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State Labor Board Prevention of Violent Union Conduct, Even Though an Unfair Labor Practice Under NLRA - United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Co.

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State Labor Board Prevention Of Violent Union Conduct, Even Though An Unfair Labor Practice Under NLRA

United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and Kohler Co.[1]

Appellant union and appellee, Kohler Co., failed to reach an accord concerning a collective bargaining agreement. The company's production workers struck and picketed the company premises. Ten days later the company filed a complaint with the Wisconsin Employment Relations Board, charging the appellant union and others with unfair labor practices under the state labor act.[2] The complaint alleged

[1] 76 S. Ct. 794 (1956).
[2] WISC. STAT. (1953), Sec. 111 *et seq.*

that members of appellant union engaged in mass picketing, thereby obstructing entrance to and egress from the Kohler plant; interfered with the free and uninterrupted use of public ways; prevented persons desiring to be employed by Kohler from entering the plant; and coerced employees who desired to work, and threatened them and their families with physical injury. Finding the allegations true, the State Board ordered appellant union and certain of its members to cease such activities. The order was enforced without substantial change by a Wisconsin Circuit Court, whose decision was affirmed by the State Supreme Court.[3] On appeal, the question is presented whether or not a State may enjoin through its labor board acting under its labor statute violent union conduct such as here which may also be an unfair labor practice under the National Labor Relations Act, as amended.[4] The Supreme Court, through Mr. Justice Reed, held the State could so enjoin. Mr. Justice Douglas, with the Chief Justice and Mr. Justice Black concurring, dissented.

Although finding that the alleged conduct was a violation of Section 8(b)(1) of the National Labor Relations Act,[5] so that the National Board might have issued an order similar to that of the State Board, it seemed obvious to the majority of the Court that the *Laburnam* case[6] made it clear that Section 8(b)(1) was not to be the exclusive method of controlling violence. As further support for the non-exclusive nature of the Federal remedy, the majority referred to Senator Taft's admission of concurrence of State and Federal remedies,[7] which could not have referred solely

[3] 269 Wis. 578, 70 N. W. 2d 191 (1955).

[4] 29 U. S. C. A. (1956), Sec. 158(b)1.

[5] *Ibid.*

"(b) It shall be an unfair labor practice for a labor organization or its agents — (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 . . ."

[6] United Workers v. Laburnum Corp., 347 U. S. 656, 666-669 (1954).

[7] *Supra*, n. 1, 798, quoting: 93 Cong. Rec. 4437 (1947):

"The Senator from Oregon a while ago said that the enactment of this proposed legislation will result in duplication of some of the State laws. It will duplicate some of the State laws only to the extent, as I see it, that actual violence is involved in the threat or in the operation.

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"Mr. President, I may say further that one of the arguments has suggested that in case this provision covered violence it duplicated State law. I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that State law. Secondary boycotts, jurisdictional strikes, and so forth, may involve some violation of State law respecting violence which may be criminal, and so to some extent the measure may be duplicating the remedy existing under State law. But that, in my opinion, is no valid argument."

to state criminal law "since *Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America v. Wisconsin Employment Relations Board*,[8] the leading case dealing with violence under this same Wisconsin statute, was well known to Congress".[9] Thus, though a State may not, in furtherance of its public policy, enjoin conduct "which has been made an 'unfair labor practice' under the federal statutes",[10] the Court in the instant case stated that its post Taft-Hartley opinions "have made it clear that this general rule does not take from the States power to prevent mass picketing, violence, and overt threats of violence".[11] Because the State's dominant interest in preventing violence and property damage cannot be questioned and since the States are the natural guardians of the public against violence, the Court refused to interpret an act of Congress as leaving the States powerless to avert the fear and loss occasioned by coercion and destruction without compelling directions to that effect.

The dissenting Justices, favoring the *Garner* case's[12] "duplication-of-remedies test", saw the majority decision as a "retreat from Garner" which will "open the door to unseemly conflicts between state and federal agencies".[13] The dissent distinguished the *Allen-Bradley* case as being decided at a time when the Federal Act made no provision for enjoining union activity. Admitting that both State and Federal regulation of the same act may survive to the extent of permitting State criminal sanctions and non-duplicating civil sanctions, the dissenting Justices saw the state administrative remedy here as reaching the same conduct in the very same manner as the Federal administrative remedy and therefore "a precise duplication of remedies which is pregnant with potentialities of clashes and conflicts".[14]

The problem of defining the area of exclusive Federal jurisdiction under the Labor Management Relations Act is a difficult one since the Act "leaves much to the states, though Congress has refrained from telling us how much".[15] There has been created a "penumbral area [which] can be rendered progressively clear only by the course of litiga-

[8] 315 U. S. 740, 748-749 (1942).
[9] *Supra*, n. 1, 799.
[10] Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 475 (1955).
[11] 76 S. Ct. 794, 799 (1956).
[12] Garner v. Teamsters Union, 346 U. S. 485 (1953).
[13] *Supra*, n. 11, 800.
[14] *Ibid.*
[15] Garner v. Teamsters Union, *supra*, n. 12, 488.

tion".[16] The extent to which the "course of litigation" has brought clarity to this area has been the subject of recent articles and comments.[17] The decision of the Court in *Garner v. Teamsters Union*[18] has been cited as "oust[ing] the state courts of all jurisdiction over peaceful picketing"[19] and deciding that state courts "were without power to enjoin picketing by a labor union in violation of both federal and state labor relations statutes".[20]

Although the Court, in the *Garner* case, specifically recognized the state's "historic powers over such traditionally local matters as public safety and order and the use of streets and highways",[21] the language is sweeping with regard to the prohibition of duplicate state and federal remedies.[22] The *Laburnum* case reiterated the "duplication-of-remedies" test and distinguished the *Garner* decision on the basis of that test.[23] Again, in *Weber v. Anheuser-Busch, Inc.*,[24] the Court discussed the pertinence of both the *Garner* and *Laburnum* decisions in terms of duplication of remedy.

Whether one characterizes the majority opinion as having "wiped away a portion of the doctrine of 'preemption' and exclusiveness of the National Labor Relations Board's jurisdiction in 'unfair labor practice' cases in which mass picketing and violence were present",[25] or merely as having pointed up a distinction which was implicit in prior decisions, it seems clear that the Court, if not "abandoning the conflict-of-remedies argument that was given so much weight in *Garner*",[26] is at least stating a major qualification of that argument in instances where the state interest in law and order is involved.[27] The majority clearly refuses to oust the States from their power to enjoin mass picketing and violent union conduct, whether determination thereof

[16] Weber v. Anheuser-Busch, Inc., *supra*, n. 10, 480-481. Parenthetical material supplied.

[17] Isaacson, *Labor Relations Law: Federal versus State Jurisdiction*, 42 A. B. A. J. 415 (1956); Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297 (1954). See also notes, 53 Mich. L. Rev. 602 (1955); 54 Mich. L. Rev. 540 (1956).

[18] *Supra*, n. 12.

[19] Note, 22 Geo. Wash. L. Rev. 770, 773 (1954).

[20] Note, 40 A. B. A. J. 145 (1954).

[21] *Supra*, n. 12, 488.

[22] *Ibid*, 488-491.

[23] United Workers v. Laburnum Corp., 347 U. S. 656, 663-665 (1954).

[24] 348 U. S. 468, 474-477 (1955).

[25] Note, 7 Labor Law Journal 599 (1956).

[26] *Review of Supreme Court's Work*, 25 L. W. 3025 (1956).

[27] Other cases dealing with state power to stop violence in labor relations cases include Automobile Workers v. O'Brien, 339 U. S. 454, 459 (1950); Auto Workers v. Wis. Board, 336 U. S. 245, 253 (1949).

be by state administrative board or the courts, "without compelling directions to that effect"[28] from Congress, even though Congress has vested in the national board and the federal courts power to exercise the same remedy.

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[28] 76 S. Ct. 794, 799 — The argument (*ibid*, p. 796) "that a State Board will use this power to stop force and violence in order to further state labor policy, thus creating a conflict with the federal policy as developed by the National Labor Relations Board" did not impress the majority as being sufficient to oust historic state police power, absent more explicit directions from Congress.