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Labor Law -- Federal Labor Law: Administrative Recession

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Labor Law

FEDERAL LABOR LAW: ADMINISTRATIVE RECESSION

Legislative Forms

The sphere in which a state government may properly operate without infringing upon federal jurisdiction presents a problem which is neither novel nor unique in our legal history.[1] Such problems will not be uncommon as long as our dual system of sovereignty endures; however, in the interest of consistency and expeditious justice our objective should be to minimize questions which deter parties from petitioning the proper forum. If there has been an infringment it matters not whether the state action was taken by the legislature,[2] its judiciary,[3] or an administrative agency.[4]

Once Congress has enacted legislation regulating an activity, the question of whether or not residuum has been left, upon which a state may exercise jurisdiction, presents numerous and varied legal issues. Federal legislation may have the effect of conferring jurisdiction upon the state judiciary, thereby making it mandatory that a state court open its doors to litigants;[5] it may give the state judiciary concurrent jurisdiction;[6] or it may altogether preclude the state courts from exercising jurisdiction.[7] A provision in the Constitution, *e.g.*, the interstate commerce clause,[8] may in and of itself prohibit state action.[9]

The inquiry made herein is primarily concerned with the Taft-Hartley Act,[10] and its predecessor the Wagner Act, [11] with reference to those situations wherein their ultimate effect has been to preclude state courts from resolving issues in labor cases. It must be assumed that any particular case is concerned with an

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1 Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).

2 Southern Pacific Co. v. Arizona *ex rel.* Sullivan, 325 U.S. 761 (1945).

3 Kansas City S. Ry. v. Kaw Valley Dist., 233 U.S. 75 (1914).

4 Bethlehem Steel Co. v. New York State LRB, 330 U.S. 767 (1947).

5 Testa v. Katt, 330 U.S. 386 (1947).

6 *Ibid.*

7 Garner v. Teamsters, C. & H. Union, 346 U.S. 485 (1953).

8 U.S. CONST. art. I, § 8, cl. 3.

9 See *e.g.* Southern Pacific Co. v. Arizona *ex rel.* Sullivan, 325 U.S. 761 (1945).

10 Labor Management Relations Act, 61 STAT. 136 (1947), 29 U.S.C. §§ 141-188 (1952).

11 National Labor Relations Act, 49 STAT. 449 (1935). 29 U.S.C. §§ 151-168 (1952).

industry "affecting commerce"[12] as those terms are defined by the National Labor Relations Act. Insofar as the federal legislation in this area depends upon the commerce clause for its constitutionality, it will not be amiss to concern ourselves with other commerce cases, though they be non-labor cases.

Supreme Law or Not?

The supremacy clause[13] of the Constitution makes it incumbent upon state judges as well as federal judges to abide by Congressional power which is constitutionally exerted. The confusion engendered in domestic law has proved to be no obstacle in the domain of foreign affairs.[14] Federal legislation, when enacted, demands no less respect by a state legislature, judiciary, or administrative agency, than that given to an international treaty or executive agreement. Nor does disagreement with the wisdom of Congress in enacting a particular statute provide a reason for ignoring the words and policy embodied in that statute.[15] The gravamen is primarily one of legislative power exercised pursuant to the Constitution. The exercise of that power in the area of labor relations has been held valid.[16]

Though Congress must clearly manifest an intent to occupy a field in order to preclude a state from asserting jurisdiction,[17] the nature of the legislation and its subject matter may imply such an intent on the part of Congress as to exclude state action though it does not expressly so state.[18] The real import of Con-

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12 61 STAT. 138 § 2(7) defines "affecting commerce" as ". . . in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

13 U. S. CONST. art. VI, cl. 2: "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

14 United States v. Pink, 315 U.S. 203, 230 (1942): "A treaty is a 'Law of the Land' under the supremacy clause . . . of the Constitution. Such international compacts and agreements as the Litvinov Assignment have a similar dignity."

15 See Ratner, *Problems of Federal-State Jurisdiction in Labor Relations*, NEW YORK UNIVERSITY FIFTH ANNUAL CONFERENCE ON LABOR 77, 93 (1952).

16 NLRB v. Jones & Laughlin Steel Corp. 301 U.S. 1 (1937).

17 Maurer v. Hamilton, 309 U.S. 598 (1940); Reid v. Colorado, 187 U.S. 137 (1902).

18 Bethlehem Steel Co. v. New York State LRB, 330 U.S. 767 (1947); Hines v. Davidowitz, 312 U. S. 52 (1941); Napier v. Atlantic Coast Line R. R., 272 U.S. 605 (1926).

gressional action, once it has been taken, was well stated by Chief Justice Marshall in *McCulloch v. Maryland:*[19]

> . . . the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is . . . the unavoidable consequence of that supremacy which the constitution has declared.

Nor may a state burden interstate commerce under the guise of its police power.[20] However, when Congress in a particular statute does not make federal jurisdiction exclusive, any state court of competent jurisdiction may hear and decide a case arising thereunder. In fact, there may arise a positive duty on the part of state courts to entertain jurisdiction over the federal cause of action where the act does not give exclusive jurisdiction to the federal courts and the state court is otherwise competent.[21] In the latter situation neither public policy nor police power of the state will aid it in attempting to decline jurisdiction.[22]

Speaking correlatively, when Congress in its wisdom vests exclusive jurisdiction not only in the federal courts but likewise in an administrative agency, there devolves upon state courts and agencies the duty to decline jurisdiction and leave the parties to pursue their federal remedies.[23] Expression of, and adherence to this duty appears in *Gerry v. Superior Court:*[24]

> The provisions of the 1947 Act [Labor Management Relations Act] show an intent to preserve the functional purposes of the National Labor Relations Act with increased objectives, and an intent not to confer powers on the courts at the suit of private parties with the exception of the jurisdiction expressly granted, *which does not include the exercise of equity powers.* (Emphasis added.)

Likewise when the Supreme Court of the United States construes a provision of the Constitution or a federal statute, a federal

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19 17 U. S. (4 Wheat.) 316 (1819).

20 Morgan v. Virginia, 328 U. S. 373 (1946).

21 Mondou v. N.Y., N.H. & H.R.R., 223 U.S. 1 (1911). See Claflin v. Houseman, 93 U.S. 130, 136 (1876): "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty."

22 See notes 5 and 20 *supra.*

23 Gerry v. Superior Court, 32 Cal. 2d 119, 194 P.2d 689 (1948); Norris Grain Co. v. Nordaas, 232 Minn. 91, 46 N.W.2d 94 (1951); Costaro v. Simons, 302 N.Y. 318, 98 N.E.2d 454 (1951). *Cf.* Sommer v. Metal Trades Council, 40 Cal. 2d 254, 254 P. 2d 559 (1953).

24 32 Cal. 2d 119, 194 P.2d 689, 694 (1948).

question has been determined and their construction is to be followed by the state courts.[25] This duty is not to be lightly regarded[26] though there is abundant evidence of indifference on the part of state judges and administrators[27] in following those decisions.

It is of interest to note that in *Gerry v. Superior Court, supra,* argument was made by counsel that since the National Act was a part of the supreme law of the land it was incumbent upon the state court to enforce and protect rights given thereby. Such an argument would need be given great weight had not Congress, when it enacted the National Labor Relations Act also made provision for the National Board empowering it to prevent unfair labor practices and to cede jurisdiction by agreement, pursuant to Section 10(a) of the Act. The late Senator Taft, one of the primary authors of the amendment, was well aware of the power placed at the Board's disposal.[28] Representative Hartley stated that ". . . by the Labor Act Congress preempts the field that the

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25 Wichita Falls & S.R.R. v. Lodge No. 1476, ... Tex. ....., 266 S.W.2d 265, 269 (1954): ". . . in the field of Federal-state relations we are bound by the decisions of the United States Supreme Court."

26 Johnson v. United States, 163 Fed. 30, 32 (1st Cir. 1908) per Justice Homes: "A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before."

27 Coutlakis v. State, 268 S.W.2d 192, 197 (Tex. Crim. App. 1954): "It is the natural inclination of State courts of last resort to uphold the legality of the acts of their Legislatures, primarily because the members thereof are ardent proponents of the rights of the States. However, by the same token as we require inferior courts to accede to our views of the law, we should be ready to accept the holdings of the court to which our cases may be appealed. An accused should not be required to appeal to a superior court when that superior court has already spoken." (Dissenting opinion). Compare the majority opinion with Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945). See Plankinton Packing Co. v. Wisconsin ERB, 338 U.S. 953 (1950), *reversing per curiam,* 255 Wis. 285, 38 N.W.2d 688 (1949).

28 2 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947, 1031 (1948):

Mr. IVES. I desire to say for the Record that right now we have a good National Labor Relations Board; and I think the senior Senator from Ohio will agree with me in that statement.

Mr. TAFT. I do agree, otherwise I would not be willing to grant them the great additional powers we give them in the . . . bill.

Act covers insofar as commerce within the meaning of the Act is concerned. . . ."[29] Nor were other legislators oblivious of the evil that was sought to be remedied by the Act of 1947.[30] The Court in *Garner v. Teamsters, C. & H. Union,*[31] placed great emphasis on the power which Congress had vested in the Board.

A literal reading of the supremacy clause would lead one to believe that any state legislation or action would need be "contrary" to federal legislation before the state could be precluded from asserting jurisdiction. It is submitted that such a conclusion is not the weight of authority because literalness is not a true criterion of intent. All rules of construction are subordinate to that intent,[32] and when we speak of construing the Constitution we must ascertain what it has come to be.[33] The same rules are applicable in interpreting the Constitution as are those in construing Congressional legislation. Mr. Justice Holmes stated the rule in *Charleston & W. Carolina R.R. v. Varnville Co.*[34] to be:

> When Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.

Similar language used by Mr. Justice Washington in *Houston v. Moore,*[35] would seem to be strong support for the doctrine advocated by the preemptionists:

> If an act of Congress be the supreme law of the land, it cannot be made more binding by an affirmative re-enactment of the same act by a State legislature. *The latter must be merely inoperative and void.* (Emphasis added.)

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[29] 1 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947, 591 *et seq.* (1948).

[30] See 2 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947, 1057 (1948).

[31] 346 U.S. 485, 490 (1953).

[32] See SUTHERLAND, STATUTORY CONSTRUCTION §§ 4910, 4914 (3d ed. 1943). *Cf.* Vermilya-Brown Co. v. Connell, 335 U.S. 377 (1948). (Held the Fair Labor Standards Act covered employees of American contractors engaged in the construction of a military base near Bermuda leased by Britain to the United States. There was no reference in the Act or it legislative history as to leased areas.)

[33] See generally CORWIN, THE CONSTITUTION AND WHAT IT MEANS TODAY (11th rev.ed. 1954). Missouri v. Holland, 252 U.S. 416, 433-34 (1920): "We must consider what this country has become in deciding what that [Tenth] Amendment has reserved." *Cf.* THE FEDERALIST No. 32 (Hamilton).

[34] 237 U.S. 597, 604 (1915).

[35] 18 U.S. (5 Wheat.) 1, 72 (1820). (However, strong objection has been made to the authority of the case for support of the preemption doctrine. Petro, *Participation by the States in the Enforcement and Development of National Labor Policy,* 28 NOTRE DAME LAW. 1 (1952).)

The late Mr. Justice Jackson was of the same mind as Holmes when he wrote the opinion in the *Garner* case:[36]

> . . . when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure. . . .

In that the National Labor Relations Act, as amended, is a part of the supreme law of the land the duty necessarily falls upon federal and state judges as well as agency administrators to abide by its terms. Administration of the Act was not vested by Congress in state common law and equity courts.[37] One of the primary reasons for Congress centralizing the functions of the Act in a single specialized agency was to assure that the Act received a uniform interpretation. Congress was also cognizant of the fact that to permit state courts to decide issues governed by the Act would open the door to potential diversity, both of policy and fact finding, which Congress, in the interest of assuring uniformity, closed.[38] Effectuation of this objective necessarily requires that the Board's conclusions should not turn upon whatever different standards the respective states may see fit to adopt.[39]

What Congress and the Supreme Court foresaw as "potential conflict," if state courts were permitted to decide issues governed by federal law, has resulted in diversity in fact.[40] The conflict was well illustrated in *H. N. Thayer*,[41] wherein the employer secured from a Massachusetts state court an injunction against the continuation of a strike on the ground that the strike was illegally conducted for an unlawful objective. The alleged illegal conduct consisted of mass picketing and the unlawful objective was that under Massachusetts law a union could not strike for recognition during the term of a contract with another union. Thereafter the Board, on unfair labor practice charges filed by the striking union, considered the same evidence and rejected both the findings of the state court and its conclusions. It then made its own determination that the strike was conducted for

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36 346 U.S. 485, 500-501 (1953).

37 Cox, *The Role of Law in Labor Disputes*, 39 CORNELL L. Q. 592, 601 (1954). See the late Mr. Chief Justice Hughes' statement in NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937): "The . . . case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding."

38 93 CONG. REC. 4132 (1947).

39 NLRB v. Hearst Publications, 322 U.S. 111 (1944).

40 See Safeway Stores, Inc., 81 N.L.R.B. 387 (1949) and Eppinger & Russell Co., 56 N.L.R.B. 1259 (1944).

41 99 N.L.R.B. 1122 (1952).

a lawful objective, and in doing so stated:[42]

> We hold that in deciding the issues before us in this case this Federal Board is in no respect bound by the decisions of the courts of Massachusetts, either as to the legality of the purpose of the strike or the legality of the manner in which the strike was conducted. The Act has preempted the field of peaceful strikes affecting commerce. . . .

The Board further stated:[43]

> Plainly, the Board is not bound by a decision as to the objectives of the strike which the State court had no power to make. Nor is it bound by that court's ruling respecting the character of the means.

It is readily observable that if there is to be certainty in the law of labor relations, and litigants are to be assured of the proper forum to petition, the Act must be respected as long as it is law not only by the Board and federal courts, but also by state judges and administrators. The feeling is apparent that the doctrine of preemption in labor law is of necessity antagonistic to the rights and desires of the employer or management. Such a conclusion is certainly not a truism.[44] The traditional argument against the legislation is not premised on Congress' lack of power to enact it but on its wisdom in enacting such legislation.[45] Such an argument, it is submitted, has no basis in law and the remedy in such case lies with Congress and not with the Board nor the federal or state courts. To date Congress has not seen fit to return jurisdiction, by statutory enactment, to the states. However, Congress did, by specific provisions in the Taft-Hartley Act, deem it advisable to permit state regulation in certain areas of labor relations. To these may be added those areas defined by the Supreme

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[42] *Id.* at 1129.

[43] *Id.* at 1130. See also Hamilton v. NLRB 160 F.2d 465 (6th Cir. 1947), *cert. denied sub nom.*, Kalamazoo Stationery Co. v. NLRB, 332 U.S. 762 (1947); NLRB v. Reed & Prince Mfg. Co., 118 F.2d 874 (1st Cir. 1941), *cert. denied*, 313 U.S. 595 (1941).

[44] Gerry v. Superior Court, 32 Cal. 2d 119, 194 P.2d 689 (1948). See Leiter Mfg. Co. v. Internat'l Ladies' Garment Workers' Union, 269 S.W.2d 409 (Tex. Civ. App. 1954). (Here the union, relying on the state's "right to work law", brought suit against the employer for the reinstatement of thirty-five women who had allegedly been discharged for union membership. The union argued that state courts have permissive jurisdiction unless and until the National Labor Relations Board assumes jurisdiction. The court of appeals sustained the employer's plea to the jurisdiction on the ground that the National Board had exclusive jurisdiction.) See also Amazon Cotton Mill Co. v. Textile Workers Union, 167 F.2d 183 (4th Cir. 1948) and Davega City Radio, Inc. v. State LRB, 281 N.Y. 13, 22 N.E. 2d 145 (1939).

[45] See note 35, Petro, *op cit. supra* at 66-72.

Court's interpretation of the Act, which are listed as follows:[46]

1. Section 10(a), with specific limitations, empowers the Board to cede jurisdiction to state or territorial agencies over predominantly local matters. Clearly, until cession is made, jurisdiction remains in the Board. An agency cannot cede that which it does not possess.

2. Section 14(b) makes state law supreme providing it is more strict on union security clauses than is the federal law.

3. Section 303 provides parties with a remedy for damages resulting from boycotts or jurisdictional disputes and the injured party may sue in a federal district court *or any other court having jurisdiction of the parties.*[47]

4. States have their traditional power to enjoin violence or mass picketing. Though there is no express authority to this effect in the Act it is supported by the legislative history and the opinion of the Supreme Court.[48]

5. Apparently a state court can entertain a suit for damages resulting from conduct that also constitutes an unfair labor practice.[49]

6. With some reservation it may be stated that a state court may adjudicate controversies involving an industry whose volume of business does not meet the jurisdictional yardsticks formulated by the Board. The standards will be discussed at greater length later.[50]

Exhaustion of Remedies

Every state recognizes the rule that a litigant who considers himself aggrieved by a decision made by an administrative agency must exhaust his remedies before that agency prior to procuring any relief from the state courts. The present inquiry

[46] See Feldblum, *Jurisdictional Conflicts in Regulation of Economic Action*, NEW YORK UNIVERSITY SIXTH ANNUAL CONFERENCE ON LABOR 305, 307-309 (1953). The author there lists four such areas.

[47] Actions relating to secondary boycotts may be brought pursuant to this section without regard to the amount in controversy or diversity of citizenship. See Int'l Longshoremen's Union v. Juneau Spruce Corp., 342 U.S. 237 (1952); Banner Mfg. Co. v. United Furniture Workers of America, 90 F. Supp. 723 (S.D.N.Y. 1950).

[48] Int'l Union v. Wisconsin ERB, 336 U.S. 245 (1949). (Held the activity there engaged in was neither prohibited nor protected by the Act.) See Allen-Bradley Local No. 1111 v. Wisconsin ERB, 315 U.S. 740 (1941). Though decided before the Taft-Hartley amendment may still be valid as to violence and mass picketing.

[49] United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 (1954).

[50] See NLRB Release R-449 (July 15, 1954).

is concerned with whether or not state tribunals should recognize and give effect to the same rule when they are petitioned to give redress to activities which are to be determined according to the terms of the National Act. The view here taken is that state courts and agencies should leave the parties to pursue their remedies before the Board or the proper federal court of jurisdiction, whichever of the two the Act empowers to hear the controversy.

The Supreme Court has recognized and given effect to the rule. In *Myers v. Bethlehem Shipbuilding Corp.*,[51] the question presented was whether or not a federal district court had equity jurisdiction to enjoin the Board from holding a hearing upon a complaint charging the corporation with dominating and interfering with the labor organization of its employees. Mr. Justice Brandeis answered the question in the negative clearly stating the reason therefor:[52]

> . . . the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. Lawsuits also often prove to have been groundless; but no way has been discovered of relieving . . . from the necessity of a trial to establish the fact.

The lower federal courts, as well as some state courts have adhered to the above rule. *Amazon Cotton Mill Co. v. Textile Workers Union*[53] illustrates the point quite candidly. There suit was instituted by the union against the employer alleging that the latter was guilty of an unfair labor practice in refusing to bargain, that a strike had resulted and the union had sustained damage from loss of employment due to the strike. The relief prayed for was an injunction requiring the employer to bargain with the union as well as an award of damages. The employer, in addition to the Board who had intervened, filed a motion to dismiss the cause of action. After an extensive consideration of the legislative history of the Taft-Hartley Act, the court of appeals reversed and remanded with directions to dismiss the cause stating:[54]

> . . . the plaintiff [Union] has been provided an adequate administrative remedy before the Labor Board; and certainly the ex-

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[51] 303 U.S. 41 (1938); *Accord,* Newport News Shipbuilding & Dry Dock Co. v. Schauffler, 303 U.S. 54 (1938).

[52] 303 U.S. at 51.

[53] 167 F.2d 183 (4th Cir. 1948).

[54] *Id.* at 190. See also Born v. Cease, 101 F. Supp. 473 (D.C. Alaska 1951); Fitzgerald v. Douds, 76 F. Supp. 597 (S.D.N.Y. 1948).

> traordinary powers of a court of equity may not be invoked until this . . . remedy has been exhausted.

It was also found that the omission of the term "exclusive" in Section 10 (a) of the amendment relating to the power vested in the Board, was not intended to vest courts with general jurisdiction over unfair labor practices, but was intended to recognize jurisdiction expressly vested in the courts as well as power in the Board to cede jurisdiction to state agencies with specific limitations. Section 10 (a) would seem to imply an express ceding of jurisdiction by the Board in that the term "agreement" is used in the Section. "Agreement" connotes a meeting with deliberations and the setting down of the terms agreed upon. To date no such "agreement" has been consummated by the Board and a state agency.

The reasoning which prevents the Supreme Court or the lower federal courts from intervening and obstructing the processes of the Board, except by way of review or on application of the Board, also precludes state courts from doing so.[55] The same reasoning also excludes state administrative agencies from assuming control of matters placed within the competence of the Board.[56]

Several state courts have recognized the duty devolving upon them not to assume jurisdiction over cases which are subject to the Board's jurisdiction. Conduct by the union in *Costaro v. Simons*[57] constituted both an unfair labor practice under the Act as well as being tortious under New York common law. The New York Court of Appeals held, in effect, that the complainant must exhaust his remedies pursuant to the National Act prior to seeking relief in its state courts. Having taken one step further, it was held prior to the latter decision in *Norris Grain Co. v. Nordaas*[58] that conduct which contravenes state law as well as the Act precludes a state court from assuming jurisdiction in any form. This decision would appear to be a correct statement of the law in view of the Supreme Court's pronouncement in *Garner v. Teamsters, C. & H. Union.*[59]

The rule of exhaustion of remedies was followed by the Supreme Court of Pennsylvania in *Garner v. Teamsters, C. & H. Union*[60] in the following form:

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55 Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938).

56 Bethlehem Steel Co. v. New York State LRB, 330 U.S. 767 (1947).

57 302 N.Y. 318, 98 N.E.2d 454 (1951).

58 232 Minn. 91, 46 N.W.2d 94 (1950).

59 346 U.S. 485 (1953).

60 373 Pa. 19, 94 A.2d 893,899 (1953), *aff'd* 346 U.S. 485 (1953).

> . . . since the plaintiff employers . . . were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, *and since that act provides an adequate and complete administrative remedy . . . the Court of Common Pleas . . . had no jurisdiction to issue an injunction.* . . . (Emphasis added.)

In the very recent case of *Pilot Freight Carriers v. De Perno*,[61] the plaintiff applied to a state court seeking an injunction to restrain the defendant union, among other things, from maintaining a picket line at its terminal and other places. Counsel for the plaintiff, upon petitioning the state court, simultaneously filed charges with the National Board alleging the defendant had engaged in unfair labor practices. This procedure, however, had unfavorable repercussions in that it placed the plaintiff in the paradoxical position of contending in the state court that no provision of the Act covered the controversy. Plaintiff's inconsistent positions were exposed by the defendant's submission to the court of an affidavit showing the filing of the charges with the Board. The plaintiff found himself unable to deny the affidavit or to reconcile its action with the position it was taking in the state court. It was held that the plaintiff could not "have it both ways". The court found that according to the dictates of the *Garner* decision the processes initiated by the plaintiff before the Board would have to be exhausted before the state court could be called upon to act in the matter. The same reasoning was relied upon in *Garmon v. San Diego Building Trades Council*[62] even though plaintiff's counsel had mailed a petition to the Board asking for a determination of which union should represent its employees and the petition apparently had been dismissed by the Board. The state court held it had no jurisdiction to enjoin picketing under these circumstances since the plaintiff had not exhausted his administrative remedy.

In view of the recent abnegation on the part of the Board, which will be discussed more fully later, some doubt may be thrown upon the argument relating to exhaustion of remedies. There is already some evidence that state courts and agencies will quickly grasp the opportunity, on the basis of this abnegation, to assert jurisdiction in labor cases. The Supreme Court in *Garner* approved the argument that in those instances where the Board does not assume jurisdiction the activity should be left

[61] 26 CCH LAB. CAS. ¶ 68,624 (N.Y. Sup. Ct. 1954).

[62] 273 P.2d 686 (Cal. App. 1954).

free, in the public interest.[63] However, one would have to admit that should it appear certain the Board would not hear a claim then a state equity court could hear and determine the merits of the cause. This would apparently constitute a plausible argument due to the Board's recent limitation on its own jurisdiction. The Supreme Court has, at least by implication, recognized the dilemma in which parties will be placed should the Board not hear them, though the recognition was only by way of a *per curiam* opinion in *Building Trades Council v. Kinard Construction Co.*[64] as follows:

> Since there has been no clear showing that respondent has applied to the National Labor Relations Board for appropriate relief, *or that it would be futile to do so,* the Court does not pass upon the question . . . whether the state court could grant its own relief should the Board decline to exercise its jurisdiction. (Emphasis added.)

Should a party find it futile to make application either to the Board or a state forum he is without a remedy. The Board's relinquishment of jurisdiction, rather than aiding parties in petitioning the proper body, serves to confuse an already complicated area.

The Garner Case

The *Garner* case is and will prove to be important not only for its precise holding but as well for the reasonable inferences arising therefrom relating to federal-state jurisdictional issues. It is foreseeable that it will be frequently cited in the future on questions relating not only to labor relations but to many situations wherein the functions of a state and the federal government may conflict. Its real impact will probably be greater than that of *Houston v. Moore, supra.* Therefore it will not be amiss to consider *Garner* at some length. The material facts were as follows: The petitioners' company was engaged in the trucking business having twenty-four employees, four of whom were members of the respondent union. The petitioners' trucking operations formed a link with an interstate railroad. There existed between the union and the petitioners no controversy, labor dispute, or strike; nor had the petitioners at any time objected to its employees becoming members of the respondent union. The union, however, placed rotating pickets, two at a time, at petitioners' loading platform. None of the pickets were employees of the petitioners. The pickets carried signs reading: "Local 776 Teamsters Union (AF of L)

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[63] See Brief for Respondent, Garner v. Teamsters, C. & H. Union, 346 U.S. 485 (1953).

[64] 346 U.S. 933 (1954).

wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." The picketing was orderly and peaceful at all times, but drivers for other freight carriers refused to cross the picket line and, since most of petitioners' interchange of freight was with unionized concerns, their business fell off as much as 95 percent.

If the petitioners' allegation was found to be true the union's activity was not only unlawful under the law of Pennsylvania but also constituted an 8(b) (2) unfair labor practice under the Act. The petitioners sought a decree in the trial court restraining the picketing and the injunction was granted. The Supreme Court of Pennsylvania reversed, holding the trial court had no jurisdiction over the cause.[65] On certiorari the Supreme Court of the United States sustained the latter decision. A unanimous Court held that the Act foreclosed the state courts from asserting any jurisdiction whatsoever.

An interesting and ingenious argument was made by counsel for the petitioners[66] in the *Garner* case which in substance stated that since the Board enforces only public rights the state courts were not foreclosed from protecting the private rights of the petitioners. Though the argument was answered in the negative, Mr. Justice Jackson devoted ten pages of his opinion to answering it.

The *Garner* decision forces at least two conclusions:

1. A state may not invoke its own law against a labor activity if there is a remedy available pursuant to the National Act and it matters not whether the state construes its remedies as being supplemental, concurrent, or in substitution for the National remedy.[67]

2. A state may not provide a party with its form of remedy merely because it says it is protecting a private right.[68]

Since Garner

There is real evidence that the administration was dissatisfied with the result reached in the *Garner* case.[69] Hence, numerous

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65 373 Pa. 19, 94 A.2d 893 (1953).

66 Brief for Petitioners, Garner v. Teamsters, C. & H. Union, 346 U.S. 485 (1953).

67 346 U.S. 485, 500-501: "... when federal power constitutionally is exerted ... it ... cannot be curtailed, circumvented or extended by a state procedure. ..."

68 This conclusion may be accepted as a consequence of the supremacy clause. Its terms make no distinction between private and public rights.

69 100 CONG. REC. 5518-5519, 5521, 5527 (daily ed. May 3, 1954).

amendments have been proposed which would materially change the Taft-Hartley Act. The most far reaching of those relating to the question of federal-state jurisdiction was that proposed by Senator Goldwater of Arizona. The author of the proposed amendment, in answer to interrogating senators, admitted that as a consequence of his amendment, a company engaging in interstate commerce and having plants in numerous states would be subject to as many different laws as the various states might enact.[70]

At the foundation of Senator Goldwater's proposed amendment was an attempted rejuvenation of the tenth amendment of the Constitution which reserved to the states those powers not delegated to the federal government nor prohibited to the states.[71] On the same subject, the proposed amendment of Senator Smith of New Jersey would have confined itself to permitting states to regulate strikes and picketing involving utilities.[72] The Senator from Arizona was of the opinion that the latter amendment was too restrictive. His real objective is best illustrated in a colloquy with Senator Douglas of Illinois:[73]

> Mr. DOUGLAS: In other words, the Senator from Arizona is saying there shall be no national regulation of strikes, secondary boycotts, picketing, and so forth, but that in these fields the States are to have complete jurisdiction, if they so desire; is that correct?
>
> Mr. GOLDWATER: Yes, if they so desire. There still will be the provisions with respect to national emergencies.

A motion to recommit Senator Goldwater's amendment to the committee on labor and public welfare was sustained by a vote of 50 to 42 with 4 abstaining.[74] It should be of interest to note here that ". . . the late Senator Taft disapproved of concurrent Federal-State jurisdiction."[75]

Though the amendment failed to become law there remained another mode (administratively) by which jurisdiction over labor relations could be returned to the states, *i.e.*, by exercise of the Board's discretion pursuant to section 6 of the Act whereby it may formulate jurisdictional yardsticks and refuse to assert its jurisdiction over an industry whose volume of business does not come within those yardsticks. Self-abnegation on the part of the

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70 *Id.* at 5532.

71 *Id.* at 5529. *Cf.* United States v. Darby, 312 U.S. 100 (1941). (Here the death-knell was practically dealt the tenth amendment).

72 100 CONG. REC. 5529 (daily ed. May 3, 1954).

73 100 CONG. REC. 5535 (daily ed. May 3, 1954).

74 100 CONG. REC. 5859 (daily ed. May 7, 1954).

75 100 CONG. REC. 5527 (daily ed. May 3, 1954).

Board has occurred once again.[76]

The terms "affecting commerce" were defined in the National Labor Relations Act in 1935 as ". . . in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."[77] There has been no statutory modification of the meaning of those terms. During the early history of the Act it was held that two minor concerns came within the jurisdiction of the Board.[78] The only restriction on the power of the Board to assert its jurisdiction seemed to be the self-imposed *de minimis* doctrine. Subsequently the Court stated that the volume of commerce affected in any particular case did not constitute a material consideration.[79] It has been held that an obstruction which follows as well as precedes an interstate movement of commerce is within the scope of the Act.[80] Nor was a business exempt merely because it was a retail store since it constituted an "industry" within the meaning of the Act.[81] It was also found that since an immediate situation might be representative of many others, the total incidence of which, if left unchecked, might well become far reaching in its harm to commerce, the Board had jurisdiction.[82] On a specific finding of fact, jurisdiction was had where the business involved did 8 percent of its sales and installation jobs outside the state and made about 33 percent of its purchases outside the state.[83]

The issuance by the Board of the new jurisdictional standards, rather than giving consistency to the law, has created further problems. Naturally they have given impetus to the return of jurisdiction to the states. This conclusion is well supported by the removal case of *Your Food Stores v. Retail Clerks Local*,[84] wherein the action was commenced in a state court seeking an

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[76] See NLRB Release R-449 (July 15, 1954). *Cf.* NLRB Release R-342 (Oct. 6, 1950).

[77] 49 Stat. 450 (1935), 29 U.S.C. § 152(7) (1952).

[78] NLRB v. Fruehauf Trailer Co., 301 U.S. 49 (1937) (manufacturer of commercial "trailers"); NLRB v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937) (clothing manufacturer).

[79] NLRB v. Fainblatt, 306 U.S. 601, 606 (1939).

[80] NLRB v. Townsend, 185 F.2d 378 (9th Cir. 1950), *cert. denied*, 341 U.S. 909 (1951).

[81] J. L. Brandeis & Sons v. NLRB, 142 F.2d 977 (8th Cir. 1944), *cert. denied*, 323 U.S. 751 (1944), *rehearing denied*, 323 U.S. 815 (1944).

[82] NLRB v. Mid-Co Gasoline Co., 183 F.2d 451 (5th Cir. 1950).

[83] NLRB v. United Brotherhood, 181 F.2d 126 (6th Cir. 1950), *aff'd*, 341 U.S. 707 (1951).

[84] 121 F. Supp. 339 (D. N.M. 1954).

injunction against the defendant unions, restraining them from picketing plaintiff's premises for the alleged purpose of coercing plaintiff's employees into joining the unions in order to retain their employment. The state court entered a temporary restraining order and the case was removed to the federal district court. During the hearing on the motion in the latter court the plaintiff admitted that in the preceding year it had purchased within New Mexico approximately 60 percent of its merchandise and purchased outside the state the remaining 40 percent; and that its imports of merchandise from other states for sale at its market amounted to approximately $400,000. The district court held that plaintiff's cause of action was exclusively within the power of the Board and therefore neither the state nor the federal court had jurisdiction. The plaintiff then rephrased its complaint and again petitioned the state court on the theory that the picketing constituted a trespass on the employer's property. The defendant again claimed jurisdiction in the district court relying on section 2283 of the judicial code which authorizes federal courts to stay proceedings in a state court when necessary in aid of their jurisdiction.[85] Over the defense of res adjudicata the district court held that the new jurisdictional standards constituted such a change in law as to render the defense inapplicable, as well as stating that when the Board declines jurisdiction the state court then has jurisdiction to grant equitable relief.[86] There is evidence that the Board does not uniformly adhere to its jurisdictional rules.[87] Though the Board had specifically denied jurisdiction on charges made by the defendant in the *Your Food Stores* case, the dilemma in which state courts are placed is readily observable, especially those rendering decisions in reliance upon the *Garner* case.

In Wisconsin, where numerous problems of jurisdiction in labor relations have arisen, the courts have taken a less stringent view of the new standards. In *Wisconsin Employment Relations Bd. v. Chauffeurs, Teamsters & Helpers Local*,[88] an injunction was

[85] This was the procedure used in Capital Service, Inc. v. NLRB, 204 F.2d 848 (9th Cir. 1953), *aff'd* 347 U.S. 501 (1954).

[86] Your Food Stores v. Retail Clerks Local, 124 F. Supp. 697, 699 (D. N.M. 1954): "Undisputably, under these new standards, no unfair labor charges brought by either defendant Unions or the plaintiff Food Stores, would be entertained and decided by the Board."

[87] See Westport Moving & Storage Co., 91 N.L.R.B. 902 (1950). (Here, the Board took jurisdiction over an individual proprietorship which had two employees engaged in moving and storage operations and ten employees making packing boxes. The employer's gross annual receipts during 1949 amounted to about $21,000).

[88] 276 Wis. 356, 66 N.W.2d 318 (1954).

sought restraining picketing which had for its alleged purpose the coercion of the employer to encourage his non-union employees to join the union or to discharge them and hire union employees. The state board held that the union picketing was in violation of the state statute and thereupon filed a complaint for enforcement of its order. The Supreme Court of Wisconsin reversed and remanded with directions to dismiss stating: [89]

> It is to be noted that the standards established by the National Board are not absolute. They are set up to guide litigants generally in choosing the proper forum for their complaints. *The true criterion for jurisdiction is the effect of the dispute upon the welfare of the nation through its obstruction of the free flow of the commerce, the prevention of such obstruction being the primary purpose of the Act.* (Emphasis added.)

Some state courts which made contrary rulings prior to the *Garner* case have granted motions to reconsider, based on the *Garner* decision, and have reversed their previous rulings.[90] The Supreme Court of Missouri has ascertained a fine line of demarcation between state and federal jurisdiction in *Anheuser-Busch, Inc. v. Weber*,[91] wherein the plaintiff sought an injunction restraining picketing which apparently arose out of a jurisdictional dispute. The evidence disclosed that the defendant union had insisted upon a contract provision whereby the plaintiff would have to refuse work to any independent contractor unless such contractor would agree to do the work with employees who were represented by the Machinists' Union. Also disclosed was the announced intention of the Union to obtain agreements similar to this from all the breweries in the St. Louis area so that under pressure from the breweries the construction contractors would be compelled to bargain with the Union. The court found there was no labor dispute or unfair labor practice involved, distinguishing the *Garner* and analogous cases. The court premised the issuance of its injunction on the ground that the picketing was part of an illegal conspiracy to restrain trade in contravention of the Missouri common law and statutes. The fact that the statute of a state or its common law has been violated would seem to be a distinction without substance when weighed against the supremacy the federal statute enjoys.

However, the *Anheuser* case was distinguished in *Cooper*

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89 *Id.* at 322-323.

90 E.g., Grimes & Hauer, Inc. v. Pollock, . . . Ohio App. . . ., 119 N.E.2d 889 (1954). (The facts were practically identical with those in Garner).

91 . . . Mo. . . ., 265 S.W.2d 325 (1954), *cert. granted*, 75 Sup. Ct. 32 (1954), *rev'd*, 23 U.S.L. Week 4150 (U.S. Mar. 28, 1955).

Transport Co. v. Stufflebeam[92] where the trial court issued an injunction against picketing. The defense interposed was that the Board had exclusive jurisdiction. Not only was the conduct here violative of the Act but also a provision of the Missouri Constitution. Nevertheless the judgment of the trial court was reversed holding that exclusive jurisdiction of the case resided with the Board. This case would seem to be the proper law on the basis of *Garner* and subsequent cases. The main detraction from the authority of these cases would be the recently announced jurisdictional yardsticks by the Board.

The yardsticks were grasped upon in *Satin, Inc. v. Local Union 445*[93] in order to sustain a state court's jurisdiction. The bill asked to restrain picketing alleged as unlawful and constituting an unfair labor practice in violation of both the state and federal statutes. The court held that the 1950 jurisdictional yardsticks were equivalent to the Board ceding jurisdiction to the states. The fact that the state statute was not inconsistent with the Act was also relied upon and an attempt was made to distinguish the *Garner* case on the thin basis that an integral part of a transit system was there involved. It is cases of this nature that presuppose state officials, judges and administrators, are free to construe federal law in this area. Such reasoning, if carried to its logical extreme would negative any need for a National Labor Relations Board. The opinion expresses the fear that the antithesis of its reasoning would permit the Act to reach every type of business activity including the corner cigar store. There would seem to be little doubt about the power to do so, but whether the Board would so exercise its discretion is another question. One wonders whether the author of the opinion was acquainted with *Wickard v. Filburn*[94] where the Agricultural Adjustment Act of 1938 extended federal regulation to production not intended in any part for commerce but wholly for consumption on the farm. Here the subject matter of the controversy was 23 acres of wheat which was to be used primarily for home consumption. The Court stated that even if the "activity be local and . . . not regarded as commerce, it may still . . . be reached by Congress if it exerts a substantial economic effect on interstate commerce . . ."[95]

The *quaere* whether a suit for damages could be maintained in a state court even though the conduct constituted an unfair labor

92 26 CCH LAB. CAS. ¶ 68,488 (Mo. Sup. Ct. 1954).

93 26 CCH LAB. CAS. ¶ 68, 508 (Mich. Cir. Ct. 1954).

94 317 U.S. 111, 124-125 (1942).

95 *Id.* at 125.

practice within the Act has been posed[96] and was answered in the affirmative in *United Construction Workers v. Laburnum Construction Corp.*[97] Though the result reached, on the facts there present is susceptible of little doubt, it is the opinion of this writer that the interpretation of the *Garner* decision is erroneous:[98]

> To the extent that Congress prescribed preventive procedure against unfair labor practices, that case [*Garner*] recognized that the Act excluded *conflicting* state procedure to the same end. . . . *The care we took in the Garner case to demonstrate the existing conflict between state and federal administrative remedies in that case was . . a recognition that if no conflict had existed, the state procedure would have survived.* The primarily private nature of claims for damages under state law also distinguishes them in a measure from the public nature of the regulation of future labor relations under federal law. (Emphasis added.)

It is difficult to reconcile the above language with either that used by the Supreme Court or the Supreme Court of Pennsylvania in the *Garner* case. The late Mr. Justice Jackson stated that "in language almost identical to parts of the Pennsylvania statute, it [Congress] has forbidden labor unions to exert certain types of coercion on employees through the medium of the employer."[99] The Pennsylvania opinion nowhere speaks of its law as "conflicting" with the Act. Its statement of the issue indicates rather a close similarity between the two laws:[100]

> . . . the question recurs whether Congress intended to exclude State action enjoining picketing which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, *where such picketing was unlawful also under the State law.* (Emphasis added.)

It is not an unreasonable inference that pursuant to the Pennsylvania law precisely the same remedy could have been given as that by the Board. The effect of the language in the *Laburnum* decision is to place the presumption in favor of the state law and overlook the presumption of Congressional preemption in the field regulated which was inherent in *Bethlehem* and *Plankinton.* The Supreme Court in *Rice v. Santa Fe Elevator Corp.*,[101] clearly expressed this proposition. Citing the *Bethlehem* case, it spoke of the Wagner Act as an instance in which Congress had acted "so

96 See Note, 27 N.Y.U.L. REV. 468 (1952).

97 347 U.S. 656 (1954).

98 *Id.* at 665.

99 346 U.S. at 488-489.

100 Garner v. Teamsters, C & H. Union, 373 Pa. 19, 94 A.2d 893, 897 (1953).

101 331 U.S. 218 (1947).

unequivocally as to make clear that it intends no regulation except its own."[102]

REMOVAL AND SUSPENSION OF STATE COURT PROCEEDINGS

There are two ways in which a state court may be deprived of asserting jurisdiction over a cause of action:[103] (1) the defendant or defendants in the state court may have the cause removed to the federal district court on the basis that the alleged state cause of action is in reality a federal cause; therefore the complaint presents a federal question; and, (2) the defendant may bring suit in the federal court to enjoin the state court proceeding on the ground that the state law derogates from rights given by federal law or on the basis that the National Act has preempted the field. The latter procedure has been availed of to enjoin state administrative agencies from assuming jurisdiction in cases governed by the National Act vesting jurisdiction in the Board. The following two cases will illustrate the procedures.

In *Direct Transit Lines v. Local Union*[104] an original complaint was filed by the petitioner in the state court seeking an injunction against the union for alleged unlawful acts and also asking for $50,000 damages. The defendant obtained a removal to the federal district court whereupon the petitioner moved for a remand to the state court which was denied. Thereupon the petitioner amended its bill of complaint by deleting the paragraph in which it sought damages and filed a second motion for a remand which was also denied. The petitioner then sought a writ of mandamus requiring the district judge to remand the action to the state court. Denying the writ the court of appeals sustained the district court relying upon the two basic grounds the district court gave for its ruling:

1. there was presented a controversy affecting commerce and a federal question was involved, so that the Act was applicable;
2. that at the time of removal of the cause to the district court the complaint demanded $50,000 damages, bringing it within section 303 of the Act, and thereby sustaining the jurisdiction of the district court to try the cause.

The court of appeals agreed with the district judge that the cause should not be remanded if it were properly removable upon the record as it stood at the time of the filing of the petition for removal. The court was also of the opinion that even apart from petitioner's claim for damages the district court had jurisdic-

102 *Id.* at 236.

103 See note 15, Ratner *op cit. supra* at 112-115.

104 199 F.2d 89 (6th Cir. 1952).

tion due to the controversy coming within the Act and directly involving interstate commerce.

The second procedure was employed in *Capital Service, Inc. v. NLRB*[105] after a preliminary injunction had been issued by a state court against labor unions' inducement of persons to refrain from purchasing the corporate defendant's bakery products by picketing its customers for the purpose of forcing its employees to join one of its unions. Subsequently an unfair labor practice complaint based on the same conduct of the union was issued under the National Act. Pursuant to section 10 (*l*) of the Act the Board petitioned the federal district court for an injunction restraining the picketing by the union pending final adjudication by the Board. The Board also sued in the same court to enjoin petitioner from enforcing the state court injunction.

The injunction against the state court temporary injunction was issued by the district court on the grounds that the conduct of the union was subject to the exclusive jurisdiction of the Board and that the state court had invaded the exclusive jurisdiction of the Board and the district court. The action of the district court was upheld by the Supreme Court:[106]

> . . . where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right.

In cases subject to the jurisdiction of the National Board, the same rule precludes state administrative agencies from determining the questions involved.

A RECOMMENDATION

Twenty years have been required to develop what would seem to be a sound and consistent body of law relating to federal-state jurisdiction in the area of labor relations. This development has culminated in the *Garner* case with which it is difficult to find serious fault on the basis of the statute. To have uniformity in the law, especially as to what body is the proper forum to petition, is an interest which is of advantage both to management and labor. The Supreme Court has recognized that ". . . uncertainty as to which [tribunal] is master and how long it will remain

105 204 F.2d 848 (9th Cir. 1953), *aff'd*, 347 U.S. 501 (1954). *Cf.* Amalgamated Clothing Workers v. Richman Bros. Co., 211 F.2d 449 (6th Cir. 1954), *aff'd*, 23 U.S.L. Week 4165 (U.S. April 5, 1955).

106 347 U.S. at 504.

such can be as disruptive of peace between industrial factions as actual competition between two [tribunals] for supremacy." [107]

However, there has been bi-partisan admission,[108] as well as judicial complaint[109] that the processes of the National Labor Relations Board are too slow. Therefore this is a matter to which Congress should direct its immediate attention. One cannot with sincerity, forcefully argue that exclusive jurisdiction resides in the Board if the Board cannot expeditiously hear and fairly determine the rights of the parties. Perhaps a part of the solution would be to increase the number of members on the Board to the number recommended when the Taft-Hartley Act was enacted. Another solution might be for Congress to enact by statute the case law as it stands ending with the *Garner* decision. The advantage to be gained by this method would have to be weighed against the stultification which usually ensues from a comprehensive statutory enactment. The administrative processes of necessity have to remain flexible.

These are considerations that will have to be resolved if we are to sustain a uniform and consistent policy pertaining to labor relations. Jurisdictional standards issued by the Board are of little help since they are usually indefinite in their legal effect and because the rights and liabilities of parties should not ultimately turn upon the dollar-volume of business. Management and labor here have a common ground of interest, the attainment of which they could easily reach by a united effort.

Wilbur L. Pollard

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107 La Crosse Telephone Corp. v. Wisconsin ERB, 336 U.S. 18, 26 (1949).

108 100 CONG. REC. 5531 (daily ed. May 3, 1954).

109 See the dissenting opinion in Garner v. Teamsters, C. & H. Union, 373 Pa. 19, 94 A.2d 893 (1953).