

1949

LABOR LAW - IMPACT OF LABOR-MANAGEMENT RELATIONS ACT ON STATE REGULATION OF UNION SHOP CONTRACTS

W. J. Schrenk, Jr. S.Ed.
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Conflict of Laws Commons](#), [Labor and Employment Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

W. J. Schrenk, Jr. S.Ed., *LABOR LAW - IMPACT OF LABOR-MANAGEMENT RELATIONS ACT ON STATE REGULATION OF UNION SHOP CONTRACTS*, 47 MICH. L. REV. 586 ().

Available at: <https://repository.law.umich.edu/mlr/vol47/iss4/16>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

LABOR LAW — IMPACT OF LABOR-MANAGEMENT RELATIONS ACT ON STATE REGULATION OF UNION SHOP CONTRACTS—The petitioning labor union made a contract with defendant employer, who was engaged solely in interstate commerce, providing that all employees were to be furnished by the union. If members could not be supplied, non-members might be hired but were required to join the union within two weeks from the date of employment. The defendant labor commissioner of the State of New Hampshire threatened to prosecute petitioner under a state statute, known as the Willey Act, which prohibited union security contracts except when ratified by two-thirds of the employees affected.¹ Petitioner sought a declaratory judgment that the provisions of the state act

¹ N.H.L. (1947) c. 195, § 21.

were inapplicable to its agreement with defendant employer, having been superseded by the Labor-Management Relations Act of 1947.² *Held*, judgment for plaintiff. State regulation of union security agreements is excluded by the paramount character of Congressional entry into that field. *International Brotherhood of Teamsters v. Riley*, (N.H. 1948) 59 A. (2d) 476.

The validity of the Willey Act, as applied to labor relations affecting interstate commerce, depends upon the effect of sec. 8(a)(3) and sec. 14(b) of the L.M.R.A.³ Although it is clear that a state statute completely prohibiting union shop contracts is allowed by the federal act,⁴ the area of uncertainty is reached by legislation like the Willey Act which purports to *regulate* union security agreements by such means as requiring ratification by the employees affected. Section 14(b) has been interpreted as allowing the state to take such action, provided it is not less restrictive than the federal act.⁵ This position finds support in the statement by Senator Murray, member of the Committee on Labor and Public Welfare, that "Section 14(b) . . . expressly provides that in the case where the state law is *more rigorous* than the policy expressed in the bill such state law shall be unaffected."⁶ The significance of such expressions is modified, however, by the fact that the terms "prohibit," "regulate," and other similar words seem to have been used interchangeably at many points in the Congressional discussions, indicating that the problem of interpretation involved in the principal case may not have been considered.⁷ During the debates on the L.M.R.A., Senator Taft made it clear that sec. 14(b) is designed to have the same effect on state limitations of union security agreements as that intended by Congress in enacting the original N.L.R.A.⁸ Thus, it may be considered pertinent to an interpretation of sec. 14(b)

² 29 U.S.C.A. (Supp. 1947) § 141 et seq.

³ Sec. 8(a)(3) provides that an employer is not guilty of an unfair labor practice in making a union shop agreement, where, *inter alia*, the agreement has been ratified by a majority of the employees affected. Sec. 14(b) provides that "Nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization in any state or territory in which such execution or application is prohibited by state or territorial law."

⁴ *State v. Whitaker*, 228 N.C. 352, 45 S.E. (2d) 860 (1947); *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 149 Neb. 507, 31 N.W. (2d) 477 (1948); *A.F. of L. v. American Sash & Door Co.*, 67 Ariz. 20, 189 P. (2d) 912 (1948). Upon appeal to the United States Supreme Court to determine the validity of such prohibitory legislation under the Fourteenth Amendment, the statutes were sustained; *A.F. of L. v. American Sash and Door Co.*, (U.S. 1948) 69 S.Ct. 258.

⁵ Smith, "The Taft-Hartley Act and State Jurisdiction Over Labor Relations," 46 MICH. L. REV. 593 at 598 (1948) (relied on by the dissenting judge in the principal case); KILLINGSWORTH, STATE LABOR RELATIONS ACTS 87, 244 (1948); Millis and Katz, "A Decade of State Labor Legislation," 15 UNIV. OF CHI. L. REV. 282 at 290 (1948); 15 UNIV. OF CHI. L. REV. 362 (1948).

⁶ 93 CONG. REC. 6505 (June 6, 1947) (*italics added*). See also H. Rep. No. 245 on H.R. 3020, 80th Cong., 1st sess., pp. 34, 44 (1947).

⁷ See the summary of the act by Senator Taft in 93 CONG. REC. 6445 (June 5, 1947); also that Senator's further comments in 93 CONG. REC. 6520 (June 6, 1947); and H. Conf. Rep. No. 510 on H.R. 3020, 80th Cong., 1st sess., p. 60 (1947).

⁸ ". . . when the [original N.L.R.A.] was enacted, it was made clear . . . that the proviso in section 8(3) was not intended to override State laws *regulating* the closed

that a Wisconsin statute, similar to the Willey Act in its regulatory provisions, was sustained in spite of objections of its invalidity under the original N.L.R.A.⁹ The court in the principal case adopts the view, however, that any state attempt at regulation is invalid.¹⁰ The same interpretation was made by the N.L.R.B. in a recent decision holding invalid the Wisconsin statute mentioned above.¹¹ In support of the principal case, it may be argued that Congress, after establishing in sec. 8(a)(3) rather elaborate requirements which must be met before union shop agreements are permitted, would not intend to allow the states to substitute other procedures and conditions in reaching the same end. Legislation such as the Willey Act expresses the same policy as the federal act, so that the confusion arising from inconsistent procedural requirements is not offset by the benefit which may be derived in some cases from leaving the states free to act as a testing ground for experimental labor legislation.¹²

W. J. Schrenk, Jr., S.Ed.

shop. . . . That has been the law ever since that time . . . we in no way change [it].” (italics added) 93 CONG. REC. 6519-20 (June 6, 1947). See also, H. Rep. No. 245 on H.R. 3020, 80th Cong., 1st sess., p. 44 (1947); S. Rep. 105 on S. 1126, 80th Cong., 1st sess., p. 6 (1947); and H. Conf. Rep. No. 510 on H.R. 3020, 80th Cong., 1st sess., p. 60 (1947).

⁹ *International Brotherhood of Paper Makers v. Wisconsin Employment Relations Board*, 249 Wis. 362, 24 N.W. (2d) 672 (1946). In response to a question about the effect of the L.M.R.A. on this same Wisconsin statute [Wis. St. § 111.06(1)(c) (1943)], Representative Hartley replied: “. . . this will not interfere with the validity of the laws within the State.” 93 CONG. REC. 6383-4 (June 4, 1947).

¹⁰ “We think that ‘prohibited’ as used in [sec. 14(b)] means forbidden, not merely frowned upon although permitted under certain conditions.” Principal case at p. 480.

¹¹ *In re Northland Greyhound Lines, Inc.*, 23 L.R.R.M. 1074 (Nov. 12, 1948). The decision is perplexing, since it was preceded by a ruling that the board would recognize the controlling effect of state legislation requiring more than majority approval of union security agreements. 21 LAB. REL. REP. 262 (April 5, 1948). In fact, on Aug. 27, 1948, the national board made an agreement with the Wisconsin board, whereby union shop referenda were to be conducted by the N.L.R.B. on behalf of both agencies. 22 LAB. REL. REP. 269 (Sept. 13, 1948).

¹² This confusion is well illustrated in *Re Northland Greyhound Lines, Inc.*, supra, note 11. Although a bargaining unit was recognized embracing employees in several states, a separate unit for union shop referenda would be necessary in each state requiring greater approval than the L.M.R.A., had such regulatory legislation been recognized. Employees in states having prohibitory statutes are excluded from the referendum altogether. See the dissenting opinion of Chairman Herzog in *Re Giant Food Shopping Center, Inc.*, 77 N.L.R.B. 791, 22 L.R.R.M. 1070 (1948).