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LABOR LAW-LABOR-MANAGEMENT RELATIONS ACT-RELATIONSHIP OF REMEDIES UNDER TITLE I AND TITLE III

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LABOR LAW — LABOR-MANAGEMENT RELATIONS ACT — RELATIONSHIP OF REMEDIES UNDER TITLE I AND TITLE III—Petitioner, a local of the International Longshoremen's and Warehousemen's Union, established a picket line at respondent's lumber mill and notified other locals to refuse to unload respondent's products. Petitioner sought to force respondent to assign certain jobs to its men. Respondent's policy had been to use its own employees for the disputed work. As a result of petitioner's action respondent was forced to suspend its operations. Respondent filed an unfair labor practice charge with the NLRB alleging union violation of section 8(b)(4)(D) of the LMRA.[1] After some time the NLRB determined that petitioner's men were not entitled to the disputed jobs and later filed a cease and desist order.[2] In the meantime respondent brought suit in a district court under section 303(a)(4) of the LMRA. $750,000 was awarded as damages from the date of the original picketing.[3] On appeal the court of appeals affirmed the judgment and denied petitioner's contention that the district court could

[7] There seems to be no objection in the authorities to depriving other beneficiaries of trust income in order to admit a new member to the class; it is only where divestiture of principal sums not in trust is required that the courts refuse to involve themselves in the difficulties of increasing the class. In the case of income from a lump sum to a class, for example, after-born members are let in even though this diminishes the shares of income going to older members. 2 SIMES, FUTURE INTERESTS §387 (1936); In re Wenmoth's Estate, 37 Ch. Div. 266 (1887).

[1] The Labor-Management Relations Act, 1947, 61 Stat. L. 136 (1947), 29 U.S.C. (Supp. IV, 1951) §141.

[2] In the matter of International Longshoremen's and Warehousemen's Union, Local No. 16, C.I.O., and Juneau Spruce Corporation, 82 N.L.R.B. 650 (1949); In the matter of International Longshoremen's and Warehousemen's Union, Local No. 16, C.I.O. and George Ford, Orville Wheat, Joe Guy and Verne Albright, as its agents and Juneau Spruce Corporation, 90 N.L.R.B. 1753 (1950).

[3] Juneau Spruce Corporation v. International Longshoremen's and Warehousemen's Union, (D.C. Alaska 1949) 83 F. Supp. 224.

not render damages covering the period of time before the union's activity had been declared illegal by the NLRB.[4] On certiorari to the United States Supreme Court, *held,* affirmed. The remedies under title I and title III of the LMRA are mutually exclusive. Success under section 303(a)(4) is not dependent upon a prior NLRB determination that an unfair labor practice has been committed. *International Longshoremen's and Warehousemen's Union v. Juneau Spruce Corporation,* 342 U.S. 237, 72 S.Ct. 235 (1952).

The LMRA sets out certain unfair labor practices in section 8 of title I and provides for enforcement upon petition before the NLRB under section 10. Section 8(b)(4) declares it an unfair labor practice "to engage in . . . a concerted refusal . . . to perform any services, where an object thereof is: . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization. . . ."[5] Under section 10(k) the NLRB hears and determines which union is entitled to the disputed work and under section 10(c) issues a cease and desist order.[6] Section 303 of title III declares unlawful in virtually identical language all those unfair labor practices listed under section 8(b)(4). This section provides that any aggrieved person may sue in any district court for damages resulting from the commission of the unlawful acts. The full implication of the act coupled with this decision that success under section 303 is not dependent upon a prior administrative determination that an unfair labor practice has been committed is rather disconcerting. Unless the holding of this case is sharply limited in the future, and there is nothing in the act or the case indicating such limitation, certain weird results may follow. In the first place it is clear that the language of sections 8(a)(4) and 303(a) is far from unequivocal. This means that there is room for disagreement between the NLRB and a district court as to whether under the same fact situation a violation has occurred. In addition, in the light of the uncertainties of proof and in the differences of procedure before an administrative board and a court, there is a real possibility of discrepancies in fact holdings in the same labor dispute. Thus we may find the NLRB rendering a decision contrary to a district court in the same case.

The debates in Congress show that the main purpose in establishing rights and liabilities under section 303 rather than giving the NLRB jurisdiction over damage suits was to provide the aggrieved party with the greater control over the outcome of the litigation afforded in a district court

[4] International Longshoremen's & Warehousemen's Union v. Juneau Spruce Corporation, (9th Cir. 1951) 189 F. (2d) 177.

[5] The Labor-Management Relations Act, 1947, 61 Stat. L. 141 (1947), 29 U.S.C. (Supp. IV, 1951) §158(b)(4).

[6] For comment on the procedure see Petro, "Job-Seeking Aggression, the NLRA, and the Free Market," 50 MICH. L. REV. 497 (1952).

where, for example, he may use private counsel.[7] Thus it may be said that Congress latently contemplated that a different result might follow from a section 303 procedure than from an administrative procedure. Senator Morse complained that certain evils might flow from the splitting of remedies between the NLRB and the court system, but he does not appear to have been answered in the debates, nor does it seem that Congress fully appreciated his contention.[8] A somewhat comparable situation is found under the Interstate Commerce Act.[9] Sections 8 and 9 give the right to sue for damages resultant from violations of the act in either a district court or before the Interstate Commerce Commission. In the *Mitchell Coal* case[10] the Supreme Court held that suits for damages resulting from the charging of unreasonable rates cannot be entertained by the district courts until the Interstate Commerce Commission has determined the question of what rate is reasonable. The Court pointed out that rate fixing requires the special skills of the Commission and also that many inconsistencies would otherwise result. However certain language of the Interstate Commerce Act permitted the court to reach its result within the expressed congressional intent. In the principal case the court was faced with the plain language of Congress separating the two remedies and redefining the rights and duties of the parties in the two titles of the LMRA. Thus the court could not have reasonably reached a different result. It is submitted, however, that the case brings to a focus a weakness in the LMRA.

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[7] S. Rep. No. 105 on S. 1126, p. 46 et seq., 80th Cong., 1st sess. [1 Legislative History of the Labor-Management Relations Act, 1947, p. 452 et seq. (1948)]; 93 CONG. REC. 4846 (1947) [2 Legislative History of the Labor-Management Relations Act, 1947, p. 1368 (1948)].

[8] 93 CONG. REC. 4840 (1947) [2 Legislative History of the Labor-Management Relations Act, 1947, p. 1358 et seq. (1948)]. See also Senate Minority Report No. 105, Pt. 2 on S. 1126, p. 12 et seq. [1 Legislative History of the Labor Management Relations Act, 1947, p. 474 et seq. (1948)].

[9] 24 Stat. L. 382 (1887), 49 U.S.C. (1946) §1.

[10] Mitchell Coal and Coke Co. v. Pennsylvania Railroad Co., 230 U.S. 247, 33 S.Ct. 916 (1913).