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Labor Law—Application of Pre-emption Doctrine in Suits to Enforce Collective Bargaining Agreements

P brought suit in a Michigan trial court asserting the breach of a no discrimination clause in a collective bargaining agreement. The complaint alleged that during a strike conducted by another union, non-union employees were permitted to report for work and were paid full wages, while most members of P's union were denied this privilege although they were available for service. The trial court granted D's motion to dismiss for want of jurisdiction, and the Michigan Supreme Court affirmed on the theory of pre-emption. Smith v. Evening News Ass'n, 362 Mich. 360, 106 N.W.2d 785 (1961). On writ of certiorari to the Supreme Court of the United States, held, reversed. The pre-emption doctrine does not negative a cause of action grounded in federal substantive law, even though the action complained of is admittedly an unfair labor practice. Smith v. Evening News Ass'n, 371 U.S. 195 (1962).

In 1935 the National Labor Relations Board was charged with the responsibility of determining the rights of the parties in labor disputes arising in industries engaged in interstate commerce. The federal judiciary devised the pre-emption doctrine as a shield to protect the exclusiveness of this congressional grant of jurisdiction. Pre-emption prevents the states either by statute or by administrative or judicial tribunals from intervening in the area of labor relations ceded to the labor board. Pre-emption not only applies to state courts, but is a self-imposed restraint on the federal judiciary itself. All of this is done in the name of congressional intent.

In 1947 Congress passed the Labor Management Relations Act, which contained a seemingly insignificant provision conferring jurisdiction on federal courts over disputes emanating from collective bargaining agreements. Labor Management Relations Act § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1953). Ten years later the Supreme Court held that Congress intended to grant to federal courts the authority to mold federal substantive law applicable to collective agreements. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957). The decision in Lincoln Mills spawned the inevitable clash between the pre-emption doctrine and the power of the federal judiciary to enforce the rights of the parties to a collective bargaining agreement. Simply stated, when the act complained of is arguably protected or prohibited by § 7 or § 8 of the National Labor Relations Act, and also constitutes the breach of a
collective bargaining agreement, may a federal court grant relief under federal substantive law? Assuming that a federal court may grant such relief, will state courts also be permitted to do so under the theory of concurrent jurisdiction? The principal case clearly limits the pre-emption doctrine to actions other than those alleging the breach of a collective agreement. Further it recognizes that state courts have concurrent jurisdiction with federal courts in applying the federal substantive law of collective bargaining.

The rationale of pre-emption is well stated in Garner v. Teamsters Union, 346 U.S. 485 (1953). In that case sympathetic truckers had boycotted P's loading platform in the face of teamster pickets, resulting in a ninety-five per cent deterioration in business. A state equity court enjoined the picketing on the ground that a state labor relations act prohibited a union from compelling management to coerce its employees to unionize. The state supreme court reversed the trial court since the act complained of was within the exclusive jurisdiction of the NLRB. The Supreme Court of the United States affirmed, because singular administration of labor policy was necessary to obtain a uniform result.

Perhaps the most definitive decision applying the pre-emption doctrine is Weber v. Anheuser Busch, 348 U.S. 468 (1954). There the Supreme Court held that while union action violated a state restraint of trade statute, the state court was pre-empted because the complaint alleged the violation of the NLRA, the truth of which only the labor board could determine. In the opinion the Court reviewed the pre-emption decisions to date. First, a state could not proscribe a federally protected right. Hill v. Florida, 325 U.S. 528 (1944); International Union v. O'Brien, 339 U.S. 454 (1949); and Amalgamated Ass'n v. Wisconsin Employment Rel's. Bd., 340 U.S. 383 (1950). Second, a state could not enjoin the commission of an unfair labor practice. Garner v. Teamsters Union, supra; Capitol Services, Inc. v. NLRB, 204 F.2d 848 (9th Cir. 1953) cert. denied, 346 U.S. 936 (1954). Third, a state could not certify a union subject to the jurisdiction of the board. LaCrosse Tele. Corp. v. Wisconsin Employment Rel's. Bd., 336 U.S. 18 (1948); Bethlehem Steel Co. v. New York State Labor Rel's. Bd., 330 U.S. 767 (1947). State courts were not, however, wholly precluded from the labor field. Allen-Bradley Local v. Wisconsin Employment Rel's. Bd., 315 U.S. 740 (1942) (violent picketing and disturbing the peace); International Union v. Wisconsin Employment Rel's. Bd., 336 U.S. 245 (1949) (unannounced work stoppages);

The pre-emption doctrine reached its pinnacle in San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1958), where the union was charged with the commission of an unfair labor practice. The issue was whether a state court could grant damages for peaceful picketing. The Supreme Court held that monetary relief was just as much an interference with the effective administration of the NLRB as was injunctive relief. Thus, "when it is clear or may fairly be assumed that the activities which a state purports to regulate are protected by § 7 of the NLRA, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield." Further, "in the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction." Thus, it seemed that the exclusiveness of the labor board's jurisdiction was effectively enveloped.

In 1962, the Supreme Court made important inroads on the pre-emption doctrine as it applied to judicial relief under § 301(a), supra, culminating in the decision in the principal case. In Teamsters Union v. Lucas Flour Co., 370 U.S. 238 (1962), union employees struck in protect of the firing of a fellow member for wrecking plant equipment. Later the discharge was arbitrably settled in favor of the company. Meanwhile, the company also had the strike enjoined and recovered damages in tort in a state court. The Supreme Court affirmed, holding that even in the absence of a no strike clause the parties were under a duty to arbitrate before resorting to self-help. The pre-emption doctrine was relegated to a footnote, wherein it was held inapplicable. The apparent reason is that state courts have concurrent jurisdiction to apply federal substantive law. While the trial court proceeded on a state tort theory, and the state supreme court applied state contract law, the Supreme Court affirmed because in applying federal substantive law, the same result would have been reached. This is so even though a federal court would be precluded from issuing an injunction under the Norris-LaGuardia Act.

That state courts do have concurrent jurisdiction with federal courts to apply the federal substantive law of collective bargaining
was most clearly pointed out in *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). The union sued the employer for breach of a stipulation included in a tentative draft of a new collective bargaining agreement. The union asked the state court for an injunction, accounting, and damages. Management contended that § 301(a) granted exclusive jurisdiction to federal courts and that the state court was, therefore, pre-empted. The Supreme Court rejected this argument on the ground that concurrent jurisdiction has been a "common phenomenon" throughout the history of American jurisprudence and that exclusive jurisdiction to enforce federally created rights was the exception and not the rule. Accord: *McCarroll v. Los Angeles Dist. Council of Carpenters*, 49 Cal.2d 45, 315 P.2d 322 (1957).

Prior to the Dowd Box decision, state courts had expressed some reluctance to grant relief for the breach of a collective bargaining agreement. In *Elisco v. Rockwell Mfg. Co.*, 387 Pa. 274, 127 A.2d 32 (1956), union members charged that company removal of a plant to another location was both an unfair labor practice and a breach of the collective bargaining agreement. The court applied the pre-emption doctrine. However, in a suit to enjoin the arbitration of eighteen claims, the Massachusetts court stated in response to the allegation that five employees had been fired for union activities that NLRB jurisdiction, while exclusive, could not be said to preclude voluntary arbitration by the parties. *Post Publishing Co. v. Cort*, 334 Mass. 199, 134 N.E.2d 431 (1956). This is substantially in accord with the view of the federal court that a party need not give up his contractual rights for a cumbersome administrative remedy. *Lodge No. 12, IAM v. Cameron Iron Works*, 257 F.2d 467 (5th Cir. 1958) *cert. denied*, 358 U.S. 880 (1958).

One perplexing issue which could prove vexing to a state court is how will the court decide a given case in the absence of federal precedent? In *McCarroll v. Los Angeles Dist. Council of Carpenters*, supra, the California court was squarely faced with this issue. The court said: "What the substantive law of collective bargaining agreements is we cannot know. Until it is elaborated by the federal courts we assume it does not differ significantly from our own law." Federal courts are often faced with the same issue in applying state law in diversity of citizenship cases. See, *Mason v. American Emery Wheel Works*, 214 F.2d 906 (1st Cir. 1957) *cert. denied*, 355 U.S. 815 (1957).

The principal case seemingly clarified one further matter
of importance as to the authority of the judiciary to grant relief in actions arising under § 301(a). Initially, § 301(a) was conceived to be merely procedural in nature for the benefit only of the signatory parties to a bargaining agreement; therefore, it seemed that personal rights of the individual union members were unenforceable either by the members or the union. Ass'n of Westinghouse Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1954). The principal case extends the right to enforce federal substantive law to individual members of a union, thus, laying to rest the implications of the Westinghouse case.

In summary, recent Supreme Court decisions clearly indicate that the pre-emption doctrine will not preclude a state court from applying federal substantive law and thereby granting relief for the breach of a collective bargaining agreement even though the action complained is admittedly an unfair labor practice. The NLRB seems to be in accord with this view as the Solicitor General by way of amicus curiae contended that to oust the courts of jurisdiction would obstruct the purpose of national labor policy.

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Mines and Minerals—Breach of Covenant—Measure of Damages

P, lessor under an oil and gas lease, brought this action for an alleged breach of an express covenant to market contained in the lease. The trial court rendered a judgment in favor of P and found the measure of damages to be the interest on the royalties P would have received had D acted diligently. From this decision both P and D appealed. Held, affirmed in part; reversed in part. The judgment in favor of P was sustained but the court determined that the proper measure of damages should be the amount of the royalties P would have received and not merely the interest thereon. The court further decided that D would be entitled to a dollar for dollar offset for the damages so paid when the gas was subsequently marketed. Cotiga Development Co. v. United Fuel Gas Co., 128 S.E.2d 626 (W. Va. 1962).

The principal case illustrates the difficulty that has confronted the courts in dealing with the enforcement of an oil and gas lease. The problem stems from the unusual nature of this type of leasing arrangement. An oil and gas lease is in effect a hybrid instrument.