherwise unlawful under local law.

Although the majority offers no discussion to support its conclusion, much can be said in behalf of its decision. When the NLRB has declined jurisdiction, a state court should assert jurisdiction to apply its own law even though there has been no compliance with the cession requirements of section 10 (a).[19] This section should be no obstacle because it refers only to "state agencies," not to state courts. Its primary purpose of avoiding a conflict of state and federal remedies[20] has been respected since there is absolutely no NLRB remedy available to the parties. Since state courts can generally enforce federal law where there is no express congressional exclusion,[21] there should be no bar to a state court's enforcement of the unfair labor practice provisions of the amended NLRA. Furthermore, the state court, in its enforcement of the amended NLRA, is not applying the provisions of a different and possibly conflicting state law but precisely the same law which the NLRB would apply. The objections to this line of reasoning are (1) the Supreme Court has indicated that where Congress has provided a specific type of remedy, e.g., an injunction, the state courts are foreclosed from utilizing the same remedy, regardless of jurisdictional facts;[22] (2) Congress was more concerned about the national effect of differing methods of application of the amended NLRA by different forums than whether the same provisions were applied;[23] (3) application of federal law to an interstate business which has been declared essentially local by the NLRB and the state, discriminates against wholly intrastate businesses governed entirely by state law.[24] A Supreme Court ruling in

tion that federal substantive rights were created by §301 of the LMRA was criticized in Westinghouse Employees v. Westinghouse Electric Corp., 348 U.S. 437, 75 S.Ct. 489 (1955). However, §303, which the state courts can enforce, has been held to create new federal substantive rights and remedies. Schatte v. Intl. Alliance, (9th Cir. 1950) 182 F. (2d) 158 at 165. See Roumell and Schlesinger, "The Preemption Dilemma in Labor Relations," 18 UNIV. DET. L. J. 17, 56, 182 (1954). Although §303 is concerned with private damage actions arising from a §8 (b) (4) type of secondary action, it may provide analogous authority for state court application of other §8 provisions.

19 See the cases cited in note 11 supra.

20 Algoma Plywood Co. v. WERB, 336 U.S. 301 at 306, 69 S.Ct. 584 (1949).

21 See note 15 supra.

22 Weber v. Anheuser-Busch, 348 U.S. 468, 75 S.Ct. 480 (1955); United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656, 74 S.Ct. 833 (1954); Baum v. Lumber & Sawmill Workers, (Wash. 1955) 284 P. (2d) 275. This would preclude the injunctive remedy in the principal case but not necessarily the damage remedy.

23 Principal case at 9-10, citing Garner v. Teamsters Union, 346 U.S. 485 at 488, 74 S.Ct. 161 (1953). However, it might be argued that such concern is unnecessary because the "action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." Baltimore & Ohio R. Co. v. Kepner, 314 U.S. 44 at 52-53, 62 S.Ct. 6 (1941).

24 Principal case at 11 (dissenting opinion).

the principal case clarifying the extent of state jurisdiction in the tidelands area will be welcome.

George E. Ewing, S.Ed.