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LABOR LAW--FEDERAL-STATE RELATIONS--VALIDITY OF MICHIGAN'S LABOR MEDIATION ACT

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LABOR LAW—FEDERAL-STATE RELATIONS—VALIDITY OF MICHIGAN'S LABOR MEDIATION ACT—Plaintiff labor union called a strike against defendant auto corporation in May, 1948, without conforming to the prescribed state procedure. The purpose of the strike was to enforce demands for higher wages and the strike was conducted peacefully. To enjoin possible criminal prosecution the union instituted the instant suit in the state courts,[1] contending that the Michigan labor mediation law, the much publicized "Bonine-Tripp Act,"[2] violated the due process and commerce clauses of the Federal Constitution. The Michigan Supreme Court[3] reversed the decision of the trial court which had granted the injunction. On appeal, *held,* reversed. Congress has occupied the field of regulation of peaceful strikes for higher wages, and has closed it to state regulation; and even if some state regulation in this area could be sustained, the particular statute involved could not stand because it conflicts with the over-riding federal act.[4] *U.A.W.-C.I.O. v. O'Brien,* 339 U.S. 454, 70 S.Ct. 781 (1950).

The decision in the principal case raises again the troublesome question of the proper relationship between federal and state legislation in the complicated area of labor relations. In resolving the question, it is not clear whether the test to be applied is or should be a test of Congressional occupancy of the field or a test of conflicting legislation. Of course, Congress has not been silent on

[1] The Michigan court held that plaintiff's acts "rendered [them] subject to threatened criminal prosecution. . . ." 325 Mich. 250 at 254, 38 N.W. (2d) 421 (1949).

[2] Mich. Comp. Laws (1948) §423.1 et seq.

[3] U.A.W.-C.I.O. v. Wayne Pros. Atty., 325 Mich. 250, 38 N.W. (2d) 421 (1949).

[4] The Court found no need to discuss the due process objection, inasmuch as it held the state court in error in its decision on the commerce power. Principal case at 456.

the subject of strikes in interstate commerce,[5] but an indication that Congress perhaps did not intend to foreclose state regulation is suggested by sections 8(d)[6] and 13[7] of the Taft-Hartley Act itself. However, the cases cited as authority in the principal case were either based upon or have since been read as being based upon the ground of occupancy, which would indicate the actual basis of the principal decision. As for the question of inconsistent legislation, the court points out that the federal act permits strikes at a different and usually earlier time than the Michigan statute,[8] that it does not require majority authorization as is required by that statute, and that the bargaining units established in accordance with federal law may be inconsistent with those required by state regulation.[9] On the other hand, it may be said that the state statute did not prohibit calling or instituting a strike incident to any legitimate labor controversy, but merely required as a condition precedent a majority approval thereby protecting both the majority of the employees and the public. There was not present here the sharp and irreconcilable conflict which has caused state statutes to fall in other labor cases.[10] The decision in the principal case should be com-

[5] In the National Labor Relations (Wagner) Act, 49 Stat. L. 449 (1935), 29 U.S.C. (1946) §151, as amended by the Labor-Management Relations (Taft-Hartley) Act, 61 Stat. L. 136 (1947), 29 U.S.C. (Supp. 1948) §141, Congress safeguarded the exercise by employees of "concerted activities" and recognized the right to strike. See §§7, 2(3) and 13 of the original and amended acts. It qualified that right in §8(d) of the 1947 act, by imposing limitations on the right to strike while there is in force a collective bargaining agreement. Plaintiff had complied with these limitations. In other provisions which did not here affect plaintiff, Congress forbade strikes for certain objectives [§8(b) (4)] and outlined procedures for dealing with strikes which might create a national emergency [§§206-210].

[6] The third subdivision of this section requires notice to be given to both federal and state conciliation boards as a condition precedent to striking where there is a collective bargaining agreement then in effect. See 61 Stat. L. 142 (1947), 29 U.S.C. (Supp. 1948) §158.

[7] "Nothing in this act, *except as specifically provided for herein,* shall be construed so as either to interfere with or impede or diminish in any way the right to strike, *or to affect the limitation or qualifications on that right.*" (Emphasis added). 61 Stat. L. 151 (1947), 29 U.S.C. (Supp. 1948) §163. There is very little legislative history as to what this section means. See Smith, "The Taft-Hartley Act and State Jurisdiction over Labor Relations," 46 MICH. L. REV. 593 at 600-601 (1948).

[8] The Michigan act calls for a notice given "in the event the parties . . . are unable to settle any dispute" to be followed by mediation, and if that is unsuccessful, by a strike vote within twenty days, with a majority required to authorize a strike. See Mich. Comp. Laws (1948) §§423.9 and 423.9(a). Under §8(d) of the Taft-Hartley Act, however, the prescribed strike notice can be given sixty days before the contract termination or modification.

[9] Though the unit for the Michigan strike vote cannot extend beyond the state's borders, the unit for which plaintiff is the federally certified bargaining representative includes defendant's plants in three states. The Michigan court in UAW-CIO v. Wayne Pros. Atty., supra note 3, thought this point to be no bar to the exercise of inherent police power incident to a strike located in the state, "for otherwise diversity of State location of employees would limit the right of any of the States, wherein the employees were located, in the exercise of [inherent police power]." The holding may beg the question, yet possibly the only answer is that the unit could and did function under both acts.

[10] See Hill v. Florida, 325 U.S. 538, 65 S.Ct. 1373 (1945) where a Florida statute requiring unions and their agents to be licensed was held invalid. Under the statute, unions could not even begin to exercise any of their rights, not even the fundamental right of collective bargaining, unless they were licensed. And see Allen-Bradley Local v. WERB, 315 U.S. 740, 62 S.Ct. 820 (1942).

pared with that in the recent case of *Plankington Packing Co. v. WERB*,[11] in which in a short per curiam opinion the Supreme Court denied the Wisconsin's Board's assertion of jurisdiction in the unfair labor practice area, contrary to *U.A.W.-A.F.L. v. WERB*,[12] which was also an unfair labor practice case. The basis of the Court's decision in the *Plankington* case was not explained and can only be inferred from the court's references to two leading cases on the federal-state relations question.[13] But there is much objection to inferring from the unexplained citation of cases that a particular segment of labor-management law has been preempted, or that statutes are in conflict, when the cited cases themselves are not necessarily controlling for the particular fact situation involved. An argument can be made that the principal case should have been governed by the earlier *U.A.W.-A.F.L. v. WERB* case, where the Supreme Court upheld the application by Wisconsin of its statute[14] (which, incidentally, also contained a majority vote clause) to prevent undue coercion in the form of unannounced work stoppages. It may be urged that the statute in the principal case does not overlap or conflict with the federal act, which neither requires nor excuses any percentage-authorization for striking, but is silent on the point just as it was silent with regard to the particular type of union activity enjoined in the earlier Wisconsin case.[15] It is possible that the decision of the principal case and of the earlier Wisconsin case would have been different if in either of the cases the Court had used the approach used in the other. It would appear that state authorities still have no clear guides as to what they may or may not do, and that the impact of federal labor relations legislation on state enactments can be measured only by compartmentalized cases as they arise.[16]

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[11] 338 U.S. 953, 70 S.Ct. 491 (1950), decided three months before the principal case and relied on by the Court in the principal case.

[12] 336 U.S. 245, 69 S.Ct. 516 (1949). The Court said in effect that the federal act deals with union objectives and not union methods, and the state therefore could regulate the latter.

[13] Those references were to Bethlehem Steel Co. v. N. Y. Labor Board, 330 U.S. 767, 67 S.Ct. 1026 (1947), where there was a clear conflict between the federal and state policies regarding the right of foremen to organize, but the decision also contained broad language to the effect that once the federal power had acted, then state authority was precluded; and to La Crosse Telephone Corp. v. WERB, 336 U.S. 18, 69 S.Ct. 379 (1949), where the exertion of state jurisdiction was not allowed in the area of representation questions, the court relying on Bethlehem's language. These same cases are cited in the principal case which also relied on the Plankington case itself, and on Hill v. Florida, supra note 10.

[14] Wis. Stat. (1947) c. 111.

[15] U.A.W.-A.F.L. v. WERB, supra note 12.

[16] See, generally: Smith, "The Taft-Hartley Act and State Jurisdiction over Labor Relations," 46 MICH. L. REV. 593 (1948); Feinsinger, "Federal-State Relations Under the Taft-Hartley Act," N.Y.U. FIRST ANNUAL CONFERENCE ON LABOR, 463 (1948); Boudin, "Supersedure and the Purgatory Oath under the Taft-Hartley Law," 23 N.Y. UNIV. L. Q. 72 (1948); 47 MICH. L. REV. 1201 (1949).