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Labor Law - Removal Jurisdiction of Federal Courts - Action to Enjoin Secondary Boycott

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LABOR LAW—REMOVAL JURISDICTION OF FEDERAL COURTS—ACTION TO ENJOIN SECONDARY BOYCOTT—Plaintiff, a Michigan trucking company subject to the LMRA,[1] brought suit in a Michigan court against defendant, a local of the Teamsters Union, for an injunction and $50,000 damages. Plaintiff alleged that defendant's conduct in attempting to coerce plaintiff's employees to become members of the Teamsters Union was an illegal combination and conspiracy under Michigan law and a violation of the Michigan antitrust laws.[2] Defendant removed the case to a federal district court on the theory that certain specific acts alleged by plaintiff would constitute an unlawful secondary boycott under the LMRA and that plaintiff had therefore stated a cause of action under section 303 of that act. After the court had denied a motion to remand, plaintiff struck out its request for damages and again moved to remand. This motion was also denied, whereupon plaintiff petitioned the court of appeals for a writ of mandamus directing the district court to remand the action. *Held*, mandamus denied. The district court had original jurisdiction of plaintiff's claim, even apart from the request for damages, since the LMRA was "directly involved." *Direct Transit Lines, Inc. v. Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.*, (6th Cir. 1952) 199 F. (2d) 89.

A general requirement for removal of a case to a federal court is that the action removed be one "of which the district courts of the United States have original jurisdiction. . . ."[3] Section 303 (b) of the LMRA provides that anyone injured by conduct in violation of section 303 (a), which forbids certain types of secondary action by unions, may recover the damages sustained in any state or federal district court. Assuming that the court below was correct in its view that at least part of the conduct alleged fell within the scope of section 303 (a), the court obviously had some justification for treating plaintiff's claim for damages as one over which it had original jurisdiction, even though plaintiff intended to state a cause of action solely under state law.[4] Consequently,

[1] Labor-Management Relations Act, 1947, 61 Stat. L. 136 (1947), as amended, 29 U.S.C. (Supp. V, 1952) §§141-197.

[2] Specifically, Mich. Comp. Laws (1948) §§445.701, 445.762.

[3] 28 U.S.C. (Supp. V, 1952) §1441(a).

[4] Pocahontas Terminal Corp. v. Portland Building & Construction Trade Council, (D.C. Me. 1950) 93 F. Supp. 217. But query the soundness of this view. "Of course the party who brings a suit is master to decide what law he will rely upon and therefore does determine whether he will bring a 'suit arising under' the . . . law of the United States by his declaration or bill." Holmes, J., in The Fair v. Kohler Die and Specialty Co., 228 U.S. 22 at 25, 33 S.Ct. 410 (1913). Should it make any difference whether plaintiff actually has no state cause of action due to federal pre-emption of the field?

jurisdiction over the subject matter of the claim for injunctive relief could conceivably have been sustained on any one of three theories: (1) that plaintiff's claim for an injunction "arose under" the LMRA within the meaning of section 1337, Title 28, U. S. C.;[5] (2) that plaintiff's original claim was a single cause of action, based on federal law as to damages and on state law as to injunctive relief;[6] (3) that plaintiff's original claim consisted of two separate causes of action, one federal and one state, both properly removable by virtue of section 1441 (c), Title 28, U. S. C.[7] By resting its decision in part[8] on the ground that the LMRA was "directly involved" the court of appeals clearly sustained the district court's jurisdiction under the first, or federal question, theory. This appears to be questionable. No provision of the LMRA, including section 303,[9] gave plaintiff any right to the injunctive relief requested.[10] There is no doubt that at least as far as the federal courts are concerned the LMRA gives the NLRB exclusive original jurisdiction to restrain conduct in violation of the act, except as otherwise provided in respects here immaterial.[11] Even assuming as did the court below that certain allegations could be construed as charging fraud or violence, and that the requirements of the Norris-LaGuardia Act[12] could be met, still, if the violence itself constituted an unfair labor practice, a federal court could grant no injunctive relief upon private suit by virtue of any provision of the LMRA.[13] And if the violence in itself were not a violation of the act there would be no basis for saying it arose under the act. It is submitted that these principles are now so firmly established that, to use the test of *Bell v. Hood*,[14] a request for injunctive relief under the LMRA in this type of case is "wholly unsubstantial" and "so patently without merit"

[5] 28 U.S.C. (Supp. V, 1952) §1337, which gives district courts "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce. . . ."

[6] In this case, under the doctrine of Hum v. Oursler, 289 U.S. 238, 53 S.Ct. 586 (1933), the court might retain jurisdiction after amendment had removed the federal ground for relief. Brown v. Eastern States Corp., (4th Cir. 1950) 181 F. (2d) 26, cert. den. 340 U.S. 864, 71 S.Ct. 88 (1950).

[7] 28 U.S.C. (Supp. V, 1952) §1441(c). This section provides that "whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein. . . ."

[8] The court also appeared to feel that jurisdiction could be sustained under the second theory.

[9] Bakery Sales Drivers Local Union No. 33 v. Wagshal, 333 U.S. 437, 68 S.Ct. 630 (1948); Amalgamated Assn. of Street, Electric Ry. & Motor Coach Employees of America v. Dixie Motor Coach Corp., (8th Cir. 1948) 170 F. (2d) 902.

[10] Amazon Cotton Mill Co. v. Textile Workers Union of America, (4th Cir. 1948) 167 F. (2d) 183; Walker v. United Mine Workers of America, (D.C. Pa. 1952) 105 F. Supp. 608; Dynamic Mfrs., Inc. v. Local 614 of the Gen. Drivers, Warehousemen & Helpers of America, (D.C. Mich. 1952) 103 F. Supp. 651; Department Store Service, Inc. v. "John Doe," (D.C. N.Y. 1951) 98 F. Supp. 870.

[11] See §§10(a), 10(e), 10(f), 10(j), 10(l), 208, 301, and 303, 61 Stat. L. 136 et seq. (1947), as amended.

[12] 47 Stat. L. 70 (1932), 29 U.S.C. (1946) §§101-115.

[13] Rock Hill Printing & Finishing Co. v. Berthiaume, (D.C. S.C. 1951) 97 F. Supp. 451, and cases cited in note 10 supra.

[14] 327 U.S. 678, 66 S.Ct. 773 (1946).

as not to present for jurisdictional purposes any federal question. Nevertheless, it cannot be doubted that one of the most important problems in the principal case is a federal one—the effect of the LMRA on state authority to regulate union conduct.[15] But since this issue will be raised as a defense, the Supreme Court's rather dubious doctrine[16] that jurisdiction cannot be based on a federal question raised in the answer,[17] even in removal cases,[18] would here apply. Thus the lower federal courts are placed in this difficult position: unless they ignore a long-established Supreme Court rule they are obliged to let defendant take its chances in a state court which may well be loathe to recognize the exclusive jurisdiction of the NLRB.[19]

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[15] See, generally, Ratner, "Problems of Federal-State Jurisdiction in Labor Relations," 3 LAB. L.J. 750 (1952); Smith, "The Taft-Hartley Act and State Jurisdiction over Labor Relations," 46 MICH. L. REV. 593 (1948).

[16] Criticized by Fraser, "Some Problems in Federal Question Jurisdiction," 49 MICH. L. REV. 73 (1950). But cf. Bergman, "Reappraisal of Federal Question Jurisdiction," 46 MICH. L. REV. 17 (1947).

[17] Metcalf v. Watertown, 128 U.S. 586, 9 S.Ct. 173 (1888).

[18] Tennessee v. Union and Planters' Bank, 152 U.S. 454, 14 S.Ct. 654 (1894).

[19] See, e.g., Kinard Construction Co. v. Building Trades Council, 23 CCH Lab. Cas. ¶67,467 (1953); Winkelman Brothers Apparel, Inc. v. Local 299, International Brotherhood of Teamsters, 22 CCH Lab. Cas. ¶67,262 (1952).