March 1993

Rum Creek Coal Sales, Inc. v. Caperton: The Fourth Circuit Preempts West Virginia's Neutrality Statute

Kelly R. Reed
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol95/iss3/10

This Student Work is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
RUM CREEK COAL SALES, INC. v. CAPERTON: THE FOURTH CIRCUIT PREEMPTS WEST VIRGINIA'S NEUTRALITY STATUTE

I. INTRODUCTION ........................................... 877
II. FEDERAL PREEMPTION OF STATE LAW ARENA ........ 878
A. The Garmon Doctrine .................................... 879
B. The Machinists Doctrine ............................... 881
C. A Recent Development in Federal Preemption ...... 885
D. Exceptions to Federal Preemption .................. 886
   1. Traditional Police Powers ........................... 886
   2. Matters of Peripheral Concern to Labor
      Policy .................................................. 888
III. RUM CREEK II ........................................... 891
   A. Statement of the Case ............................... 891
   B. The Opinion ......................................... 893
   C. Analysis ............................................. 895
IV. CONCLUSION ............................................... 898

I. INTRODUCTION

The National Labor Relations Act1 (NLRA) was enacted with the intent to protect employees’ rights to organize and engage in certain collective action and to facilitate collective bargaining between labor and management.2 The labor-management relationship carries with it certain rights and duties which are delineated in sections 7 and 8 of the NLRA.3 Section 7 outlines activities engaged in by labor which are “protected,” including the right to strike.4 Section 8 outlines activi-
ties engaged in by both labor and management which are "prohibited" as unfair labor practices. Also included in section 8 is the duty to bargain collectively in good faith for both labor and management.

Although the NLRA outlines these rights and duties in a fairly clear manner, it fails to discuss the areas that remain open for state regulation. As the Supreme Court of the United States has stated, the Act "leaves much to the states, though Congress has refrained from telling us how much." Notwithstanding this statement by the Court, as NLRA preemption principles have developed, state regulation of the labor-management relationship has been largely displaced.

Recently, in Rum Creek Coal Sales, Inc. v. Caperton (Rum Creek II), the United States Court of Appeals for the Fourth Circuit struck down West Virginia's Neutrality Statute, holding it to be preempted by the NLRA. This Comment discusses the development of federal preemption principles under the NLRA and their application to the decision in Rum Creek II. The discussion will explain the nuances of preemption principles, especially as they relate to the facts in Rum Creek II. The analysis will focus on questions concerning the current status of the preempted statute and the apparent imposition of an affirmative duty on the State Police in a labor dispute. Although the court's opinion leaves these questions unanswered, the court's decision to preempt the statute as it was interpreted and applied comports with existing NLRA preemption principles.

II. FEDERAL PREEMPTION OF STATE LABOR LAW


5. Id. § 158.
6. Id.
9. 971 F.2d 1148 (4th Cir. 1992) [hereinafter Rum Creek II].
10. Id.
Relations Board (commonly referred to as the Briggs-Stratton case),\textsuperscript{11} held that a state could regulate activity that was neither protected nor prohibited under the auspices of the National Labor Relations Act.\textsuperscript{12} The Court declared that intermittent work stoppages engaged in by employees and encouraged by the union did not fall within the protections or prohibitions contained in sections 7 and 8 of the NLRA.\textsuperscript{13} Furthermore, the National Labor Relations Board (NLRB) had jurisdiction over strike activities having an illegal purpose but not over such activities utilizing an illegal method, as did those in Briggs-Stratton.\textsuperscript{14} The Court thus held that no conflict existed between the NLRA and the state regulation because the NLRA simply did not encompass the activity in question.\textsuperscript{15} Based on the fact that the NLRA did not encompass this activity, the Court further declared that if the state did not regulate such conduct, it was not subject to regulation by any entity.\textsuperscript{16} As preemption doctrine evolved, however, the Court realized that the holding in Briggs-Stratton did not promote uniformity in the labor law arena and refused to follow the decision.\textsuperscript{17}

A. The Garmon Doctrine

In San Diego Building Trades Council v. Garmon,\textsuperscript{18} the Supreme Court addressed the concern that state regulations and causes of action concerning labor-management conduct interfered with the uniform

\begin{flushleft}
\textsuperscript{11} 336 U.S. 245 (1949) (Briggs-Stratton).
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 253.
\textsuperscript{14} Id. (emphasis added)
\textsuperscript{15} Id.
\textsuperscript{16} Id.; see also United Elec., Radio & Machine Workers of Am. v. Wisconsin Employment Relations Board, 315 U.S. 740 (1942) (holding that states are not stripped of their traditional police powers in regulating mass picketing, threats, and violence during a labor dispute).
\textsuperscript{17} See, e.g., International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976); San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245 n.4 (1958) (holding Briggs-Stratton overruled except where a state seeks to regulate violent activity associated with a labor dispute).
\textsuperscript{18} 359 U.S. 236 (1959).
\end{flushleft}
national rule of the NLRA in labor disputes. This concern led the Court to hold that where the activity that a state seeks to regulate is even arguably protected or prohibited under sections 7 or 8 of the NLRA, the state is not free to regulate the activity even if the NLRB refused to act.

The employer in Garmon commenced actions with both the state and the NLRB to enjoin peaceful union picketing. Although the NLRB declined to assert jurisdiction, the state court granted an injunction against the union and awarded damages to the employer. On appeal, the California Supreme Court upheld the lower court's power over the dispute on the bases that the NLRB had declined to act and that the conduct of the union was an unfair labor practice under the NLRA.

The Supreme Court of the United States granted certiorari and held that "the refusal of the [NLRB] to assert jurisdiction did not leave with the states power over activities they otherwise would be preempted from regulating." On remand, the California Supreme Court set aside the injunction but sustained the award of damages.

The Supreme Court heard the case again and held that a state could not award damages for activity that it could not enjoin. In reaching this decision, the Court stated that Congress intended to place the administration of the nation's labor policy with the NLRB as a centralized administrative agency equipped with specialized procedures, knowledge, and experience in the area of labor relations. The Court in Garmon relied heavily on its decision in Garner v. Teamsters Union:

19. Id.
20. Id. at 245.
21. Id. at 239.
22. Id. at 237-38.
23. Id.
24. Id. at 238.
25. Id. at 239.
26. Id.
27. Id. at 242.
Congress did not merely lay down a substantive rule of law to be
enforced by any tribunal competent to apply law generally to the parties. It
went on to confide primary interpretation and application of its rules to a
specific and specially constituted tribunal and prescribed a particular proce-
dure for investigation, complaint and notice, and hearing and decision, in-
cluding judicial relief pending a final administrative order. Congress evi-
dently considered that centralized administration of specially designed
procedures was necessary to obtain uniform application of its substantive
rules and to avoid these diversities and conflicts likely to result from a
variety of local procedures and attitudes towards labor controversies . . .
A multiplicity of tribunals and a diversity of procedures are quite as apt to
produce incompatible or conflicting adjudications as are different rules of
substantive law . . . .

Although the Garmon Court explicitly placed activities even argu-
ably protected or prohibited under sections 7 or 8 of the NLRA in the
primary jurisdiction of the NLRB, the Court did not resolve the ques-
tion whether a state is preempted from regulating activities that are not
so protected or prohibited.

B. The Machinists Doctrine

The focus of the Machinists doctrine differs fundamentally from
that of the Garmon doctrine. While the Garmon doctrine places prima-
ry jurisdiction over protected or prohibited activities with the NLRB,
the focus of the Machinists doctrine is on activities that are not subject
to any regulation because Congress intended that the activities be left
to the free play of economic forces in the collective bargaining pro-
cess.

The seeds of the Machinists doctrine were sown in NLRB v. Insur-
ance Agents’ International Union32 and Teamsters Union v. Morton.33 In Insurance Agents, the Supreme Court held that the NLRB

29. Garmon, 359 U.S. at 242-43 (quoting Garner v. Teamsters Union, 346 U.S. 485,
490-91 (1953)).
30. Id. at 245.
31. International Ass’n of Machinists & Aerospace Workers v. Wisconsin Employment
did not have authority to find a violation of the duty to bargain in good faith where the union engaged in tactics not protected or prohibited by the NLRA.34 While engaged in contract negotiations on behalf of its members with the Prudential Insurance Company, the union and its members began concerted on-the-job activities designed to harass the company.35

Prudential filed a charge with the NLRB claiming the union refused to bargain collectively.36 The NLRB determined that the union's activities amounted to a failure to bargain in good faith pursuant to its duties under section 8 of the NLRA and issued a cease and desist order against the union.37

The Supreme Court characterized the NLRB's decision as an intrusion into national labor policy.38 The Court stated that "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences."39 The Court also declared that "at the present statutory stage of our national labor relations policy, the two factors—necessity for good-faith bargaining between parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms—exist side by side."40 Additionally, the Court reasoned that to allow the NLRB to interject itself into these processes would undermine national labor policy because the NLRB would effectively enter the bargaining process to an extent Congress has not authorized.41

In a similar vein, the Supreme Court, in Teamsters Union v. Morton,42 held that a state was precluded from awarding damages, under its common law, where a union had engaged in secondary boycott

34. Insurance Agents, 361 U.S. at 490.
35. Id. at 479-80.
36. Id.
37. Id. at 481.
38. Id. at 488-89.
39. Id. at 488.
40. Id. at 489.
41. Id. at 498.
42. 377 U.S. 252 (1964).
activities which were not protected or prohibited by the NLRA.\textsuperscript{43} Although the focus of the Court’s decision in \textit{Morton} was on the state’s regulation rather than on the NLRB as in \textit{Insurance Agents}, its reasoning was the same. The Court embraced the rationale that secondary boycott measures, such as those taken by the union in \textit{Morton}, are weapons of self-help permitted by the NLRA and that such tactics formed an integral part of the union’s “effort to achieve its bargaining goals during negotiations with the respondent.”\textsuperscript{44} The Court further stated that if allowed to stand, state regulation and control of secondary boycott activity would “frustrate the congressional determination to leave this weapon of self-help available and . . . upset the balance of power between labor and management expressed in our national labor policy.”\textsuperscript{45}

These seminal cases eventually resulted in the Court’s decision in the case of \textit{International Association of Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission}.

The essence of the \textit{Machinists} doctrine is that activities engaged in by either an employer or an employee, which are not protected or prohibited under sections 7 or 8 of the NLRA, are not regulable by either a state or the NLRB; instead, such activities were intended by Congress to be available to each party in labor negotiations or disputes and should be left to the free play of economic forces.\textsuperscript{46}

In \textit{Machinists}, the union and its members engaged in a concerted refusal to work overtime during ongoing negotiations for a collective bargaining agreement with the employer.\textsuperscript{47} The employer filed a charge with both the NLRB and the Wisconsin Employment Relations Commission charging that the refusal to work overtime constituted an unfair labor practice under federal and state law.\textsuperscript{48}

\textsuperscript{43} \textit{Id.} at 260. Note that the secondary boycott activity in \textit{Morton} is addressed under section 303 of the NLRA as opposed to sections 7 or 8; however, the analysis by the Court is the same.

\textsuperscript{44} \textit{Id.} at 259.

\textsuperscript{45} \textit{Id.} at 260.

\textsuperscript{46} 427 U.S. 132 (1976).

\textsuperscript{47} \textit{Id.} at 136-55.

\textsuperscript{48} \textit{Id.} at 134.

\textsuperscript{49} \textit{Id.} at 135.
The NLRB dismissed the charge on the ground that the concerted refusal to work overtime did not violate the NLRA; thus, under *Insurance Agents*, the refusal was not conduct cognizable by the NLRB. The Wisconsin Commission, however, decided that the activity in question was not arguably protected or prohibited by the NLRA and therefore, the Commission was not preempted from regulating such conduct. The state Commission further concluded that the refusal to work overtime constituted an unfair labor practice under Wisconsin law and it entered a cease and desist order against the union.

Subsequent to affirmation by both the Circuit Court and the Supreme Court of Wisconsin, the United States Supreme Court granted *certiorari*. In its majority opinion, the Court's analysis focuses on a survey of federal preemption in the field of labor law, beginning with an outline of the *Garmon* doctrine. The Court then states that "a second line of pre-emption analysis has been developed in cases focusing upon the crucial inquiry whether Congress intended that the conduct involved be unregulated because left 'to be controlled by the free play of economic forces.'" In giving substance to this preemption analysis, the Court draws mainly from its decisions in *Insurance Agents* and *Morton*, ultimately stating that "the crucial inquiry regarding preemption is . . . whether 'the exercise of plenary state authority to curtail or entirely prohibit self-help would frustrate effective implementation of the [NLRA's] processes.'" The *Machinists* Court answers this inquiry in the affirmative, stating that the Wisconsin law impinges upon the union's use of economic pressure which, under the NLRA, is "part and parcel of the process of collective bargaining."

50. *Id.*
51. *Id.*
52. *Id.* at 135-36.
53. *Id.*
54. *Id.* at 138-39.
55. *Id.* at 140 (quoting NLRB v. Nash-Finch Co., 404 U.S. 138, 144 (1971)).
57. *Id.* at 148-49 (quoting NLRB v. Insurance Agents' International Union, 361 U.S. 477, 495 (1960)).
C. A Recent Development in Federal Preemption

More recently, the Supreme Court expanded federal preemption in the labor relations area with its decision in *Golden State Transit v. City of Los Angeles* (*Golden State I*).\(^{58}\) Prior decisions dealt with state regulation of activities where either labor or management was the actor. However, in *Golden State I*, the focus was on governmental activity that interfered with the rights of parties under the NLRA in a labor dispute.\(^{59}\) Golden State operated a taxicab franchise in Los Angeles California.\(^{60}\) While its franchise renewal application was pending with the city, Golden State’s contract with its cab drivers expired.\(^{61}\) After a short term contract between Golden State and the union also expired, the drivers went on strike.\(^{62}\) The Los Angeles City Council determined that it would not renew Golden State’s franchise unless the strike was settled in an allotted amount of time.\(^{63}\) Subsequently, when the strike was not settled within City Council’s time frame, Golden State’s franchise expired.\(^{64}\)

The Court held that the city’s action in conditioning Golden State’s taxicab franchise renewal on the settling of a strike by its employees impinged upon economic measures of self-help guaranteed to parties in a labor dispute under the NLRA.\(^{65}\) The Court flatly rejected the city’s argument that its action was based on its transportation policy and that it had not intended to regulate labor relations. By its actions, the Court stated, the city had entered into the bargaining process in a manner that Congress has not authorized.\(^{66}\)

---

58. 475 U.S. 608 (1986) [hereinafter *Golden State I*].
59. Id.
60. Id. at 609.
61. Id.
62. Id. at 610.
63. Id. at 611.
64. Id.
65. Id. at 618.
66. Id. at 615-18.
D. Exceptions to Federal Preemption

Although the development of NLRA preemption principles in the area of labor law has largely circumscribed state regulation, there are instances where state regulation has been deemed valid. The Supreme Court has allowed state court causes of action and regulations under the guise of “traditional police powers” and “matters which are of peripheral concern” to labor policy. Although these exceptions are given separate titles, there is a certain amount of overlap in the two doctrines.

1. Traditional Police Powers

Fairly early in the development of NLRA preemption principles, the Supreme Court recognized a state’s right to exercise its traditional police powers over public safety and order. In United Elecical, Radio & Machine Workers of America v. Wisconsin Employment Relations Board (Allen-Bradley) the Court considered whether a Wisconsin statute conflicted with the NLRA and thus should be preempted. The statute in question made it an unfair labor practice for an employee or the union to engage in mass picketing, to inflict personal injury or property damage, and to block ingress and egress to and from any place of employment. During a strike situation, the union in Allen-Bradley engaged in such prohibited activities against its employer, prompting the Wisconsin Employment Relations Board to issue a cease and desist order against the union.

On appeal, in considering whether the Wisconsin statute conflicted with the policies and purposes of the NLRA, the Supreme Court stated that it would not lightly infer that Congress preempted a state’s sovereignty to exercise its police powers “over such traditionally local matters as public safety and order.” An important consideration in

68. Id.
69. Id. at 741-42.
70. Id. at 743.
71. Id. at 749.
the Court's preemption analysis was that Congress had not placed these types of activities under regulation of the NLRA. As a result, the Court concluded that "the [NLRA] was not designed to preclude a state from enacting legislation limited to the prohibition or regulation of this type of employee or union activity."

In subsequent cases, the Supreme Court has continued this trend. In United Construction Workers v. Laburnum Construction Co., the Court held that a common-law tort action brought in state court for damages sustained by a union's violent conduct was not preempted by the NLRA. In Laburnum, the employer was forced to abandon its work projects due to threats, intimidation, and violence on the part of the union. As a result, the employer brought a common-law tort action against the union in state court. The jury found for the employer, awarding both compensatory and punitive damages.

On appeal, the Supreme Court considered whether this type of state court action was preempted by the NLRB's exclusive jurisdiction. In its analysis, the Court reasoned that because Congress provided no alternative for traditional state court actions to collect tort damages under the NLRA, to preempt such a right of recovery would "deprive [respondent] of its property without recourse or compensation." The Court further stated that to deny such a cause of action would allow unions to destroy property without fear of liability.

72. Id. Although this case precedes the 1947 amendment to the NLRA, which arguably does place these types of activities under the Act, the Court continues to uphold state regulation of such activities under the traditional police power analysis.

73. Id. at 748.


75. Id.; see also UAW v. Russell, 356 U.S. 634 (1957) (upholding a state cause of action against a union for tortious conduct during a labor dispute); Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957) (upholding a state court injunction ordering a union to cease and desist unlawful picketing, violent conduct, and interference with ingress and egress to and from an employer's facilities).

76. Id. at 658.

77. Id.

78. Id.

79. Id. at 663-64.

80. Id. at 669.
2. Matters of Peripheral Concern to Labor Policy

The Supreme Court has also recognized an exception to federal preemption where state regulations and causes of action are of peripheral concern to the NLRA. The rationale of this exception is not necessarily that the state regulation or cause of action does not conflict with the NLRA, but rather that the conflict is so remote that it does not have a detrimental effect on NLRA policies.

In *New York Telephone Co. v. New York State Department of Labor*,[81] the Supreme Court upheld a New York law that conflicted with the NLRA because Congress intended to tolerate such a conflict.[82] The employees here engaged in a seven month strike.[83] Under New York’s unemployment law, the strikers collected unemployment benefits from the ninth week of the strike until it was over.[84] The employer brought suit seeking an injunction against enforcement of this provision of New York’s unemployment compensation law.[85] The employer argued that such benefits to strikers interfered with the NLRA policy of free collective bargaining between labor and management because not only was the employer contributing in large part to provide these benefits but also the benefits to striking employees encouraged them to remain on strike.[86]

Although the Supreme Court did not reject the employer’s interference with free collective bargaining argument, the Court stated that the New York law was not an attempt to regulate conduct within the labor-management relationship, but rather a state program designed to ensure employment security.[87] The Court further reasoned that because Congress had given consideration to and not foreclosed providing unemployment benefits to strikers when it passed the NLRA and

---

82. Id.
83. Id. at 522.
84. Id. at 523.
85. Id. at 525.
86. Id. at 523-26.
87. Id. at 532-33.
the Social Security Act, it had decided to tolerate many conflicts which might arise out of such state legislation.⁸⁸

In addition to state regulations, the Supreme Court has also upheld state court causes of action under the rationale of peripheral concern to the NLRA. In *International Association of Machinists v. Gonzales*,⁹⁹ the Supreme Court upheld a state court action which awarded reinstatement and damages to a wrongfully expelled union member on the basis that conflict with the policies of the NLRA was too remote.⁹⁰ The union member had been expelled from the union in violation of the union’s constitution and he filed suit in state court seeking reinstatement and damages.⁹¹ The state court entertained the action and awarded the relief sought. The union appealed on the basis of preemption under the NLRA.⁹²

On appeal, the Supreme Court classified the relationship between unions and their members as contractual and the present action as a breach of that contractual relationship.⁹³ The Court then stated that “the protection of union members from arbitrary conduct by unions . . . has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied.”⁹⁴ Further, the NLRB could not provide the same relief that the state court gave pursuant to its contract and damages laws.⁹⁵ The Court concluded that the possibility of conflict between the state court judgment and the policies of the NLRA was too remote to warrant preemption.⁹⁶

The Supreme Court has continued to uphold similar state court actions. More recently, in *Belknap, Inc. v. Hale*,⁹⁷ the Court held that

---


⁹⁰. *Id.*

⁹¹. *Id.* at 618.

⁹². *Id.*

⁹³. *Id.* at 618-21.

⁹⁴. *Id.* at 620.

⁹⁵. *Id.* at 621.

⁹⁶. *Id.*

a state court action for misrepresentation and breach of contract was not preempted by the NLRA.98 In Belknap, the employer hired replacement workers following a strike by its employees.99 At the time of hiring and subsequently, the employer made promises of permanent employment to the replacements regardless of the outcome of the strike.100 Upon settlement of the strike, the employer disregarded its promises and reinstated the strikers.101 The ensuing state court action by the replacements sought damages from the employer for misrepresentation and breach of contract.102 The employer argued preemption of the state court cause of action because it conflicted with the NLRA under both the Garmon and the Machinists doctrines.103

The Supreme Court rejected the employer's argument on the basis that the NLRA, although allowing an employer to hire permanent replacement workers, does not preclude a remedy for actionable behavior such as the employer engaged in here.104 The Court stated that the replacement workers did not come within the free zone of economic forces set out in the Machinists doctrine and thus, although the strikers and the employer were free to use economic weapons against each other, neither was free to inflict injury upon the replacement workers without attendant liability.105

The Court also rejected preemption under the Garmon doctrine stating that Garmon allowed states to regulate conduct of peripheral concern to the NLRA.106 An important factor in the Court's analysis

---

98. Id.
99. Id. at 494.
100. Id. at 494-96. It should be noted that during an economic strike by employees, an employer is permitted to hire permanent replacements. However, during an unfair labor practice strike, even though an employer may hire replacements for the duration of the strike, striking employees are entitled to their previous jobs once the strike is settled.
101. Id. at 496.
102. Id. at 496-97.
103. Id. at 499.
104. Id. at 500.
105. Id.
106. Id. at 509; see also Farmer v. United Brotherhood of Carpenters & Joiners of Am., 430 U.S. 290 (1977) (holding that the NLRA did not preempt a state action for intentionally inflicting emotional distress, even though a major part of the cause of action consisted of conduct that was arguably an unfair labor practice); Linn v. United Plant Guard
was that the state court action by the replacement workers had nothing in common with any NLRB adjudications of the strike. The Court concluded that the state court action was not preempted because it "would not interfere with the [NLRB's] determination of matters within its jurisdiction and that such an action is of no more than peripheral concern to the [NLRB] and the [NLRA]."

III. RUM CREEK II

Recently, in Rum Creek Coal Sales, Inc. v. Caperton (Rum Creek II), federal preemption of state action under the NLRA was revisited. The United States Court of Appeals for the Fourth Circuit applied the existing principles of NLRA preemption doctrine to strike down West Virginia's Neutrality Statute as an impediment to the policies of the NLRA.

In its decision in Rum Creek II, the Fourth Circuit relies mainly on the Machinists doctrine of preemption. Under Machinists, the court determined that Rum Creek's right under the NLRA to utilize economic weapons in reserve, namely continued operation of its business during the strike by its employees, was impeded when the State Police allowed the strikers to carry on in a violent and unlawful manner.

A. Statement of the Case

Rum Creek operated a coal mine and preparation plant in southern West Virginia. In August 1989, the United Mine Workers of Workers of Am., 383 U.S. 53 (1966) (holding that false and malicious statements in the course of a labor dispute were actionable under state law if injurious to reputation, even though such statements were in themselves unfair labor practices adjudicable by the NLRB). 107. Id. at 510.
108. Id. at 511. Although this specific language was stated in reference to the misrepresentation action in Belknap, the same rationale was applied to the breach of contract action. Id. at 512.
109. 971 F.2d 1148 (4th Cir. 1992) [hereinafter Rum Creek II].
110. Id.
111. Id.
112. Rum Creek Coal Sales, Inc. v. Caperton, 926 F.2d 353 (4th Cir. 1991) [hereinafter Rum Creek I].
America (UMWA) and employees of Rum Creek engaged in a strike that was marked by violence, personal injury, substantial property damage, and blockage of ingress and egress to and from Rum Creek’s plant.\(^{113}\) As a result of these actions on the part of the UMWA and its employees, Rum Creek was prevented from transporting essential materials to and from its plant, causing substantial losses of revenue.\(^{114}\)

Prior to the strike at Rum Creek, in anticipation of a strike at another coal mine, the West Virginia Department of Public Safety (State Police) issued a memorandum interpreting two West Virginia statutes.\(^{115}\) The statutes in question were known as the “Trespass”\(^{116}\) and “Neutrality”\(^{117}\) Statutes.\(^{118}\) The memorandum stated:

[T]roopers are simply proscribed from taking sides or doing anything not clearly in pursuit of legitimate law enforcement. Assaults, batteries and destruction of private property should be prevented and treated as any crime . . . . However, labor demonstrators on private roads or land should not be bothered until appropriate warrants or court orders are obtained by the owners of said roads or land.\(^{119}\)

Initially, Rum Creek sought and received state court and NLRB injunctions enjoining the UMWA from obstructing ingress and egress to and from Rum Creek’s plant and from other illegal activities.\(^{120}\) When these injunctions proved ineffective, Rum Creek brought suit in

\(^{113}.\) Id. at 356.
\(^{114}.\) Id.
\(^{115}.\) Id.
\(^{116}.\) W. VA. CODE § 61-3B-3(d) (1992) (“Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, That the provisions of this article shall not apply in a labor dispute.”).
\(^{117}.\) W. VA. CODE § 15-2-13 (1991) (“No officer or member of the department of public safety may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in such cases see that the statutes and laws of this State are enforced in a legal way and manner.”).
\(^{118}.\) Rum Creek I, 926 F.2d at 356.
\(^{119}.\) Id. (emphasis in original).
\(^{120}.\) Id.
federal court against the State Police seeking declaratory and injunctive relief.121 Rum Creek also sought a preliminary injunction to enjoin the State Police from enforcing the Trespass and Neutrality Statutes.122

The United States District Court for the Southern District of West Virginia denied the preliminary injunction.123 Rum Creek appealed to the United States Court of Appeals for the Fourth Circuit, which, in Rum Creek I, reversed the denial of the preliminary injunction regarding the Trespass Statute but resolved no issues regarding the Neutrality Statute.124 Subsequently, Rum Creek filed a motion for summary judgment with the district court, seeking to have both the Trespass and Neutrality Statutes declared unconstitutional because the statutes conflicted with federal law.125 The district court granted Rum Creek’s motion as to the Trespass Statute but denied the motion as to the Neutrality Statute.126

Rum Creek appealed the denial of its motion for summary judgment as to the Neutrality Statute.127 The Fourth Circuit held that the Neutrality Statute, as interpreted and applied, violated Rum Creek’s federally protected right to withstand a strike by creating an impediment to the clear federal purpose of the protection of the free expression of peaceful economic forces in a strike situation.128

B. The Opinion

The Fourth Circuit began its analysis in Rum Creek II by stating that the West Virginia Neutrality Statute has a substantial impact on the federally regulated labor-management relationship.129 The court noted that Congress has promulgated specific rules which give broad

---

121. Id. at 357.
122. Id.
123. Id.
124. Id. at 367.
125. Rum Creek II, 971 F.2d at 1149.
126. Id.
127. Id.
128. Id. at 1154.
129. Id. at 1152.
rights to labor and management, concluding that to the extent the Neutrality Statute violates, is inconsistent with, or undermines these rules, it must be preempted.\[^{130}\]

The court then declared that while not all state regulation of the labor-management relationship is preempted, the types of state regulation that are preempted under the Machinists doctrine are those that restrict “the free play of economic forces.”\[^{131}\] Among the economic tactics included in the “free play of economic forces” are striking and withstanding strikes.\[^{132}\]

Although the Neutrality Statute does not seek to regulate the labor-management relationship directly, the court declared that the State Police interpretation of the statute led to stationing troopers in nonoptimal positions and failing to deter strikers from blocking ingress and egress to and from Rum Creek’s plant.\[^{133}\]

The court’s application of the Machinists doctrine led it to find that the State Police interpretation and application of the Neutrality Statute restricted Rum Creek’s right to apply economic pressure and withstand the strike by allowing the strikers a private sanctuary from which to impede ingress and egress to and from Rum Creek’s plant.\[^{134}\] The court further buttressed its analysis by reference to Golden State I, where the Supreme Court similarly applied the Machinists doctrine to strike down an action by the city which impinged upon an employer’s right to withstand a strike.\[^{135}\]

After applying the Machinists analysis to preempt the Neutrality Statute, the court stated that the statute likely could have withstood preemption had the State Police given it a different interpretation and application.\[^{136}\] Offering an example that could withstand preemption, the court stated that, “[a] more preferable application of a doctrine of neutrality would mandate neutral enforcement of the laws of the state,

\[^{130}\] Id.
\[^{131}\] Id. at 1153.
\[^{132}\] Id.
\[^{133}\] Id. at 1151.
\[^{134}\] Id. at 1154.
\[^{135}\] Rum Creek II, 971 F.2d at 1154.
\[^{136}\] Id.
not neutral acquiescence to unlawful acts of destruction, and would promote, or at least not effectively undermine, the federal purpose of free interplay of economic forces."\textsuperscript{137}

In addition, the court characterized a “labor dispute” as a playing field which Congress intends to be equal.\textsuperscript{138} Ensuring that this playing field remains equal necessarily requires the “reasonable protection of law and order by a disinterested and neutral referee.”\textsuperscript{139} The court described the action by the State Police as providing far from that and stated, “[t]he failure to do anything to come between the strikers and management condoned violence and served to provide unjustified support to the strikers by restricting the pressure which the appellant could lawfully bring to bear in support of its own anti-strike efforts.”\textsuperscript{140}

\textbf{C. Analysis}

The court’s preemption of the Neutrality Statute, as interpreted and applied, was warranted under existing NLRA preemption principles. However, the court’s language in \textit{Rum Creek II} creates confusion regarding the current status of the statute for two reasons. First, the court implies that the Neutrality Statute, on its face, would withstand preemption. Second, the court seemingly imposes an affirmative duty on the State Police to ensure and protect an equal playing field exists between labor and management in a labor dispute.

Although the court does not explicitly make the statement, the Neutrality Statute, on its face, would withstand federal preemption as an exception under either a “traditional police powers” or a “matter of peripheral concern” approach.\textsuperscript{141} West Virginia enacted the Neutrality Statute in 1919 as part of the bill creating the Department of Public Safety.\textsuperscript{142} At that particular time in West Virginia’s history, it was

\begin{itemize}
  \item \textsuperscript{137} \textit{Id.} (emphasis in original).
  \item \textsuperscript{138} \textit{Id.}
  \item \textsuperscript{139} \textit{Id.}
  \item \textsuperscript{140} \textit{Id.}
  \item \textsuperscript{141} \textit{See Rum Creek II, 971 F.2d at 1154; see also discussion supra part II.D.}
\end{itemize}
common practice for coal mine operators to utilize local law enforcement officials as "strikebreakers" and "union busters."¹⁴³ This practice was utilized to deter employees from organizing. The resulting clashes between law enforcement officials and labor, as well as between management and labor, were often profused with violence.¹⁴⁴ Although the legislative history pertaining to the Neutrality Statute is virtually non-existent, the court in Rum Creek II believed that it was intended as a measure to preclude the newly created State Police from becoming another armed agent of coal mine operators.¹⁴⁵

Thus, the Neutrality Statute, on its face, would qualify as a traditional police power exception to NRLA preemption. The statute, by its terms, seeks to dispel violence and criminal conduct not only on the part of law enforcement officials, but also on the part of labor and management. Although not expressly speaking to state regulations concerning criminal acts of law enforcement officials, the Supreme Court has long upheld state regulation of violent and criminal conduct on the part of unions and employers.¹⁴⁶

The Neutrality Statute, on its face, would also qualify as a matter of peripheral concern to labor policy. The mandate of the Neutrality Statute does not seek to enter into the substantive policies of the NLRA by placing additional obligations on either labor or management. In actuality, the Neutrality Statute does not "regulate" the labor-management relationship per se; it simply seeks to prevent criminal conduct on the part of both law enforcement and labor and management in a labor dispute.

Thus, if the dispute had arisen over its terms alone, the Neutrality Statute would have withstood preemption. The distinction in Rum Creek II, which gave the Fourth Circuit a basis for preemption, was

¹⁴⁴. Id. at 89-93.
¹⁴⁵. See Rum Creek I 926 F.2d at 355.
¹⁴⁶. See discussion supra part II.D.1.
not the terms of the statute, but the manner in which it was interpreted and applied by the State Police. In cases prior to *Golden State I*, preemption analysis focused on state regulation where labor or management were the actors.\textsuperscript{147} Under a *Golden State I* analysis, however, the State Police interpretation and application of the statute was state action analogous to City Council's conditioning Golden State's franchise renewal on settlement of its labor dispute. As in *Golden State I*, state action on the part of the State Police in *Rum Creek II* impeded the labor-management relationship by denying Rum Creek its right to carry on its business operations during a labor dispute.

The second point of confusion in the court's language in *Rum Creek II* is that the court has seemingly imposed an affirmative duty on the State Police to ensure and protect an equal playing field between labor and management during labor disputes. The existence of such an affirmative duty on the State Police is suggested by the court's statements that:

> Without neutral enforcement of the law, the criminal acts of one or another party in a labor dispute can effectively hold that federal purpose hostage, as the acts of the strikers did here.

> . . . The equal playing field of labor dispute must effectively include the reasonable protection of law and order by a disinterested and neutral referee. Without that neutral enforcement agent, and without the prevention of wholesale unlawful and violent activity, the free zone of economic forces required by federal law is an impossibility.\textsuperscript{148}

An affirmative duty is further suggested by the court in a footnote which declares that the state's failure to prevent similar illegality if committed against the union also would be held "as a failure to protect a free zone of economic activity mandated by federal law."\textsuperscript{149}

When considering this apparent affirmative duty imposed upon the State Police in conjunction with the court's implicit declaration that the Neutrality Statute, on its face, would withstand preemption, the ultimate fate of the statute becomes unclear. The court is effectively pre-

\textsuperscript{147} See supra text accompanying notes 58-59.
\textsuperscript{148} *Rum Creek II*, 971 F.2d at 1154.
\textsuperscript{149} Id. at n.9.
empting the Neutrality Statute with one hand while giving the state an affirmative duty to carry out its mandates with the other. If the court is limiting preemption of the Neutrality Statute to its interpretation and application, a more clear and forceful statement to that effect is paramount in order for the state of West Virginia to know the status of the Neutrality Statute.

In the final analysis, regardless of whether the court’s opinion is read as preempting the Neutrality Statute outright, the apparent imposition of an affirmative duty upon the State Police to ensure and protect the equal playing field of labor dispute is unwarranted. Although there is no question that federal preemption principles articulate the concept of a “free zone of economic forces” into which the states may not generally inject themselves, there has been no articulation by any court which suggests that states are under an affirmative duty to ensure and protect this zone. The practical effect of such an imposition on the states would amount to the states being the armed agent of the NLRA. The states have never been expressed as being within the scope or policy of the NLRA. If the court is making such an assertion here, then it has gone beyond valid boundaries of federal preemption principles and effectuated policy which was not intended by Congress in enacting the NLRA.

IV. CONCLUSION

In Rum Creek II, the United States Court of Appeals for the Fourth Circuit held that West Virginia’s Neutrality Statute impinged upon the free zone of economic forces intended, under the NLRA, to be available to parties involved in a labor dispute. The court relied on the Machinists doctrine of federal preemption and the Golden State I opinion to hold that the State Police interpretation and application of the Neutrality Statute denied Rum Creek’s right to withstand a strike by allowing the strikers to block ingress and egress to and from Rum Creek’s plant.

150. Id. at 1153.
151. Id. at 1154.
The court's decision to preempt the Neutrality Statute, as interpreted and applied, comports with existing NLRA preemption principles. However, the court's opinion raises unanswered questions concerning the current status of the Neutrality Statute. First, the court implies that the Neutrality Statute, on its face, would withstand preemption. Second, the court seemingly imposes an affirmative duty on the State Police to ensure and protect an equal playing field exists between labor and management in a labor dispute. The court's opinion seems to suggest that although the letter of the Neutrality Statute is dead, the spirit of the statute is alive and well.

Kelly R. Reed