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LABOR LEGISLATION AND THE CONSTITUTION: POWERS OF THE FEDERAL AND STATE GOVERNMENTS

The scope of governmental intervention in the field of labor-management relations mirrors the increase in government apparent in other fields of economic and social endeavor. Due to the complexities resultant upon the transition to high industrialization, the early philosophy based on the doctrine of laissez faire has, by necessity, given way to one of increased governmental activity.

The advent of the participation of government in industrial affairs has produced problems not only economic in nature, but legal and constitutional as well. Under the 10th Amendment to the Constitution, the Federal Government is said to possess only delegated powers, while the States are said to be custodians of residual powers. This dual system of government has made it rather difficult to deal with many modern social and economic problems, including labor problems and labor legislation; often the Supreme Court has been obliged to decide whether or not each of the political divisions is acting within the sphere established for it by the Constitution of the United States.

Police power, defined by many authors as a power inherent in government to protect itself and all of its constituents,[1] is the basis upon which the states have passed most of their laws dealing with labor, health, safety, morals, and general well-being of the people. However, the exercise of police power has created jurisdictional conflicts between the Federal and State Governments. This often occurs when the state attempts to legislate and solve labor problems in the same field in which the Federal Government, acting under and by virtue of the Commerce Clause, also has legislated and claimed jurisdiction.

The Federal Government derives its jurisdictional power primarily from the Commerce Clause and secondarily, from the "Necessary and Proper Claudse."[2] When interstate commerce is involved, and the Federal Government has constitutional jurisdiction, the problem of the area of state jurisdiction is manifest. Early in our constitutional history, it was decided that the Commerce Clause, standing alone, does not bar state regulation of activities of a predominately local concern, where nationwide uniformity of regulation is not imperative, even though the activities involve or affect interstate commerce.[3] At the same time, how-

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[1] Prentice-Hall, *Labor Course* (New York: Prentice-Hall, Inc., 1954), p. 1039.

[2] U. S. CONST., Art. I, §8 (3) and (18).

[3] Houston v. Moore, 1820, 5 Wheat. 1, pp. 20-23.

ever, it was decided that the affirmative grant of power to regulate commerce, coupled with the Supremacy Clause and the Necessary and Proper Clause, enabled Congress to close the door completely to state regulation even in these areas.[4] It followed, therefore, that the scope of state regulation, in areas in which Congress could regulate, was subject to the will of Congress.

Congress, of course, may specifically state that state regulation shall be paramount to Federal law.[5] Where Congress has clearly manifested its intention either to premit or to preclude state jurisdiction, nothing remains for the courts but to give effect to Congressional judgment. Courts have assumed that the remaining area was open to state regulation where Congress manifested no intention with respect to the survival of state regulatory powers and where there was no evidence that Congress had even considered the problem.[6]

But, if Congress intended comprehensively to treat (whether by regulating or by leaving free from regulation) a particular subject, i.e., if it intended to "occupy the field", the states are deprived of jurisdiction. "The laws of the United States . . . shall be the Supreme Law of the Land". [*The Constitution of the United States,* Article VI, (2)]. The task of the court is not that of determining whether or not state law applies,[7] but rather to determine the scope of the "field" which Congress intended to be occupied. Specific legislation was thought of by Congress as comprehensive treatment of some segment of human activity; within that segment or field, matters, not expressly dealt with, are deemed to have been deliberately placed outside the bounds of regulation and the states may not interfere with the Congressional scheme by regulating these activities. The delineation of the "occupied" field necessarily rests on the attitude of the court and the public with respect to federal authority generally, and the relative merits of the federal and state labor laws.[8]

NLRA AND THE CONGRESSIONAL INTENT

Twenty-five years ago, there was no general federal labor law. Today, the National Labor Relations Act is virtually a complete code of labor legislation. Both the Wagner Act of 1935, the original NLRA, and the 1947 Taft-Hartley Amendments thereto (known as the Labor Management Relations Act) empowered the National Labor Relations Board to act "whenever a question affecting commerce" arises concerning representation of employees. The Board may investigate such controversy and certify . . . the representatives that have been designated;[9] it is "empowered . . .

[4] U. S. CONST., Art. VI (2); and Art. I, § 8 (18).

[5] NLRA, Section 14 (b); Algoma Plywood and Veneer Co. v. Wisconsin Employment Relation Board, 336 U. S. 301, 49 A. L. C. 239 (1949).

[6] Charleston, E. Carolina R. R. v. Varnville Co., 237 U. S. 297, p. 604; Missouri Pacific R. R. Co. v. Porter, 273 U. S. 341, pp. 345-346 (1926).

[7] Missouri Pacific R. R. v. Porter, *Ibid.*

[8] Prentice-Hall, *Labor Course,* p. 4168.

[9] LMRA AND NLRA, §9 (c); I. A., 29 U. S. C., §141 (b).

to prevent any person from engaging in any unfair labor practice . . . affecting commerce".[10]

The term "commerce," the basis of NLRB jurisdiction is defined as "trade, traffic commerce, transportation, or communication among the several states or between the District of Columbia or any foreign country,"[11] and the related term "affecting commerce" means "in commerce or bordering or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute bordering or obstructing commerce or the free flow of commerce."[12]

The Wagner Act contains no provision relating to the jurisdiction of state boards or concerning the delegation of jurisdiction to them by the NLRB. Although language relating to "exclusive jurisdiction" appears in Section 10 (c), a prohibition of action by state boards was not intended. Congress, by this language, intended to exhaust its powers under the Constitution and extend coverage of the law to the fullest extent legally permissable.[13] In any event, all businesses, however small and however "local" in character, could be made subject to the law, except in *de minimus* situations.[14]

Even though the potential jurisdiction of the Board was extensive, it was neither practical nor wise for it to expand its coverage any more than was absolutely necessary. Since every business has a situs within a state, local authorities have a vital interest in labor relations of a business, physically present therein. These practical considerations led the old Board to decline jurisdiction over many businesses which were usually regarded as "local" in character except where the business was an integral part of a company engaged in interstate commerce; a local branch or a subsidiary corporation,[15] or a business servicing one engaged in interstate commerce.[16] Since the state boards, during this era, quite frequently exercised jurisdiction over "local" businesses and even asserted jurisdiction admittedly in interstate commerce where the NLRB did not act for budgetary or other reasons, this policy of NLRB was calculated to promote maximum labor peace.

The Taft-Hartley Act of 1947 made two changes in Section 10 (a) of the Wagner Act: It eliminated the reference to "exclusive" jurisdiction and providing for delegation to state boards, under certain conditions. Section 10 (a) of the NLRA provides as follows:

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This

[10] LMRA AND NLRA, §10 (a).
[11] LMRA AND NLRA, §1 (6); and LMRA, §503 (3).
[12] NLRA AND LMRA, §1 (7); and LMRA, §501 (1).
[13] Polish National Alliance v. NLRB, 322 U. S. 643.
[14] NLRB v. Fairblatt, 306 U. S. 601.
[15] Atlantic Co. v. NLRB, 65 NLRB 1274.
[16] Trinidad Brick and Tile Co., 67 NLRB 1351.

> power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise: provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency, jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation, except wherein predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this act or has received a construction, inconsistent therewith.[17]

The T-H Act also expressly sanctions state legislation which imposes greater restrictions on union shop and other forms of union security than are provided by the federal act,[18] and exemplifies the basic principle that Congress may specifically provide that state regulation shall be paramount to Federal law.[19]

Although the language of the Wagner Act, relating to "commerce" and "affecting commerce", was unchanged, certain fundamental changes in the structure and purposes of the federal labor relations law made it inevitable that the Board would expand its operations. Membership was increased from three to five and five panels of three members each were set up.[20] The budget of the Board was also increased. New procedures were introduced, and additional Unfair Labor Practices (ULP's) were designated. However, the Board did not feel compelled to extend its coverage to include all businesses which might technically be subject to jurisdiction and continued to decline jurisdiction over local businesses where the exercise of its jurisdiction would not, in its view, "effectuate the purposes of the act".

In 1950, the Board announced that, because of its heavy load and limited budget, it would, in the future, take jurisdiction only over those businesses in which a labor dispute would have a "pronounced impact upon the flow of commerce".[21] Subsequently, in eight simultaneous decisions, the board set forth the "yardsticks" by which it intended to measure this impact. The Board said it would take jurisdiction over the following types of businesses:

1. Instrumentalities and channels of interstate and foreign commerce
2. Public utility and transit systems

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[17] NLRA, §10 (a).
[18] LMRA, §14 (b).
[19] *Ibid.*
[20] LMRA, §3 (a) (b).
[21] Hollow Tree Lumber Co., 91 NLRB 635; National Gas Co., 99 NLRB 273; and Brooks Wood Products, LABOR LAW REVIEW, ¶13004.

3. Integral parts of multi-state enterprises
4. Enterprises, annually shipping $25,000 worth of goods out of state
5. Enterprises, annually supplying $50,000 worth of services or materials to interstate enterprises
6. Enterprises, annually purchasing $500,000 worth of materials from out of state
7. Enterprises, spending $1,000,000 on purchases from local suppliers of interstate materials
8. Enterprises, whose total purchases and sales, expressed in percentages of the minimum requirements, equal 100%
9. Establishments, substantially affecting national defense[22]

This list is subject to additions or deletions, or even alterations of the existing tests, at any time. The Board may find it desirable to make such changes because of changes in its budget or case load, or for policy reasons. Also, the Board's "yardsticks" are so comprehensive, when construed broadly, persons or industries that seemingly would be considered predominantly local in character,[23] also would seem to be included.

When an employer or union questions the jurisdiction of the Board, claiming that the business is essentially local in character, the Board decides the question in a case by case basis. All the petitioner can do is to file his petition and wait, often for many months, to learn whether the Board will exercise jurisdiction. Where the Board has construed Section 10 (a) of the Act narrowly state boards have been deprived of jurisdiction, not only of interstate business where the NLRB has failed or refused to act, but also that which is intrastate in nature. Thus, this creates a "no man's land" in the field of local business. In addition, although deprived of access to the NLRB, small or local businesses will continue to be subject to the civil, equitable, and criminal provisions of the act, if the business "affects commerce".[24]

In other cases, NLRB has allowed the state to remain free to punish, on traditional non-labor relations grounds, acts of violence and coercion by individual employees, who, unless acting as agents of a union, are immune to the ban imposed by Section 8(b) 1-A of the Act. The NLRB has also stated that although an employee's assault upon a union organizer may amount to "interference" within the prohibition of Section 8(a) (1) of the National Act, the states retain jurisdiction to punish such an assault as a police court matter.[25] Since the National Act pre-empts only the field of labor relations law and policy, the states are not precluded from applying to unions, employers and employees the same legal and policy standards which are applicable to all citizens generally.

[22] Prentice-Hall, *Labor Course*, p. 4028.

[23] Breeding Transfer Co., 95 NLRB 1157; Prentice-Hall, *op. cit.*, p. 4031.

[24] E. L. Schwartz, *A No Man's Land in Labor Relations*, LABOR LAW JOURNAL (Chicago, Ill.: Commerce Clearing House, Inc., 1949-50), Vol. 1, No. 3, p. 189.

[25] Arlon Studios, 74 NLRB 1158; Spalik Engineering Co., 45 NLRB 1272; Revlon Products Corp., 48 NLRB 1202; Paragon Die Casting Co., 27 NLRB 878

CASES INVOLVING STATE AND FEDERAL JURISDICTION

Supreme Court Decisions

Union Security: Although union shop agreements are permitted under federal law, the NLRA does not authorize any union security agreements where state law prohibits or regulates them.[26]

In *Algoma Plywood and Veneer Co. v. Wisconsin Employment Relations Board, (op. cit. supra)*, the NLRB certified local 1521 of the United Brotherhood of Carpenters and Joiners as bargaining representatives for the production employees of Algoma Plywood and Veneer Co., a Wisconsin company, whose activities affected interstate commerce. Moreau, an employee of Algoma, filed with the Wisconsin Employment Relations Board unfair labor practice charges arising out of his discharge. The Wisconsin Board agreed with Moreau and held that the maintenance of a membership agreement between the company and the union was invalid because it was not preceded by the authorization elective required by the Wisconsin Employment Peace Act. It ordered Algoma to reinstate Moreau with back pay. The union and employer brought the case first to the Wisconsin Courts and thereafter to the United States Supreme Court on the theory that the Wisconsin Board had no power to act; that since a maintenance of membership agreement was lawful under the NLRA, and the State law to the contrary should not govern. The plaintiffs relied on the Supremacy Clause of the Constitution, but the United States Supreme Court disagreed. There was no doubt, the Court conceded, that Algoma was subject to the NLRA, but this fact did not mean that Algoma was exclusively subject to the NLRA. The Company would be exclusively subject to the NLRA only if that act expressly or implicitly revealed a Congressional intention to pre-empt either the whole field of labor relations law or, at least, compulsory unionism. Legislative history and the Act, said the Court, clearly indicated an intent not to interfere with state laws relating to compulsory unionism. Accordingly, Algoma was under a duty to observe the requirements of the Wisconsin Employment Peace Act. The state board had jurisdiction to find that Algoma had committed an unfair labor practice and remedy it.

In the *Plankington case*,[27] the NLRB certified the United Packing House Workers of America (CIO) as exclusive bargaining representative of the Plankington Packing Co., an interstate business. In February, 1945, pursuant to directive of the NLRB, the union and the company executed a maintenance of membership agreement. Stokes, an employee, attempted to resign from the union, but the union did not accept the resignation. Once again, after a finding by the Wisconsin Board, similar to the one in the *Algoma* case, the state and federal judicial circuit was travelled. On appeal from the State ruling, a Wisconsin Circuit

[26] NLRA, §14 (b).

[27] WERB v. Plankington Packing Co., *16 Labor Cases*, ¶64,910 (1948).

Court held that the State Board acted beyond its power. The Wisconsin Supreme Court reversed the Circuit Court and, relying on the *Algoma* case, held that there was room for the Wisconsin act to apply, notwithstanding the fact that the company involved was subject to the NLRA. This time, however, the United States Supreme Court reversed the Wisconsin Court in a *per curiam* decision. Since the Wisconsin Board had ordered Plankington to reinstate Stokes with back pay, the Supreme Court reversal required Plankington to do neither. In the *Algoma* case the sole issue was that of the maintenance of a membership agreement. In the *Plankington* case the legality of the discharge of employee Stokes in no way rested on the legality of the maintenance of membership agreement once he had tendered his resignation to the union within the "escape period". Accordingly, the agreement simply was not applicable to Stokes. The decision could have been based only on one other provision of the Wisconsin Act which declared it to be an unfair labor practice for an employer to encourage or discourage membership in any labor organization by discrimination in hire, tenure, terms or conditons of employment. When the provision is applied, conflict between the National Act and the State Act becomes apparent. The National Act contains an "employer-discrimination" provision virtually identical to that of the State Act.[28] Where there is a possibility of conflict existing, the basic principle of "occupation of the field" operates to deprive the state of jurisdiction. Section 10 (a) of the NLRA clearly discloses that the NLRB's jurisdiction over unfair labor practices, defined in Section 8 of the NLRB, was meant to be exclusive.[29]

Representation Cases: In the Bethlehem Steel case,[30] the NLRB had refused to certify a union as a collective bargaining agent for supervisors. The New York Board entertained a representative petition filed by foremen employed by a company engaged in interstate commerce. In a suit instituted by the employer challenging the New York Board's assumption of jurisdiction, the Supreme Court held that the New York Board had no power to act. The essential fact, according to the Supreme Court, was that both the Federal and State governments had attempted to govern an identical phase of employer-employee relationship and had delegated, to their respective agencies, a discretion which could result in conflicting decisions. In an opinion written by Mr. Justice Holmes the court stated: "When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition . . . If the two Boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one, necessarily denies the discretion of the other. The State argued for the rule that would enable it to

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[28] NLRA, §8 (a) 3.

[29] A. K. Garfindel, *Conflict Between Federal and State Jurisdiction*, LABOR LAW JOURNAL (1949-50), Vol. 1, No. 13, pp. 1027-1044.

[30] Bethlehem Steel Co. v. NYLRB, 330 U. S. 767, 67 S. Ct. 1026.

act until the Federal Board had acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here. The Federal Board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general.[31] It asserts its power to decide whether these foremen may constitute themselves a bargaining unit. We do not believe this leaves room for the operation of the state authority asserted."

In another representative proceeding,[32] the Supreme Court invalidated a certification granted by the Wisconsin State Board to the Telephone Guild, an independent union. The Guild had filed a petition with the NLRB while negotiations were pending between the company and the International Brotherhood of Electrical Workers, AFL, for renegotiation of a contract. The Guild withdrew its petition before the NLRB had acted upon it and filed with the State Board. The State Act and the Wagner Act differed in the procedure to be followed in determining the bargaining unit. Considering the differences, the Court stated: "The Wisconsin Supreme Court concluded that the Wisconsin Board could exercise jurisdiction here until and unless the National Board undertook to determine the appropriate bargaining representatives or unit of representation of these employees . . . In the Bethlehem Steel Case, on p. 776, we rejected that argument, saying, 'The State argues for a rule that enables it to act until the Federal Board has acted in the same case. But we do not think that a case by case test of federal supremacy is permissible here.' We went on to point out that the National Board had jurisdiction of the industry in which the particular employers were engaged and asserted control of their labor relations in general. Both the State and Federal statutes had laid hold of the same relationship and had provided different standards of regulation. Since the employers in question were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the State agency, even though the Board had not acted in the particular cases before us."

The *Bethlehem* and *La Crosse* cases appear to stand for the proposition that once the NLRB assumes jurisdiction in an industry, the jurisdiction becomes exclusive. Although the *La Crosse* case involved inconsistent regulation, the language in the opinion made it clear that even consistent regulation would be prohibited under the Wagner Act.

Despite the exclusive character of jurisdiction, there are certain aspects of interstate labor relations subject to state regula-

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[31] See, J. L. Walsh, *Local Business*, LABOR LAW JOURNAL (1949-50), Vol. 1, No. 10, pp. 783-788, 828, for industries in which the NLRB has asserted jurisdiction (footnote added).

[32] La Crosse Telephone Corporation v. Wisconsin Employment Relations Board, 336 U. S. 18.

tion; local regulation is permitted when it is determined that no intent to pre-empt is disclosed.[33]

Concerted Activities and Unfair Labor Practices: In the *Allen Bradley* case,[34] employees of the company engaged in interstate commerce, struck and engaged in mass picketing of homes of other employees and also threatened violence to non-strikers. Such activities were considered unfair labor practices under Wisconsin law. The State Board accordingly issued a cease and desist order. The Supreme Court upheld the state action, holding that Congress had not made such employee-union conduct subject to regulation by the Federal Board. It should be remembered that union practices were not tested as "unfair" until the passage of the Taft-Hartley amendments.

In the Briggs and Stratton case,[35] the union, during contract negotiations, called frequent unannounced meetings during working hours in order to pressure the company. The local board ordered the union to cease and desist, and in a five to four decision the United States Supreme Court upheld the state action. The majority stated: "There is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question. Although "What Congress has given, the state may not take away", Congress, in Section 7 of the NLRA, had not given protection to intermittent work stoppages.

A later case [36] involved the validity of a Michigan statute requiring a strike notice to the State Mediation Board, a waiting period, and a majority strike vote. The Supreme Court unanimously held the state law unconstitutional and reasoned, "None of these sections (NLRA, Section 7, 8 (b) (4) and Section 8 (d) and Section 13) can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation." The *Briggs and Stratton* case was distinguished as involving an activity which the Court regarded as "coercive", similar to the sit-down strike or labor violence and thus subject to state police power.

Later a Wisconsin statute, providing for compulsory arbitration and prohibiting strikes in public utilities, was held unconstitutional.[37] The decision was based on the theory that jurisdiction, once assumed is exclusive, and the states thereby are precluded from regulating.[38]

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[33] International Union Local 232 v. WERB (Slowdown could be restrained by State Board), 69 S. Ct. 516 (1949); Algoma Plywood and Veneer Co. v. WERB, *Ibid.*

[34] Allen Bradley Local 1111 v. WERB, 315 U. S. 745 (1942).

[35] International Union, UAW v. WERB, 336 U. S. 245, 49 A.L.C 177 (1949).

[36] International Union, UAW v. O'Brien, 339 U. S. 454, 50 A.L.C. 436 (1950).

[37] Amalgamated Association of Railway Employees v. WERB, 340 U. S. 381, 51 A.L.C. 201 (1951).

[38] Prentice-Hall, "NLRA," *Labor Course* (New York: Prentice-Hall, Inc., 1954), p. 1169.

The trend toward federal jurisdiction over unfair practices was supplemented in a recent decision.[39] Trucking business operators sought to enjoin picketing on the ground that its purpose was to coerce operators into violating the state statute forbidding an employer to encourage or discourage membership in labor organizations by discrimination in hiring, tenure of employment, or any condition of employment. The Court of Common Pleas of Dauphin County, Pennsylvania, entered a decree restraining picketing and the defendants appealed. The Supreme Court of Pennsylvania reversed the decree and dismissed the bill for want of jurisdiction and the operators brought certiorari. The United States Supreme Court held that the operators' complaint fell within the NLRB's jurisdiction to prevent unfair labor practices, and that Pennsylvania, through its courts, could not decide the same controversy and grant its own form of relief.

Several conclusions may be drawn from these cases.

Union Security. Although union ship agreements are permitted under federal law, the NLRA does not authorize any union security agreements where state laws prohibit or regulate them.

Representation Cases. The states may not deal with questions of representation in industries over which the NLRB has consistently exercised jurisdiction. Presumably, the states may take jurisdiction in cases where it is an established NLRB policy to decline to adjudicate.

Concerted Activities and Unfair Labor Practices. Employee activities which are affirmatively protected as "concerted activities" by the NLRA, Section 7, may not be regulated by the states. Employer-employee activities which fall within the unfair labor practices set out by the NLRA, Section 8, also may not be regulated by the states. However, where affirmative protection of the activity is absent, the field which Congress will be deemed to have "pre-empted" by Section 7 and 8 of the NLRA will be limited to the matters with which the Act is expressly concerned.[40]

State Court Decisions

When a union or employer files a petition with the NLRB, the Board will initially decide whether or not it has jurisdiction to resolve the controversy by resorting to the Act. When a union or employer files a petition with the State Labor Board, the State Board will, in theory, look to its own labor acts and also the NLRA to determine whether it has jurisdiction. When the State Board wishes an injunction to be issued it must turn to the state courts. At this time the state court should determine whether the Board has jurisdiction over the matter. (In Colorado, it is not necessary that the union or employer go to the State Industrial Commission; it may go directly to the court.)

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[39] Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (AFL), 74 S. Ct. 161, 22 L.W. 4055 (1953).

[40] Prentice-Hall, "NLRA," 1954, pp. 4168-4169.

Although state boards and courts should look to the NL RA in order to determine local jurisdiction, more often than not this is not done.[41]

Often it is very difficult to decide the question of jurisdiction. Without a doubt, the state courts have jurisdiction over torts or crimes. However, criminal or tort punishment is remedial and an injunction against the commission of the same does not, necessarily, fall within the state police powers. It would seem that if the pre-emption and conflict doctrine is to be applied, the state court should not enjoin a crime or tort about to be committed if such crime or tort is within the prohibition of the National Act. Once violent picketing or assault upon an individual or employer has ensued, action for damages would lie. However, state courts often prohibit such conduct in the interest of preserving the peace.

In the past it has been the practice of the NLRB not to appear in state court litigations. When cases involving issues of conflict and pre-emption reach the Supreme Court, the NLRB, with approval of the Solicitor General, has appeared as amicus curiae. In view of the budgetary and administrative considerations with which the Board is faced, it would neither be practical nor wise for the Board to look into every state court case involving issues of conflict and pre-emption. The Board's budget and heavy workload does not permit it to assign such work to the staff. Therefore the opportunity and responsibility for effectuating Congressional policy, in so far as the "pre-emption and conflict" matters are concerned, depends to a great extent upon local administrative and judicial agencies.

CONCLUSION

Although Federal jurisdiction is limited to interstate and foreign commerce, Congress has, in addition, jurisdiction over any business "affecting" commerce. This judisdiction is derived from the Necessary and Proper Clause which permits federal regulation of any activity which prohibits, promotes, or affects interstate commerce.

The Power of the NLRB has extended into local communities to such an extent that frequently little jurisdiction appears to be left to the agencies set up by the state acts. Although subject to the civil, equitable and criminal provisions of the Act, local businesses are often deprived of access to the NLRB due to budgetary and administrative consideration or the narrow construction of Section 10 (a) of the Act. The jurisdictional "yardsticks" have aided in narrowing the field over which Congress may exercise its jurisdiction; however, these are subject to alteration, deletion, or changes by the Board when it deems it expedient.

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[41] See for example, Central Storage and Transfer Co .v. Teamsters, 30 LLRM 2379, *21 Labor Cases*, ¶67,034, 67,035; Montgomery Building and Construction Trade Council v. Ledbetter Erection Co., 29 LLRM 2415, 57 So. (2nd) 112; Goodwin, Inc. v. Hogehorn, 303 N. Y. 300, 101 N. E. (2nd) 697; Art Steel Co. v. Velazquez, *21 Labor Cases*, ¶66,728, 29 LLRM 2329.

The NLRB can agree to cede jurisdiction over certain industries to state agencies, but the NLRB can not cede jurisdiction over mining, manufacturing, communications or transportation unless these industries are predominantly local in character. Furthermore, state laws governing the industry in question, must not be inconsistent with corresponding provisions of the Federal Act.

The pre-emption doctrine has restricted the conflict between the NLRA and state laws with respect to such fields as unfair labor practices, certification and union security contracts. However, recent state cases in which injunctive relief against various types of concerted activity has been granted do not contain consideration of the fact that the enjoined conduct falls within the pre-empted field. This seems particularly true where state courts have granted injunctive relief to private parties against secondary boycotts and where stranger picketing and organizational strikes have been enjoined on the ground that the objective of the concerted activity is unlawful under either the State or Federal law.

> If easy evasion of the Supreme Court's pre-emption policy is to be avoided, state regulation, which in fact duplicates, or complements the protection afforded under the Federal Act, can not be permitted to stand and if application of the state law forfeits the rights guaranteed by the National Act or obstructs effectuation of National policy, the state law can not be given effect.
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> If the pre-emption policy is given effect in the spirit of the Supremacy Clause, it will, as Congress intended it should, aid in reducing Federal-State jurisdictional conflicts, and point the way to desirable improvements in federal law in the field of labor management relations.[42]

[42] M. G. Ratner, *Problems of Federal-State Jurisdiction in Labor Relations*, LABOR LAW JOURNAL (1952), Vol. 3, No. 11, p. 815.