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Labor Law--Federal vs. State Jurisdiction--Common Law Action for Damages for Conduct Which Is Also an Unfair Labor Practice under LMRA

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> "There are practical as well as theoretical reasons for not excusing (the owner). The rule we are adopting tends to make the streets safer by discouraging the hazardous conduct which the ordinance forbids. It puts the burden of the risk, as far as may be, upon those who create it."[24]

This is to be compared with a statement by the Massachusetts court in *Sullivan v. Griffin*:

> "The plaintiff's contentions go far toward making the defendant an insurer as to the consequences of every accident in which his automobile might become involved while operated by the original thieves or their successors in possession. This is a course upon which, even if it were open we decline to embark."[25]

It should be kept in mind that this "judicial policy" is neither absolute nor inflexible. It must be administered as to the facts presented in each case. A criminal act is never a superseding cause *per se*, but only when the surrounding facts are such that under no rational interpretation of these facts could the intervening act have been foreseen. Or, more realistically, where the court feels that it would be improper that the original actor bear the risk of the thief's negligent act. The principal case involves a set of facts on which the greater number of courts have refused to extend liability for the criminal's act. Yet it can hardly be said that the same courts, confronted by a different fact situation, would hold the act to be a superseding cause as a matter of law.[26]

George Moscone

LABOR LAW. FEDERAL VS. STATE JURISDICTION—COMMON LAW ACTION FOR DAMAGES FOR CONDUCT WHICH IS ALSO AN UNFAIR LABOR PRACTICE UNDER LMRA.

In the recent Supreme Court decision of *United Construction Workers v. Laburnum*,[1] it was held that a state court could award damages for tortious conduct of a union organization even though such conduct was also an unfair labor practice under the Labor Management Relations Act.[2] The plaintiff contractor filed a common law tort action for damages allegedly caused by the conduct of the union which resulted in his losing his contracts with the construction company. The Circuit Court of the City of Richmond found the defendant union guilty of threatening and intimidating employees of the contractor in an effort to induce them to join the union. Finding this to be a interference with advantageous relations, the court awarded compensatory and punitive damages under the common law of Virginia. The Supreme Court of Appeals of the Commonwealth of Virginia affirmed the decision and modified the amount of the damages awarded.[3] On a writ of certiorari, the Supreme Court upheld the ruling, concerning itself solely with the jurisdictional question.

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[24] 139 F.2d 14, 16 (D.C. Cir. 1943).

[25] 318 Mass. 359, 362, 61 N.E.2d 330, 332 (1945).

[26] Illinois and New Jersey both held, on facts similar to the principal case, that the criminal act was a superseding cause. *But see* Neering v. Illinois Cent. R.R. Co., 383 Ill. 366, 50 N.E.2d 497 (1943); Brower v. New York Cent. & Hudson River R.R. Co., 91 N.J.L. 190, 103 Atl. 166 (1918). In these cases it was held, on facts different from the principal case, that the defendant was liable for the intervening acts of criminals which he should have foreseen.

[1] 347 U.S. 656 (1954).

[2] 61 STAT. 136 (1947), 29 U.S.C. § 141 *et seq.* (Supp. 1953).

[3] United Construction Workers v. Laburnum, 194 Va. 872, 75 S.E.2d 694 (1953).

The ruling of the principal case seems to be a partial solution of the question of Federal vs. State jurisdiction in labor disputes. This problem of Federalism in the field of labor relations has been a thorn in the judicial side since the passage of the National Labor Relations Act in 1935.[4] This question was heightened in 1947 with the passage of the complex and controversial Taft-Hartley Act.[5] Since no statutory guides to jurisdiction were laid down and the language of the Acts was extremely broad, the result has been a body of federal and state cases with confused, confusing and contradictory decisions in labor litigation. On these shifting sands of judicial precedent, the rulings of the Supreme Court uneasily rest.

On first examination of Supreme Court holdings in labor controversies it appears their attitude has pointed towards complete federal occupation of the labor field and that states have been totally excluded. But a closer analysis of the leading cases would seem to indicate a concurrent federal and state jurisdiction.[6] State action has only been excluded when it was in direct conflict with and repugnant to federal policies and procedures. In the *Laburnum* case, this view was apparently solidified and expressly stated in the first case to reach the high court in which the state had jurisdiction of a dispute on the basis of common law tort and the conduct was also an unfair practice under LMRA. The Court's holding, in effect that NLRB and state courts have concurrent jurisdiction, appears too farreaching. It is here submitted that this ruling must be narrowed down since the states are excluded from any action within the purview of Section 303 of the LMRA, which concerns secondary boycotts and jurisdictional disputes. As a result, the decision will not have the clarifying effect on the jurisdictional question it was apparently intended to have and the problem of federalism is still present.

In the *Laburnum* case, the defense contended that where interstate commerce was involved in a labor dispute and the conduct constituted an unfair labor practice under Section 8(b)(1)(A) of the LMRA, the states were excluded from entertaining a common law tort action for the recovery of damages. The dissenting opinion by Justice Douglas adopted this view and held that the Taft-Hartley Act had so completely occupied the labor relations fields that state regulation was precluded unless expressly authorized. The dissent relied on the broad implications of *Garner v. Teamsters*[7] and said that since the Supreme Court had excluded state injunctive relief against an unfair labor practice, like reasons should prevent the states from giving any other sanction to conduct which was also an unfair labor practice.

The majority opinion distinguished the *Garner* case on the ground that Congress had set up administrative machinery and the state procedure was in direct

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[4] 49 STAT. 449 *et seq.*, 29 U.S.C. (1946 ed.) § 151 *et seq.* (1953) Cox and Seidman, *Federalism and Labor Relations,* 64 HARV. L. REV. 211 *et seq.* (1950), Hall, *The Taft-Hartley Act v. State Regulation,* 1 J. PUB. LAW 97 (1952), Rose, *The Labor Management Relations Act and the States Power to Grant Relief,* 39 VA. L. REV. 765 (1953), Note, 27 N.Y.U.L.Q. REV. 468 (1952), Note, 6 STAN. L. REV. 555 (1954), Note, 7 VAND. L. REV. 374 (1954).

[5] *Supra* note 2.

[6] Bus Employees v. Wisconsin Employment Relations Board, 340 U.S. 383 (1951), International Union UAW, CIO v. O'Brien, 339 U.S. 454 (1950), Plankington Packing Co. v WERB, 338 U.S. 953 (1950), LaCrosse Telephone Corp. v. WERB, 336 U.S. 18 (1949), Bethlehem Steel Co. v NYSLRB, 330 U.S. 767 (1947), Hill v. Florida *ex rel.* Watson, 325 U.S. 301 (1945).

[7] Garner et al. v Teamsters, Chauffers and Helpers Local Union # 776 (AFL), 346 U.S. 485 (1953).

conflict. However, the LMRA had not provided any machinery for the awarding of damages. Thus it was reasoned that denial of state action here would create a vacuum and allow the union to escape liability for its tortious conduct. The court points to Section 303(b) as the one place in the LMRA which expressly states a judicial remedy of damages and allows recovery to private parties in federal district court or in any other court having jurisdiction of the parties.[8] The Court holds that this is consistent with traditional state jurisdiction for enforcement of criminal penalties and common law liabilities generally. "This is inserted," the Court said, "to assure uniformity in rights of recovery in the state courts and also grants jurisdiction to the Federal Courts without respect to the amount in controversy."[9]

Section 303(b) of the Taft-Hartley Act states:

> "Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of Section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."[10]

The *Laburnum* decision, in relying on this section for support, clearly interpreted it as granting a remedy which could be enforced in either a federal or state tribunal. The Court held this concurrent jurisdiction to be consistent with their ruling that a state could give remedial relief where the conduct was also an unfair labor practice under LMRA. On closer examination, the section seems to create a federal right enforceable only in a federal court, therefore the section was apparently misinterpreted.

In looking to the language of the section, it must be borne in mind that literalness is not the sole touchstone of legislative construction.[11] It has been intimated in a recent Supreme Court opinion that the words in Section 303(b), "in any other court having jurisdiction" refer only to other federal courts such as territorial courts and not to the various state courts.[12] Such an interpretation would regard the right of action given to private parties as a new federal substantive right to be enforced in a federal forum. This would not be creating concurrent federal and state jurisdiction but would require the establishment of a federal common law.[13]

An examination of the history and purposes of Section 303 will support the aforementioned construction. The NLRA dealt solely with unfair labor practices on the part of management and neither secondary boycotts, jurisdictional disputes, nor any other union activities were made unlawful by statute. There was some question whether the secondary boycott and particularly the jurisdictional dispute, would have been recognized as common law torts. With the 1947 amendment to NRLA, Congress recognized such conduct to be costly, reprehensible and sorely condemned in the eyes of the public, and such activities were therefore outlawed. Congress expressly established the right of action in Section 303(b) due to this question of state's treatment of such conduct, both by statute and at common law.

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[8] 61 STAT. 158, 159, 29 U.S.C. (1952 ed.) § 187(b) (1947).

[9] *Supra* note 1 at 665-6.

[10] *Supra* note 8.

[11] ILWU v. Juneau Spruce Corp., 342 U.S. 237 (1952).

[12] *Ibid.*

[13] See Banner Mfg. Co. v. United Furniture Workers, 90 F.Supp. 723 (S.D.N.Y. 1950), Schatte Inc. v. International Alliance T.S.E., 182 F.2d 158 (9th. Cir. 1950).

The purpose was to achieve a uniform adjudication of such remedies and to universally outlaw such conduct.[14]

When Section 303 is read in conjunction with Section 301, Congressional intent to create new federal substantive rights enforceable only in a federal form is more apparent. Section 301 expressly grants jurisdiction to any United States District Court for actions of breach of bargain contracts. This jurisdiction is broadened by the elimination of the diversity of citizenship requirement and the $3000 minimum amount in controversy Section 303 is subject to the provisions of Section 301, and even though it did not expressly eliminate the need for diversity of citizenship, courts have held that it is not required for an action for damages in a federal court.[15]

This view of an exclusive federal right receives further support when an examination is made of the remedy provided by the act, to wit: " and shall recover the damages by him sustained and the cost of the suit."[16] Prima facie, this language would preclude an award of punitive damages against a union found guilty of conduct enumerated in Section 303(a) In an action in the United States District Court sitting in Virginia, an action for damages was brought against a union which had conducted a secondary boycott.[17] This was a violation of Section 303 and also an interference with contractual relations under Virginia tort law. The federal judge relied on the common law principle that an aggravated and unjustified interference with contractual relations, in reckless disregard of the rights of the contracting parties, justifies an award of exemplary or punitive damages. The defendant cited authority in which identical statutory language prohibited recovery of punitive damages.[18] The court held that even though Section 303 did not expressly provide for punitive damages, it did not expressly prohibit their recovery

This case was reversed by the United States Circuit Court of Appeals on grounds that Section 303 only allowed compensatory damages and that the lower court could not decide on the basis of state common law, as there was no diversity of citizenship.[19] This appears the better view as to punitive damages. If the Virginia District Court's view were to be followed, it would point to a concurrent jurisdiction. This would give injured party a choice of remedy and allow him to go into a state court and recover punitive damages and yet he would be limited to actual damages in a federal court. Such a conclusion would directly thwart the purpose behind the section which was to achieve uniformity of decision regarding such conduct.

Although a reliance on Congressional intent can be illusory in the interpretation of the fine points of legislative construction, it will illuminate the question of punitive damages and aid the courts in charting the undefined areas of jurisdiction. There were several earlier cases holding unions liable for treble damages under the Sherman Anti-Trust Act.[20] Such a penalty on labor organizations was

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[14] 61 STAT. 136 (1947), 29 U.S.C. § 141 (Supp. 1953) (Short Title and Declaration of Policy), H.R. REP. No. 245, 80th Cong., 1st Sess. (1947).

[15] *Supra* note 13.

[16] *Supra* note 8.

[17] Patton v. United Mine Workers, 114 F.Supp. 596 (W.D. Va. 1953)

[18] Penn. R.R. Co. v. International Coal Mining Co., 230 U.S. 184 (1913).

[19] United Mine Workers v. Patton, 211 F.2d 742 (4th Cir. 1954).

[20] Loewe v Lawlor, 208 U.S. 274 (1908), Coronado Coal Co. v UMW, 268 U.S. 295 (1925).

bitterly opposed and later cases rejected this idea.[21] The atmosphere in which the Taft-Hartley amendment was incubated was one of extreme industrial unrest. Thus an attempt to include a provision making unions liable in treble damages was denounced.[22] The Senate debate over the punitive measure resulted in its rejection on the grounds that it would increase the dissention between employers and unions and would only lead to demands that equally strong punitive measures be made available against management.[23] Senator Taft introduced a nonpunitive provision which was subsequently adopted in LMRA as Section 303. In defending the provision, the Senator stated, "After all, it is only to restore to people who lose something because of boycotts and jurisdictional strikes, the money they have lost."[24] The whole tenor of testimony in hearings, the committee reports, congressional debate and the final adoption of the nonpunitive clause, all seem to indicate a congressional adversity to the imposition of punitive measures against a union organization. This is consistent with the policy of the LMRA of equal responsibility before the law and with the broader objective of eliminating industrial strife. To reach these goals requires an equalizing of the bargaining positions of labor and management, which would not be possible with punitive damages imposed on one side or the other.

From the foregoing analysis, it appears that a state court cannot entertain a common law action for damages for conduct also constituting an unfair labor practice when such conduct is within the narrower range of Section 303. To hold otherwise would be to allow state jurisdiction in direct conflict to federal procedure and policy. This conflict is no less repugnant when disguised as a common law tort action for damages than an action under Section 303 of the LMRA.

The question then arises whether or not the legislative background of the punitive damages problem could be extended to all actions for damages which are also unfair labor practices. Such a view would be consistent with the desire for uniformity and equality which is inherent in the Act. But if such was congressional intent, it was not expressed in the provisions of the Act. Since there was no judicial machinery established beyond Section 303, to deny state jurisdiction under the broader range of Section 8 would create an immunity from tortious conduct. If it is found in balancing the conflicting interests involved, that the purposes of the Act should best be effectuated by the establishment of a federal forum for the enforcement of damages, then solution must await legislative reform.

Frank E. Howard

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[21] U.S. v. Hutcheson, 312 U.S. 219 (1941); Apex Hosiery Co. v. Leader, 310 U.S. 219 (1938).

[22] House version contained such a provision in H.R. 3020, 80th Cong., 1st Sess. § 301 (1947), making unions liable under Sherman Act. The predecessor to Taft-Hartley, the Case bill, contained a like provision but the bill was vetoed by President Truman.

[23] 2 LEGISLATIVE HISTORY OF LMRA, 1361, 1369-70 (comments of Senators Morse and Taft); *Hearings before Committee,* 80th Cong., 1st Sess. 1381 (1947), 1 LEGISLATIVE HISTORY OF LMRA 456-62; Note, 6 STAN. L. REV. 555.

[24] 2 LEGISLATIVE HISTORY OF LMRA 1371 (1947).