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Chapter 15: Labor Relations

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CHAPTER 15

Labor Relations

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A. Federal-State Jurisdiction

§15.1. Pre-emption: Litigating elucidation. "The statutory implications concerning what has been taken from the States [by the Taft-Hartley Act] and what has been left to them are of a Delphic nature to be translated into concreteness by the process of litigating elucidation." These words of Mr. Justice Frankfurter in *Association of Machinists v. Gonzales*[1] are indicative of the continuing development of the pre-emption doctrine in the field of labor relations law. In a colorful opinion,[2] the majority in *Gonzales* upheld the jurisdiction of a state court to entertain a breach of contract action by a union member for wrongful expulsion from a union and to award damages for the member's consequent loss of wages and mental suffering, even though the union's conduct might be the basis for an unfair labor practice under the Taft-Hartley Act. The potential conflict with federal policy was held to be too contingent and too remotely related to the public interest expressed in Taft-Hartley, to justify depriving state courts of jurisdiction to vindicate the personal rights of an ousted union member. The state court was held not to lack jurisdiction to "fill out" its remedy of reinstatement in the union (admittedly not displaced by Taft-Hartley) by an award of damages for loss of wages (which the NLRB could order) and mental and physical suffering (which the NLRB could not award). The possibility of partial relief from the NLRB does not, in such a case, deprive a party of available state remedies for all damages suffered. There was a vigorous, lengthy and equally colorful dissent by the Chief Justice, in which Mr. Justice Douglas joined.

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§15.1. [1] 356 U.S. 617, 78 Sup. Ct. 923, 2 L. Ed. 2d 1018 (1958).

[2] Mr. Justice Frankfurter refers to a contrary result as possibly being "abstractly justifiable as a matter of wooden logic." He also quotes approvingly from an article by a prominent union attorney to the effect that state court actions of this type do not present "potentialities of conflicts in kind or degree which require a hands-off direction to the states." Isaacson, Labor Relations Law, Federal Versus State Jurisdiction, 42 A.B.A.J. 415, 483 (1956).

In another case decided the same day, *United Automobile Workers v. Russell,*[3] the Court also held that the federal pre-emption doctrine did not apply, again with a vigorous dissent by the Chief Justice. Here a non-striking employee had brought an action for damages against the union in an Alabama state court for maliciously preventing him from engaging in his employment by means of unlawful picketing during an economic strike. The union had engaged in mass picketing and when the non-striking employee attempted to drive toward the plant gates in his car, the pickets blocked the way and threatened him with bodily harm and damage to his property. He recovered $10,000 in compensatory and punitive damages.[4]

The majority opinion held that, even assuming the conduct of the union to be an unfair labor practice under Section 8(b)(1)(A) of the Taft-Hartley Act, the state court had jurisdiction. It relied on the *Laburnum* case[5] in which a state court was held to have jurisdiction in a tort action for damages by an employer against a union for loss of business caused by the union's unlawful conduct. Under the facts in *Laburnum* the NLRB could not have awarded the employer damages but would have been limited to a cease and desist order. In *Russell* it was assumed that the NLRB could have awarded the employee back pay (compensatory damages) but could not have granted punitive damages. The possibility of such partial NLRB relief was held not to deprive the employee of his common law right of action for all damages suffered.[6] It was also pointed out that there was no conflict of remedies of a kind forbidden by the pre-emption doctrine. The majority declared that the Court's concern has been that "one forum would enjoin, as illegal, conduct which the other forum would find legal, or that the state courts would restrict the exercise of rights guaranteed by the Federal Acts." Here, however, there is no inconsistency if one forum awarded back pay and the other did not. Further, to cut off the employee's common law rights of action against a union tort-feasor "would, in effect, grant to unions a substantial immunity from the consequences of mass picketing or coercion such as was employed during the strike in the present case." [7]

[3] 356 U.S. 634, 78 Sup. Ct. 932, 2 L. Ed. 2d 1030 (1958).

[4] It is noted in the dissenting opinion that 29 other employees had suits against the union for the same conduct pending in the state court, and the damages claimed totaled $1,500,000.

[5] United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656, 74 Sup. Ct. 833, 98 L. Ed. 1025 (1954), discussed in 1954 Ann. Surv. Mass. Law §16.2.

[6] The dissenting opinion argued that the majority decision will result in violations of the federal act varying as to their consequences from state to state, depending upon the availability of a given right of action and procedures, citing as examples Massachusetts and four other states that do not permit punitive damages under these circumstances. The dissent cites McCormick, Damages §78 (1935), and Note, 70 Harv. L. Rev. 517 (1957), as authority for this statement of Massachusetts law.

[7] By way of dicta, the majority opinion indicates that the union's conduct was such that the pre-emption doctrine did not protect it against equitable relief by state courts. ". . . [W]e note that the union's activity in this case clearly was not pro-

In *Youngdahl v. Rainfair, Inc.*[8] the United States Supreme Court held: (1) a state court may enjoin strikers and union representatives from threatening, intimidating or coercing any of the officers, agents, or employees of the employer at any place and also from obstructing or attempting to obstruct the free use of the streets adjacent to the employer's place of business and the free ingress and egress to and from the employer's property; and (2) a state court may not enjoin peaceful picketing. The employer was engaged in interstate commerce. The conduct of the pickets principally complained of was abusive language, such as "scab," [9] shouted sufficiently loudly and by such a large number of pickets as to justify the Arkansas trial court in a finding that violence was imminent. But the trial court was held to have "entered the pre-empted domain of the National Labor Relations Board in so far as it enjoined peaceful picketing." The Court pointed out that there was nothing in the record to indicate that here, as distinguished from the *Meadowmoor* case,[10] the picketing was so enmeshed with violence that enjoining of peaceful picketing would be required to make effective an injunction against the conduct calculated to provoke violence.

In a per curiam decision the United States Supreme Court reversed the Supreme Court of Ohio which had upheld an injunction against peaceful picketing for recognition as bargaining agent by a union that had lost an NLRB election.[11]

Another facet of federal-state jurisdiction was involved in *Staub v. City of Baxley*,[12] dealing with the validity of a municipal ordinance making it an offense to solicit members for any dues-collecting organization without a permit. The union organizer who was convicted raised inter alia the contention that the ordinance was in conflict with the National Labor Relations Act, but the Supreme Court did not reach this issue, since the ordinance was held unconstitutional on its face as an abridgement of freedom of speech.

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tected by federal law. Indeed, the strike was conducted in such a manner that it could have been enjoined by Alabama courts." The Court cited the Youngdahl case, discussed in the text supported by notes 8-10 *infra*, and Auto Workers v. Wisconsin Board, 351 U.S. 266, 76 Sup. Ct. 794, 100 L. Ed. 1162 (1956). It may be argued that there is an inference that the unlawful conduct in the Russell case was deemed so interwoven with other conduct that the strike itself (including peaceful picketing) could have been enjoined.

8 355 U.S. 131, 78 Sup. Ct. 206, 2 L. Ed. 2d 151 (1957).

9 Among the many varieties of adjectival modifications used was the apparently modern "cotton-picking scab."

10 Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 61 Sup. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200 (1941). See also comment in note 7 *supra* as to the dicta in the more recent Russell case.

11 District Lodge 34, Lodge 804, International Assn. of Machinists v. L. P. Cavett Co., 355 U.S. 39, 78 Sup. Ct. 122, 2 L. Ed. 2d 72 (1957). The NLRB has held that picketing under these circumstances violates Section 8(b)(1)(A) of the National Labor Relations Act, as amended. Local 639, Teamsters and Curtis Bros., Inc., 119 N.L.R.B. No. 33 (Oct. 30, 1957), but the Board's decision was overturned by the Court of Appeals. Local 639, Teamsters v. NLRB, 43 L.R.R.M. 2156 (D.C. Cir. 1958).

12 355 U.S. 313, 78 Sup. Ct. 277, 2 L. Ed. 2d 302 (1958).

No federal legislation on labor law jurisdiction was enacted during the past year, although the Senate passed a bill [13] which contained an amendment to Section 10(a) of the National Labor Relations Act requiring the NLRB to assert jurisdiction in all cases, thus eliminating the "twilight zone" created by the *Guss* case;[14] the amendment, however, failed to pass in the House, partly, at least, because of those who favored allowing the states to act when the board has declined jurisdiction. But Congress did increase the board's appropriations in response to the board's claim that it required more money before it would be able to lower its requirements for exercising jurisdiction.

B. Massachusetts Decisions

§15.2. Injunctions in labor disputes. In *Poirier v. Superior Court,*[1] the union (in the building trades) began picketing an unorganized employer (a construction company) with signs stating that the employer was "Non Union," and setting forth the name of the union. The agreed facts were that the picketing was peaceful, none of the pickets was ever in the employ of the employer, and none of the employees was a member of any union. The employer brought a bill in equity alleging inter alia that the pickets' purpose was to compel the employer to sign a union agreement with the union involved. In the Superior Court, a preliminary injunction against the picketing was granted without the filing of a bond by the employer and without the findings of the judge required by the statute in cases involving a labor dispute. The judge found that there was no labor dispute. On the union's petition for writ of mandamus the Supreme Judicial Court reversed the order of the Superior Court granting the preliminary injunction, holding that a labor dispute existed and, consequently, that the preliminary injunction issued without jurisdiction since the procedural requirements of the statute applicable in labor dispute cases had not been followed.[2]

The statute defines labor disputes as including:

[13] Senate No. 3974.

[14] See comments on the Guss case and the problems it raises in 1957 Ann. Surv. Mass. Law §25.1.

§15.2. [1] 1958 Mass. Adv. Sh. 797, 150 N.E.2d 558. The pendency of this case before the Supreme Judicial Court was noted in 1957 Ann. Surv. Mass. Law §25.2.

[2] These procedural requirements, set forth in G.L., c. 214, §9A, include: (1) a hearing on notice (subject to special, detailed provisions applicable to applications for temporary restraining orders); (2) findings of fact by the court in respect to the commission or continuation of unlawful acts, substantial and irreparable injury, greater injury to the complainant by denial of relief than to the defendants by granting relief, inadequacy of remedy at law, and inability or unwillingness of police to furnish protection; (3) the furnishing of a bond by the complainant; and (4) a requirement that the complainant must have complied with all legal obligations involved in the labor dispute and must have made every reasonable effort to settle such dispute either by negotiation, mediation or arbitration.

> any controversy *arising out of any demand of any character whatsoever* concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange, terms or conditions of employment, *regardless of whether the disputants stand in proximate relation of employer and employee.*[3]

The italicized phrases above-quoted were added to the previous statutory provision by the Cox-Phillips Act of 1950.[4] Pointing to the allegation in the employer's bill in equity that the union's purpose was to compel the employer to sign a union agreement, the Court concluded that there was a labor dispute between the parties. What constitutes a labor dispute under the statutory definition of Section 20C is a question of law. The case involved persons "in the same industry, trade, craft or occupation," the dispute was "between one or more employers . . . and one or more employees or association of employees" and "conflicting or competing interests in a 'labor dispute' of persons participating or interested therein," all of which are involved in the statutory definition of an equity case involving or growing out of a labor dispute. The Court pointed out that the fact that there are no business relations between the employer and the union is no longer important because of the addition of the statutory language, "regardless of whether the disputants stand in proximate relation of employer and employee." [5]

The decision, which would appear to be a correct interpretation of the statute, is confined to the procedural aspects of injunction proceedings in cases involving labor disputes. The opinion states, "The effect of the [statutory] definitions . . . is to make the procedural safeguards of c. 214, §9A applicable to every kind of labor dispute regardless of whether the dispute is lawful or unlawful as a matter of substantive law." [6] The Court was not called upon to rule on whether the labor dispute was lawful [7] and judiciously refrained from making any comment in this respect. This substantive question involves the controversial issue of organizational picketing, the legal status of which is still in doubt in Massachusetts.[8]

[3] G.L., c. 149, §20C, as amended by Acts of 1950, c. 452, §2. (Emphasis supplied.)

[4] Acts of 1950, c. 452.

[5] Thus laying to rest the statements in Simon v. Schwachman, 301 Mass. 573, 18 N.E.2d 1 (1938), and Quinton's Market, Inc. v. Patterson, 303 Mass. 315, 21 N.E.2d 546 (1939), decided prior to the Cox-Phillips Act, to the effect that no labor dispute existed if the pickets were not employees of the picketed employer, or the picketing union had no members employed by the picketed employer.

[6] 1958 Mass. Adv. Sh. 797, 801, 150 N.E.2d 558, 561.

[7] Subsection (d) of G.L., c. 149, §20C defines "lawful labor disputes"; Subsection (e) defines "unlawful labor disputes"; and Subsection (f) defines "unlawful secondary boycotts."

[8] At a trial on the merits in a case like the Poirier case, the union would undoubtedly deny the allegation that the purpose of the pickets was to compel the employer to sign a union agreement. The union's usual position in such instances is that the picketing is not "recognition" picketing directed against the employer to have the latter recognize the union as collective bargaining agent, but, rather, that it is either "informational," i.e., informing the general public that the employer is

§15.3. Employment security: Compulsory retirement. In *Lamont v. Director of the Division of Employment Security*[1] the Supreme Judicial Court held that employees who leave their employment under a compulsory retirement provision of a pension plan agreed to by a union that is the employees' bargaining agent, and the employer, are disqualified from receiving unemployment benefits under the Employment Security Law[2] on the basis of leaving work "without good cause attributable to the employing unit or its agent." The Court's reasoning was that the claimant for benefits "was bound by the agreement made on his behalf by the union to the same extent as though he had entered into it individually." The compulsory retirement feature of the agreed-upon pension plan under which the employee was required to leave his employment upon reaching a specified age was the cause of his leaving, and, in the words of the Court, this is "a cause jointly attributable to both the employing unit and the union, that is, to both the employing unit and the employees."

Prior to this decision, the rule followed by the Division of Employment Security was to allow unemployment benefits to employees retired under a compulsory retirement plan, if otherwise qualified, and to deny benefits to those whose retirement was voluntary. Following this decision, a bill was promptly filed in the General Court which would permit employees retired under a compulsory retirement provision of a pension plan to receive benefits if otherwise qualified, regardless of whether prior assent to compulsory retirement had been given by the employee either directly or indirectly. This bill would also change the language in the disqualification for leaving work from leaving "without good cause attributable to the employing unit" to "without good

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non-union, or "peaceful persuasion" directed toward the unorganized employees in an effort to induce them to join the union. The term "organizational" picketing is a general term often used to refer to all such picketing. Employers counter the union arguments with the contention that the union's actual purpose is to bring economic pressure on the employer through respect for the picket line by those making deliveries or picking up shipments, and the only way the employer can stop the picketing is to commit the unfair labor practice of recognizing the union which does not represent a majority of the employees. The interesting question is also raised whether any "demand" is being made if the picketing is merely informational, a "demand" being one of the statutory ingredients of a labor dispute. A related question is whether an employer may obtain an election by the Massachusetts Labor Relations Commission on the basis of organizational picketing. The commission will not order an election in the absence of a request for recognition by the union involved. Recent articles on organizational picketing can be found in Bornstein, Organizational Picketing in American Law, 46 Ky. L.J. 25 (1957); Gochman, Organizational Picketing in New York, 9 Lab. L.J. 143 (1958); Meltzer, Recognition — Organizational Picketing and Right to Work Laws, 9 Lab. L.J. 55 (1958); Stern, Enjoinable Organizational Picketing: A Phantasy on the Constitutional Doctrine of International Brotherhood of Teamsters v. Vogt, 31 Temp. L.Q. 12 (1957); Notes, 26 Fordham L. Rev. 580 (1957); 9 Syracuse L. Rev. 134 (1957); 11 Vand. L. Rev. 627 (1958).

§15.3. [1] 1958 Mass. Adv. Sh. 593, 149 N.E.2d 372.
[2] G.L., c. 151A.

cause." This bill has been enacted since the close of the 1958 SURVEY year.[3]

C. MASSACHUSETTS LEGISLATION

§15.4. Public employees: Right to form unions. During the 1958 SURVEY year the General Court enacted a statute recognizing the right of public employees to form and join labor organizations and to present proposals relative to their salaries and conditions of employment.[1] This is the first specific statutory provision in Massachusetts history relating to this subject. Public employees are specifically excluded from the Massachusetts Labor Relations Act [2] as well as the National Labor Relations Act.[3] In recognizing the right of public employees to form and join labor organizations and in proscribing discharge, discrimination, intimidation and coercion in connection with the exercise of this right, the new statute is similar to state and federal labor law governing the rights of non-public employees. The right of public employees "to present proposals" is, however, something substantially less than the right to bargain collectively provided by law for non-public employees. This statute also does not specifically treat of "employer-dominated" labor organizations forbidden by state and federal laws in non-public employment.

The concept of a majority representative of employees being the exclusive bargaining agent for all employees in an appropriate unit is not followed. Nor is there any method provided for determining whether a particular unit is the "representative of their own choosing." Presumably a union would present proposals for its members only, and more than one union could have representation in the same group of employees.

An interesting feature of this new law is the prohibition against any person using direct or indirect intimidation or coercion to compel or attempt to compel a public employee "to join or refrain from joining" a union. Although the Taft-Hartley Act recognizes the right of employees to join or refrain from joining a union, the Massachusetts Labor Relations Act recognizes only the employees' right to join a union and does not recognize the right of employees to refrain from

[3] Acts of 1958, c. 677.

§15.4. [1] Acts of 1958, c. 460. The act inserts new Section 178D in G.L., c. 149, as follows: "Employees of the commonwealth or any political subdivision thereof shall have the right to form and join vocational or labor organizations and to present proposals relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a vocational or a labor organization. This section shall not be applicable to police officers in the employ of the commonwealth or any political subdivision thereof."

[2] G.L., c. 150A, §2(2).

[3] NLRA §2(2), 49 Stat. 450 (1935), as amended, 29 U.S.C. §152 (1952).