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Labor Law—Labor Management Relations Act—Section 301(a)—Removal of Cause—Injunction Action—Breach of No Strike Clause.—American Dredging Co. v. Local 25, Int'l Union of Operating Eng'rs

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than hard bargaining itself, seem to lead the Board to the finding of overall bad faith.

It can be seriously doubted that the *General Electric* decision will have any far-reaching significance. The case does not condemn "hard bargaining" or an employer's communications program per se. It probably does not attack Boulwareism per se either—at least not the bare elements, for the *Philip Carey* decision upheld a form of Boulwareism. The case does represent a close look at the role which GE accorded the IUE in its national negotiations in 1960—an examination of the effect of Boulwareism in its most effective company setting as practiced on the strongest of many weak unions represented in the company. In extremely few, if any, negotiations could the Board find such a combination of a weak union and a proven plan by a giant company to further diminish the union's strength through the collective bargaining process.

If the Board's decision is sustained, as it probably will be, it can also be doubted whether GE's bargaining approach will be radically changed. Boulwareism has been successful for GE, and it will not be altered in light of a decision as vague as this. As a first step, GE probably will recognize that the union must be patronized—at least to the point of supplying information to it and using contract language which the union requests. It seems that GE could pay lip-service to the IUE and thus avoid Board disapproval without any great effort or loss of effectiveness in its bargaining. In the long run, even if the IUE support were to grow appreciably, there is little danger to GE of a successful strike. A token bow to the union in its conduct and communications program might be enough to appease the Board and allow GE to practice a milder Boulwareism as a form of "hard bargaining."

ANDREW F. SHEA

Labor Law—Labor Management Relations Act—Section 301(a)—Removal of Cause—Injunction Action—Breach of No-Strike Clause.— ***American Dredging Co. v. Local 25, Int'l Union of Operating Eng'rs***[1]**—** A collective bargaining agreement exists between the plaintiff corporation and the defendant union which contains clauses that prohibit strikes and work stoppages. The union commenced a work stoppage which caused a cessation of the corporate business. The corporation thereupon filed a complaint in the state court to enjoin the union from violating the no-strike provisions of the agreement and for other appropriate relief. The state court issued a temporary restraining order prohibiting the union from violating the agreement. Thereafter, the union removed the action to the federal district court pursuant to Section 1441 of the Removal Statute.[2] The corporation amended its com-

[1] 338 F.2d 837 (3d Cir. 1964), cert. denied, 33 U.S.L. Week 3296 (U.S. March 8, 1965).

[2] 28 U.S.C. § 1441 (1958):

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have

plaint, omitting the request for other appropriate relief, and sought to have the case remanded on the ground that the federal district court lacked subject matter jurisdiction.[3] The district court denied the motion, holding that it had jurisdiction under Section 301(a) of the Labor Management Relations Act (LMRA).[4] The district court decision was appealed to the Court of Appeals for the Third Circuit. HELD: An action brought in a state court based solely on state created rights to enjoin a union's violation of the no-strike provisions of its collective bargaining agreement is not removable to a federal district court.

In the reasoning of the court, three major arguments were presented. Each one, if sound, is sufficient to sustain the result. The dissent was diametrically opposed to the court on each of the conclusions. The issues will be considered in this note in the order in which the court presented them.

The first issue directly involves the right to removal. The court held that the district court could not entertain a removal of this type, since it lacked the major prerequisite for removal, jurisdiction. The court employed various Supreme Court decisions to show that jurisdiction is the power to take cognizance of the suit and render a binding decision thereon.[5] It then showed that the Supreme Court in *Sinclair Ref. Co. v. Atkinson*,[6] had held that in all suits to enforce collective bargaining agreements, the federal courts are denied the right to issue a no-strike injunction by Section 4 of the Norris-LaGuardia Act.[7] Therefore, since the federal district court is unable to grant

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original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

[3] The corporation, by amending its complaint to omit the request for other appropriate relief, sought to have the district court deal with the injunctive issue solely. If the corporation sought other appropriate relief, the district court would have an additional factor upon which to base its jurisdiction other than the request for injunctive relief. H. A. Lott, Inc. v. Hoisting & Portable Eng'rs, 222 F. Supp. 993 (S.D. Tex. 1963).

[4] 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

American Dredging Co. v. Local 25, Int'l Union of Operating Eng'rs, 224 F. Supp. 985 (E.D. Pa. 1963).

[5] American Dredging Co. v. Local 25, Int'l Union of Operating Eng'rs, supra note 1, at 840-41.

[6] 370 U.S. 195 (1962).

[7] 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958):

the relief sought, to wit: the issuance of a no-strike injunction, it is unable to take cognizance of the suit and decide it on the merits.

The dissent, on the other hand, found that the term jurisdiction is not employed in the same manner in the Norris-LaGuardia Act as in the removal statute; that is, lack of jurisdiction under the Norris-LaGuardia Act is not lack of power to hear the suit. As a result, the preclusion of injunctive relief by force of the Norris-LaGuardia Act is not an ouster of the "original jurisdiction" which the removal statute contemplates. Therefore the district court would have jurisdiction.

This dispute revolves around one question. Does the term jurisdiction, as used in the Norris-LaGuardia Act, mean lack of authority to take cognizance of the suit or lack of authority to act after taking cognizance?[8] Other courts that have encountered this problem have answered the question both ways.

The majority of the courts[9] take the position as set forth by this court, that removal should not be allowed. They use various reasons for their conclusion. One court has stated that "the term 'jurisdiction' as used in the [Norris-LaGuardia] Act is used in its literal and more accepted meaning, and that under the Act this Court is not only precluded from granting . . . injunctive relief . . . but may not 'take cognizance' of the action."[10] Another has stated that it would be "anomalous to hold, on one hand that a District Court has original jurisdiction sufficient to grant the removal of a cause and then to hold, on the other, that the cause, once removed, must be dismissed by the District Court for the reason that it lacks jurisdiction of the cause and consequently has no power to grant the relief sought."[11]

In *National Dairy Prods. Corp. v. Heffernan*,[12] the court examined the Norris-LaGuardia Act and felt that the act compelled the conclusion that jurisdiction was used in the sense of power to take cognizance of the action and to decide it on its merits. The reason for this conclusion was that the

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> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment . . . .

8 National Dairy Prods. Corp. v. Heffernan, 195 F. Supp. 153, 155 (E.D.N.Y. 1961).

9 District Transit Lines, Inc. v. Starr, 219 F.2d 699 (6th Cir. 1955); National Dairy Prods. Corp. v. Heffernan, supra note 8; Swift & Co. v. United Packinghouse Workers, 177 F. Supp. 511 (D. Colo. 1959); Kon-Tempo Furniture Inc. v. Kessler, 145 F. Supp. 341 (E.D.N.Y. 1956); Lock Joint Pipe Co. v. Anderson, 127 F. Supp. 692 (W.D. Mo. 1955); Irving Subway Grating Co. v. Silverman, 117 F. Supp. 671 (E.D.N.Y. 1953); Sandsberry v. Gulf, C. & S.F. Ry., 114 F. Supp. 834 (N.D. Tex. 1953); Hat Corp. v. United Hatters, 114 F. Supp. 890 (D. Conn. 1953); Castle & Cooke Terminals, Ltd. v. Local 137, International Longshoreman's and Warehouseman's Union, 110 F. Supp. 247 (D. Hawaii 1953); American Optical Co. v. Andert, 108 F. Supp. 252 (W.D. Mo. 1952); Walker v. UMW, 105 F. Supp. 608 (W.D. Pa. 1952).

10 National Dairy Prods. Corp. v. Heffernan, supra note 8.

11 Walker v. UMW, supra note 9, at 611.

12 Supra note 8.

word "jurisdiction" was not used in sections 3, 6, 8, and 9 of the act.[13] These sections simply denied the power of the district court to grant relief without any withdrawal of jurisdiction. Therefore, in sections 4 and 13 where the term is used,[14] Congress must have intended to do more than deny the district court its power to grant a specific form of relief.

The minority of the courts,[15] those that would allow removal, could also use the Norris-LaGuardia Act itself to support their position. They could show that section 7 of the act permits issuance of an injunction to enjoin picketing involving fraud or violence.[16] Therefore, for the court to ascertain whether it can issue an injunction, it must first hear the case. Once it has taken testimony, jurisdiction will attach.[17] These courts further hold that the Norris-LaGuardia Act only restrains the court's power to grant injunctive relief with respect to those powers within section 4.[18] They point out that "the test of removal to a federal court is not what the court must ultimately do with the case under federal law but whether the federal law applies to and controls the case."[19] Therefore, the court has the power to act upon a cause of action seeking a no-strike injunction but lacks the jurisdiction to issue the injunction.

Weighing both sides, the position of the majority is preferable. Jurisdiction is a power or right to act.[20] Allowing the court to accept jurisdiction over the case and then requiring it to dismiss for lack of power to grant the relief sought is an exercise in futility.[21] Whether Congress ever anticipated these problems is highly unlikely; yet there is no reason to believe that Congress intended the term jurisdiction to mean anything other than the ability to take cognizance over the suit and decide it on its merits.[22]

Secondly, the majority found that even if the federal courts were not

[13] 47 Stat. 70-72 (1932), 29 U.S.C. §§ 103, 106, 108, 109 (1958).

[14] 47 Stat. 70, 73 (1932), 29 U.S.C. §§ 104, 113 (1958).

[15] Direct Transit Lines, Inc. v. Local 406, Teamsters Union, 199 F.2d 89 (6th Cir. 1952); S. E. Overton Co. v. International Bhd. of Teamsters, 115 F. Supp. 764, 771 (W.D. Mich. 1953); Pocahontas Terminal Corp. v. Portland Bldg. & Constr. Trade Council, 93 F. Supp. 217 (D. Me. 1950).

[16] 47 Stat. 71 (1932), 29 U.S.C. § 107 (1958).

[17] This position is set forth by Professor Zechariah Chafee. He stated that § 7 of the Norris-LaGuardia Act does permit the issuance of injunctions under certain circumstances and that in order for a court to decide whether it can issue the injunction, the court must first hear the evidence. Once the court hears the evidence, the jurisdiction attaches, since jurisdiction must attach in the beginning of the case or not at all. Chafee, Some Problems of Equity 373 (1950).

[18] Pocahontas Terminal Corp. v. Portland Bldg. & Constr. Trade Council, supra note 15, at 225.

[19] Ibid.

[20] Industrial Addition Ass'n v. Commissioner, 323 U.S. 310, 314 (1945).

[21] Mr. Justice Frankfurter's concurring opinion in Touhy v. Ragen, 340 U.S. 462, 473 (1951) stated in a situation similar to this that it "would be to apply a fox-hunting theory of justice that ought to make Bentham's skeleton rattle."

[22] The Supreme Court had six years before the Norris-LaGuardia Act defined jurisdiction as the "power to entertain the suit, consider the merits and render a binding decision thereon. . . ." General Inv. Co. v. New York Cent. R.R., 271 U.S. 228, 230 (1926). Therefore it is more probable than not that Congress knew of this definition and intended it to apply in lieu of another.

deprived of jurisdiction by the Norris-LaGuardia Act, the case does not arise under federal law, but rather was brought to enforce a *state* created right. The court held that in order for a case to be removed there must be a controversy or dispute concerning the validity or construction of the Constitution or laws of the United States upon which the rights of the parties depend. This controversy must be disclosed on the face of the complaint. Therefore, since no federal controversy was shown on the face of the complaint, this case was based upon a state created right. This right is dependent upon the power to enforce contracts which resides in the states; and the case is therefore not removable. The dissent, in rebuttal, contended that a suit of this type must necessarily arise under federal law. It stated that federal law, by means of Section 301 of the LMRA, has superseded state law as the exclusive legal basis for the enforcement of collective bargaining agreements in industry affecting commerce.

To resolve this controversy, the purpose behind the enactment of section 301 and also the Supreme Court's decisions on this statute should be examined. Until section 301 was enacted, the states were the customary forums for enforcing suits for violations of collective bargaining agreements.[23] However, in many state jurisdictions, unions were not suable entities.[24] This left the employer who sought to enforce these agreements at a definite disadvantage.[25] Congress, realizing this inequality in positions,[26] opened the federal courts to the parties in order to stabilize labor relations by making the collective bargaining agreement equally enforceable on both parties. Entry into the federal courts could be accomplished "without respect to the amount in controversy or without regard to the citizenship of the parties."[27] In the federal courts the unions were suable entities.[28] Therefore, in its embryonic state, section 301 had as its purpose the increase of forums available for enforcing collective bargaining agreements in order to make unions as responsible for their collective bargaining agreements as management.[29] The duty of interpreting section 301 then devolved upon the courts.

The first major decision of the Supreme Court in this area was in *Textile Workers Union v. Lincoln Mills*.[30] The Court decided that section 301 was

[23] Witmer, Collective Labor Agreements in the Courts, 48 Yale L.J. 195 (1938): "It is in terms of contract . . . that the collective bargain reaches the courts when it reaches them at all." S. Rep. No. 105, 80th Cong., 1st Sess. 17 (1947): "There are no Federal laws giving . . . an employer . . . any right of action . . . for any breach of contract."

[24] H.R. Rep. No. 245, 80th Cong., 1st Sess. 46 (1947); S. Rep. No. 105, 80th Cong., 1st Sess. 15-17 (1947).

[25] The unions were mostly unincorporated and at common law were not liable for their contracts. For an employer to seek redress he had to proceed against all the individual members of the union in most states. This very often left him remedyless due to the large membership in these unions. See United Mine Workers v. Coronado Co., 259 U.S. 344, 385-89 (1922); Frankfurter and Greene, The Labor Injunction 82 (1930).

[26] See Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 510 (1962).

[27] See text of § 301 quoted supra note 4.

[28] United Mine Workers v. Coronado Co., 259 U.S. 344, 391 (1922).

[29] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 454 (1957). Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 508 (1962).

[30] 353 U.S. 448 (1957).

not merely a jurisdictional statute but that the section implied a mandate to the courts to fashion a uniform body of federal substantive law based on federal labor policies. This law was to be applied in all cases arising under section 301.[31] The next major ruling of the Court was in the *Charles Dowd Box Co. v. Courtney* decision.[32] In this case, on the state level,[33] the employer contended that by virtue of section 301 the state courts were without jurisdiction to entertain a suit for the violation of a collective bargaining agreement, and that if the state court did have jurisdiction, a lack of uniformity of labor law would result which would be inconsistent with the spirit of *Lincoln Mills*.[34] The Supreme Court held that exclusive jurisdiction is the exception and not the rule; and therefore, since the statute provided that suits "may" be brought in federal courts, there is concurrent jurisdiction.[35] The Court went on to state that the contract should be left to the usual processes of law, and that there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts.[36]

Shortly after the *Dowd* decision, a question arose in *Local 174, Teamsters Union v. Lucas Flour Co.*[37] whether state or federal law should be used in interpreting and enforcing a collective bargaining agreement. (This question did not arise in *Dowd* since there was no contention that the laws in the state differed from the federal law.)[38] On the state level,[39] the Washington courts applied their local contract law. The union claimed that the state law differed from the federal law. The Supreme Court, on appeal, held that "*suits of a kind covered by section 301*" (emphasis added) are to be decided according to the precepts of federal labor policy and that the subject matter covered by section 301 calls for uniform law.[40] Thereby the Court extended the holding of *Dowd* giving priority to the unity concept.[41] Henceforth the state courts would have to interpret and apply federal law.

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[31] Id. at 456.

[32] 368 U.S. 502 (1962).

[33] Courtney v. Charles Dowd Box Co., 341 Mass. 337, 169 N.E.2d 885 (1960).

[34] Id. at 338, 169 N.E.2d at 887.

[35] Charles Dowd Box Co. v. Courtney, supra note 32, at 506-08.

[36] Id. at 509-11.

[37] 369 U.S. 95 (1962).

[38] Id. at 102. Only a few courts have considered this problem of state versus federal law. McCarroll v. Los Angeles County Distr. Council of Carpenters, 49 Cal. 2d 45, 60, 315 P.2d 322, 330 (1957) held that federal law must govern. Accord: Local Lodge No. 774, Int'l Ass'n of Machinists v. Cessna Aircraft Co., 186 Kan. 569, 573, 352 P.2d 420 (1960); Harbison-Walker Refractories Co. v. Local 702, United Brick & Clay Workers, 339 S.W.2d 933 (Ky. Ct. App. 1960). Other courts have found it unnecessary to decide the question, because they found no conflict between state and federal law on the issues presented. Karcz v. Luther Mfg. Co., 338 Mass. 313, 317, 155 N.E.2d 441, 444 (1959); Springer v. Powder Power Tool Corp., 220 Ore. 102, 106-07, 348 P.2d 1112, 1114 (1960).

[39] Lucas Flour Co. v. Local 174, Teamsters Union, 57 Wash. 2d 95, 356 P.2d 1 (1960).

[40] Local 174, Teamsters Union v. Lucas Flour Co., supra note 37, at 103.

[41] In Charles Dowd Box Co. v. Courtney, supra note 32, the Court was concerned mainly with the aspect of concurrent jurisdiction. The extension resulted when in Local 174, Teamsters Union v. Lucas Flour Co., supra note 37, at 102-03 the Court stated that it "proceeded on the hypothesis that state courts would apply federal law in exercising jurisdiction over litigation within the purview of § 301(a) . . . ." The Court then explicitly stated that "301(a) is peculiarly one that calls for uniform law."

The decision cleared up any doubt on the question of whether state law could be resorted to under section 301 actions. It further implied that all violations of collective bargaining agreements are to be considered section 301 actions. When the Court used the words, "suits of a kind covered by section 301," it was necessarily referring to all suits for violation of a contract between employer and union. This could be construed as meaning that all of these actions, including the present one, are to be considered section 301 actions. If this is the proper interpretation, there would no longer be a state created right to enforce, since the remedy for this type of action would come from the federal law;[42] and a suit for breach of agreement would, of necessity, be brought under federal substantive law.[43] This would satisfy the federal law prerequisite for removal to the federal court.

On the third point in this case, the court stated that if it allowed removal, it would be depriving the employer of the injunctive relief available in the state court. This is the case since the Norris-LaGuardia Act's restriction on the issuance of a no-strike injunction applies only to the federal courts, and is not applicable to the state courts. In its inception the congressional intent was that it should apply only to the federal courts; and if the court extends this to the states, it would be infringing on the legislative field. It would not be merely fashioning judicial remedies but legislating. Furthermore, the *Sinclair* decision specifically limited its decision to the courts of the United States.[44]

The dissent, on the other hand, stated that the courts must fashion federal law under section 301 and that state courts must apply it as fashioned. Therefore, since *Sinclair* has ruled that Section 4 of the Norris-LaGuardia Act bars federal district courts from granting injunctive relief, this limitation is now part of the federal substantive labor law. To allow any state to enforce a no-strike clause by injunction would be incompatible.

As pointed out by the majority, there have been decisions, both before and after *Sinclair*, to the effect that states can issue injunctions.[45] However, there has also been at least one decision to the contrary.[46] The closest the Supreme Court has come to making an authoritative pronouncement on this issue to date was the *Sinclair* decision. In this decision, however, the Court did not touch upon whether the *states* were prevented from issuing injunctions. The dissent in *Sinclair* specifically mentioned this omission and ques-

[42] McCarroll v. Los Angeles County Distr. Council of Carpenters, supra note 38, stated, "It is obvious that in exercising this jurisdiction state courts are no longer free to apply state law, but must apply the federal law of collective bargaining agreements, otherwise the scope of the litigant's rights will depend on the accident of the forum in which the action is brought. What the substantive federal law of collective bargaining agreements is we cannot now know. Until it is elaborated by the federal courts we assume it does not differ significantly from our own law."

[43] Isaacson, The Grand Equation: Labor Arbitration and the No Strike Clause, 48 A.B.A.J. 914, 920 (1962). "Since federal substantive law under Section 301 is exclusive, a suit for breach of agreement is of necessity brought under federal substantive law."

[44] See discussion of the *Sinclair* decision in text supra at note 6.

[45] American Dredging Co. v. Local 25, International Union of Operating Eng'rs, supra note 1, at 853.

[46] Independent Oil Workers v. Socony Mobil Oil Co., 85 N.J. Super. 453, 205 A.2d 78 (1964).

tioned whether the state courts were to be bound by the prohibition against injunctive relief.[47]

It is clear that Congress, in enacting the Norris-LaGuardia Act specifically under its power over the federal judiciary system, intended it to apply to the federal, and not the state courts.[48] Before section 301 was enacted, states were not bound by the Norris-LaGuardia restriction, since both the language of the statute and its legislative history indicate Congress' reluctance to interfere with the general equity powers of the states to issue injunctions.[49] Had Congress so desired, it could have made the statute binding on the states through its power under the Commerce Clause.[50] Therefore, if the Norris-LaGuardia Act is to apply to the states, it must do so through section 301.

The Supreme Court in interpreting section 301 has constantly, where possible,[51] made all collective bargaining agreements equally binding on both parties. In *Lincoln Mills*, it espoused the *quid pro quo* doctrine—that is, that an "agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike."[52] The Court held that unions were to benefit from specific enforcement of arbitration agreements, but in addition implied that management would also be able to avail itself of the injunction to enforce no-strike provisions.[53] Later, in *Lucas Flour*, the Court concluded that a contract to settle an issue by arbitration implies a contract not to strike over that issue.[54] At this time it appeared that both management and union were to receive equal protection. The *Sinclair* decision destroyed the right to this *quid pro quo* for management in federal courts, but state courts could still give the injunction. Therefore, if the intent to give management and union

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[47] Sinclair Ref. Co. v. Atkinson, supra note 6, at 226.

[48] It is evident that states did issue injunctions at the time the Norris-LaGuardia Act was enacted. See Frankfurter and Greene, supra note 25, at 51. This is an indication that the act was only aimed at the federal courts.

[49] Isaacson, supra note 43, at 919.

[50] Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 480 (1955). "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces."

[51] The Supreme Court held that it was not possible for the Court to accommodate the Norris-LaGuardia Act with § 301 of the LMRA; that "§ 301 was not intended to have any such partially repealing effect upon . . . the Norris-LaGuardia Act. . . . If Congress had intended that § 301 suits should also not be subject to the anti-injunction provisions of the Norris-LaGuardia Act, it certainly seems likely that it would have made its intent known in this same express manner." Sinclair Ref. Co. v. Atkinson, supra note 6, at 203-04.

[52] Textile Workers Union v. Lincoln Mills, supra note 30, at 455.

[53] Comment, 49 Cornell L.Q. 81, 86 (1963): "If arbitration agreements are to be enforced, it would seem logical to enforce, by the only remedy that is effectual, their *quid pro quo*, the no-strike clause." Comment, 25 U. Chi. L. Rev. 496, 499 (1958): "[T]he Court's determination as to the specific enforceability of the quid (the arbitration clause) was based on the assumption that the quo (the no-strike clause) was also subject to specific enforcement."

[54] Local 174, Teamsters Union v. Lucas Flour Co., supra note 37, at 105.

equal protection is still paramount with the Supreme Court, the states should retain the power to grant no-strike injunctions.[55]

However, it must be noted, this rationale runs contrary to another purpose of the Supreme Court as shown in its decisions on section 301, to wit: to have the state courts apply uniform federal law under the section.[56] If the state courts remain free to apply injunctions to prevent no-strike agreements there will be a disparity in remedies available depending on the state in which the action arises.[57] However, a difference in remedies may not be a disparity in substantive law which remains uniform.[58]

A summation of the positions on this issue would be as follows. Those who maintain that the Norris-LaGuardia Act did not deprive the state of its power to issue a no-strike injunction stress three major points: first, that the Norris-LaGuardia Act was specifically aimed at the federal courts;[59] second, that Congress had no intention of depriving state courts of remedies they formerly possessed;[60] and third, that there is no real threat to uniformity if the states are able to give a more effective remedy.[61] Those against preserving the states' power contend that under the section 301 mandate for a uniform federal labor law, a state cannot give more stringent or effective relief than a federal court,[62] and that the bulk of labor law would be fashioned by the state courts due to the rush to these courts by litigants.[63]

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[55] The violation of the no-strike clause in a collective bargaining agreement would still entitle the employer to damages. Also the violation of the agreement to arbitrate would entitle the union not only to damages but also to an injunction. Therefore, management should also be entitled to its most effective means of implementing the no-strike clause—the injunction.

[56] Local 174, Teamsters Union v. Lucas Flour Co., supra note 37, at 103.

[57] There are twenty three states that have some sort of anti-injunction regulation. These states are as follows: Ariz. Rev. Stat. Ann. § 12-1808 (1956); Conn. Gen. Stat. Rev. §§ 31-112 to -121 (1962); Idaho Code Ann. §§ 44-701 to -713 (1947); Ill. Rev. Stat. ch. 48, § 2a (1959); Ind. Ann. Stat. §§ 40-501 to -514 (1952); Kan. Gen. Stat. Ann. § 60-1104 (1949); La. Rev. Stat. §§ 23-841 to 49 (1950); Me. Rev. Stat. Ann. ch. 107, § 36 (1954); Md. Code Ann. art. 100, §§ 63-75 (1957); Mass. Gen. Laws Ann. ch. 214, § 9A (1955); Minn. Stat. § 185.10 (1957); Mont. Rev. Codes Ann. § 93-4203(8) (1947); N.J. Rev. Stat. § 2A: 15-51 to -58 (1951); N.Y. Civ. Proc. Art. § 876-76a, superseded by N.Y. Lab. Law § 807-08 (Supp. 1963); N.D. Cert. Code § 34-08-05 (1943); Okla. Stat. tit. 40, § 166 (1951); Ore. Rev. Stat. §§ 662.080-.090 (1961); Pa. Stat. Ann. tit. 43, § 206 (1952); R.I. Gen. Laws Ann. §§ 28-10-2 (1956); Utah Code Ann. §§ 34-1-28 to -34 (1953); Wash. Rev. Code §§ 49.32.010-.910 (1961); Wis. Stat. § 133.07 (1959); Wyo. Stat. Ann. § 27-239 to -245 (1957). Of these only fourteen can properly be called "little Norris-LaGuardia acts." These are: Conn., Idaho, La., Md., Mass., Minn., N.J., N.Y., N.D., Ore., Pa., Wash., Wis., Wyo.

[58] McCarroll v. Los Angeles County Distr. Council of Carpenters, 49 Cal. 2d 45, 64, 315 P.2d 322, 332-33 (1957): "Uniformity in the determination of the substantive federal right . . . is not threatened because a state court can give a more complete and effective remedy."

[59] Curtis v. Tozer, 374 S.W.2d 557, 591 (St. Louis Ct. App. 1964); General Bldg. Contractor Ass'n v. Local 542, Int'l Union of Operating Eng'rs, 370 Pa. 73, 80, 87 A.2d 250, 254 (1952).

[60] C.D. Perry & Sons, Inc. v. Robilotto, 39 Misc.2d 147, 240 N.Y.S.2d 331, 332 (1963).

[61] McCarroll v. Los Angeles County Distr. Council of Carpenters, supra note 38.

[62] Id. at 73, 315 P.2d at 338, dissent of Justice Carter.

[63] Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 226 (1962), dissent of Justice Brennan.

The fact remains, however, that if Section 4 of the Norris-LaGuardia Act creates a federal substantive labor policy against the issuance of injunctions, it should be binding on the state courts. If it is simply a jurisdictional limitation on the federal courts it should not be binding.[64] The better approach, it appears, would be to consider the Norris-LaGuardia Act a jurisdictional statute and allow the states to maintain their right to issue injunctions. Congress intended the act to apply only to the federal courts. It would have specifically stated otherwise if it had intended the states to be bound by the act.[65] In general, the reasons behind this point of view as set out above are the more convincing.

Therefore, if the states possess the power to issue a no-strike injunction, the right to remove must be denied. If not, the right to this state enforcement would be in name only and ineffective since removal of the action would always preclude its use. Since the majority of the federal courts now refuse to grant a motion for removal under the conditions of the case at hand, this should continue to be the policy.[66]

In conclusion, it appears that the federal courts do not have the power to entertain an action for removal which seeks a no-strike injunction. The action should be remanded to the state court. Further, all of these actions for violation of collective bargaining agreements should be considered to have arisen under Section 301(a) of the LMRA and the federal substantive labor law should be applied by the states in enforcing these actions. However, since the Norris-LaGuardia Act is not part of the federal substantive law, but rather is jurisdictional, the states need not apply this law but may issue injunctions to enforce no-strike agreements.

If the United States Supreme Court should ultimately resolve the issue, the following holding might be anticipated. State courts must apply federal labor law and policy in enforcing collective bargaining agreements, but retain the power to issue the no-strike injunction. Further, the federal district courts are unable to grant removal of actions in which no-strike injunctions are sought.

MATTHEW T. CONNOLLY

Trade Regulation—Price Discrimination—Meaning of "Like Grade and Quality" Under Section 2(a) of the Robinson-Patman Act—*Borden Co. v. FTC.*[1]—The Borden Company manufactures and distributes dairy products and sells both the Borden brand and private label brand evaporated milk. Although chemically identical and similarly packed, except for the

[64] See Comment, 72 Harv. L. Rev. 354, 364-68 (1958).

[65] The Court in Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 204 (1962), stated that "if Congress had intended that § 301 suits should also not be subject to the anti-injunction provisions of the Norris-LaGuardia Act, it . . . would have made its intent known in this same express manner." This argument can also apply to the fact that had they intended the states to be bound by the act they would have specifically made their intent known.

[66] See cases cited supra note 9.

[1] Borden Co. v. FTC, 339 F.2d 133 (5th Cir. 1964).