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Labor Law--Federal Pre-Emption in the Field of Labor Relations

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lished that the federal constitution does not extend the right to counsel beyond the trial stage into the area preceding the preliminary hearing. _Larkins v. State_, 202 Md. 212, 96 A.2d 246 (1953); _Commonwealth v. McNeil_, 328 Mass. 436, 104 N.E.2d 153 (1952); _State v. Murphy_, supra; _State v. Grillo_, supra; _State v. Tune_, supra; _Commonwealth v. Agoston_, supra; _Commonwealth v. Bryant_, supra.

It is submitted that as long as the Court can not find an absence of "that fundamental fairness essential to the very concept of justice" confessions obtained while the defendant is without the assistance of counsel, as in the principal case, will be acceptable as evidence. Perhaps efforts should be made to improve the crime detection system to a point where the type of interrogation suggested in the dissenting opinion would not be necessary and the arguments contained in this article supporting the denial of counsel theory would be without foundation.

G. D. G.

LABOR LAW—FEDERAL PRE-EMPTION IN THE FIELD OF LABOR RELATIONS.—_P_ brought an action against _D_ in a circuit court of Alabama alleging malicious interference with his lawful occupation. _D_, a union, of which _P_ was not a member, called a strike, and in the course of picketing refused to allow _P_, an employee, by threats of bodily harm and damage to his personal property, to enter the plant. _P_ sought to recover for loss of earnings, mental anguish, and punitive damages. _D_ filed a plea to the jurisdiction of the court on the basis that the National Labor Relations Board, by virtue of the Taft-Hartley Act, had exclusive jurisdiction. The trial court sustained _P_’s demurrer to that plea; the case went to trial and _P_ obtained judgment for $10,000. The Supreme Court of Alabama affirmed both the circuit court’s jurisdiction and the judgment. On certiorari, the Supreme Court, held, that the award of compensatory and punitive damages was valid and the fact that both the National Labor Relations Board and the state court had concurrent jurisdiction in awarding back pay did not create a conflict of remedies. _UAW-CIO v. Russell_, 78 Sup. Ct. 932 (1958).

The principal case raises the question of federal pre-emption and how readily it is to be inferred, particularly in the field of labor relations. The first principal congressional legislation in this field was the National Labor Relations Act of 1935, 46 Stat. 499 (1935), 26 U.S.C. § 151 (1946), which created the National Labor Relations
Board and gave to it exclusive jurisdiction in the field of certification, collective bargaining and employer unfair labor practices, and left to the states control over the activities of employees and the labor unions insofar as the state's action did not conflict with the Board's jurisdiction. *Allen Bradley Local 1111 v. Wisconsin Employment Relations Board*, 315 U.S. 740 (1942). The Board's jurisdiction was extended by the Labor Management Relations Act, 61 Stat. 36 (1947), 29 U.S.C. § 141 (Supp. 1953), to include certain named unfair labor practices on the part of labor organizations. The act also designated certain rights of both employers and employees.

Assuming that Congress could, by virtue of the commerce and supremacy clauses, exclude all state action in the field of labor relations, Cox & Seidman, *Federalism and the Law of Labor Relations*, 64 Harv. L Rev. 211 (1950), to what extent did the passage of these two congressional acts pre-empt the field of labor relations?

Prior to *Garner v. Teamsters Union*, Local 776, 346 U.S. 485 (1953), the Supreme Court decisions in the field of labor relations limited the doctrine of federal pre-emption not to absolute pre-emption of the entire field because of congressional occupancy, but rather to situations in which there was a direct conflict of state and federal legislation, *International Union v. Wisconsin Employment Relations Board*, 336 U.S. 245 (1949); see Note, 26 N.Y.U.L. Rev. 468 (1952). In the *Wisconsin case*, supra, the Supreme Court held that the states were not excluded from regulations that were not controlled by federal legislation.

However, in the *Garner case*, supra, the Supreme Court held, in effect, that Congress by the creation of the NLRB had entered the field of labor relations and that the Board had exclusive jurisdiction over the entire field of labor relations whether there was a remedy for the particular wrong or not. This decision seems to stand for the principle of a general federal pre-emption by entry into the field rather than the direct conflict theory which prevailed in the earlier cases.

The statement of the rule in the *Garner case*, supra, seems too broadly stated in view of the prior decisions hereinbefore discussed, and the subsequent decisions, particularly *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656 (1954), and the principal case. In the *Laburnum case*, supra, the Virginia court had held the defendant union guilty of the tort of interference with contractual relations. *United Const. Workers v. Laburnum Const.*
On certiorari the Supreme Court held that the state had jurisdiction to try the tort action even though the same tortious act did, under the LMRA, constitute an unfair labor practice. The court proceeded on the theory that, since the LMRA did not provide a remedy for the consequences of such tortious conduct, it was still within the power of the state to award such relief.

In the principal case the court held that although the Board, if the respondent had applied to it, could have awarded him back pay, the fact that the state would also make such an award in a tort action would not cause a conflict of remedies.

It would seem then that in the principal case the Court could have held, under the Garner case, that the power of the state to award back pay in a tort action had been pre-empted since Congress had given the Board the power, in its discretion to likewise make such an award. However, the Court chose not to so hold, perhaps because the awarding of back pay does not constitute full tort relief in most cases of this nature, thereby indicating that Congress did not intend for the Board to have jurisdiction in the tort aspect of labor relations. In any case, it follows that by the outcome of the Russell and Laburnum cases, supra, the Supreme Court is supporting pre-emption by direct conflict rather than pre-emption by entry into the field.

It is felt that Congress could regulate even the tort phase of labor relations under the commerce clause as hereinbefore stated; however, the Board thus far has been given no jurisdiction in this aspect of the field. It would seem in accord with the majority of prior opinions concerning labor relations that until Congress legislates in the tort realm of labor relations, the states will continue to have jurisdiction although the act constituting the tort may also consist of an unfair labor practice under the LMRA of 1947.

G. H. A.

Personal Property—Gifts—Informal Writing as Constituting Sufficient Delivery.—Defendant wrote several letters to the plaintiff, his former wife, in which he referred to certain bonds as "your bonds". He also stated that he would draw the interest on these bonds. Defendant had access to the bonds after the alleged