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MASS PICKETING, VIOLENCE AND THE BUCKNAM CASE

It is often said that due to extensive federal legislation in the field of labor law, the states have only a minimal and insignificant responsibility with respect to disputes between organized labor and management. To a certain extent this statement is true. Congress by enacting the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947 (Taft-Hartley),[1] has pre-empted from the states the lion's share of jurisdiction over labor disputes and peaceful strikes in particular. However, as we shall see, the states' judicial processes are not entirely banned, and states still retain an important responsibility in the field of labor relations which should not be underrated.

The primary problem confronting state courts is that Congress, in its attempt to blanket as much of the labor law field as possible, has neglected to define the limits of federal responsibility or to set specific limits within which states may operate. As a consequence many state courts, when called upon to decide cases in the field of labor law, feel initimidated by the omnipresence of federal power and take an almost apologetic attitude about entering into the field.

A recent decision by the Supreme Court of Wyoming in the case of *Bucknam v. United Mine Workers of America*[2] focuses attention upon an area of labor law in which state courts still retain jurisdiction of major importance. In this case Bucknam and five others, operating the Hanna Basin Coal Company as partners, sought to enjoin the members of the United Mine Workers of America Local 7247 from conducting violent mass picketing at their mine. Upon a showing by the defendants that the company operated in interstate commerce, the District Court for Carbon County refused to take jurisdiction in the case on the theory that the matter was not properly one for state action but should be taken before the National Labor Relations Board. The plaintiffs' appeal was based on the premise that this complaint was sufficient to give the state court jurisdiction in the dispute.

Plaintiffs alleged that in addition to the six partners who worked actively at the mine, the partnership employed two other persons—a secretary and a truck driver. The defendants demanded that all but one of the plaintiffs join the union, indicating that it would be necessary for one of the partners to remain non-union and thus represent management, and that the mine be unionized so that the other partners and the two employees would be forced into joining the union. When the union demand was refused by the partners, the union began mass picketing. Concurrently with the picketing, the defendants' business agent threatened the plaintiffs by indicating that the union would place as many at 250

1. Act of July 5, 1935, c. 372, 49 Stat. 136, as amended June 23, 1947, c. 120, § 101, 61 Stat. 136, 29 U.S.C. 141 et seq. (1952 Ed.).
2. a) Report dealing with issue of District Court jurisdiction see, ... Wyo. ...., 339 P.2d 398 (May 19, 1959). b) On the defendant's appeal from injunction see, ... Wyo. ...., 342 P.2d 236 (July 14, 1959).

pickets on the picket line at once. It was alleged that in the course of the picketing the defendants, through the pickets, threatened physical violence, used abusive language, prohibited entrance to the mine to the plaintiffs' customers, inflicted property damage and obstructed a public highway.

Counsel for the defendants based the union's resistance to the injunction on the theory that the controversy was one of those within the scope and effect of section 8 (b) of the Labor Management Relations Act as amended,[3] and that Congress had thereby pre-empted the field depriving the state court of jurisdiction. The answer further alleged that the picketing was peaceful and was therefore protected by provisions of the Constitution of the United States[4] and the Constitution of the State of Wyoming.[5] A hearing was held upon the complaint and the resistance above mentioned. At the close of the hearing the judge presiding ruled that the court had no jurisdiction in this matter. An order was entered denying the injunction, and the plaintiffs appealed.

The sole question to be decided by the Supreme Court of Wyoming was whether the complaint stated a cause of action over which the state District Court had jurisdiction. The Supreme Court in an opinion written by Mr. Chief Justice Blume held that the District Court should have taken jurisdiction in the dispute and should have made a finding to determine whether or not the picketing was peaceful. To give the National Labor Relations Board exclusive jurisdiction, the court indicated, not only must the employer be engaged in interstate commerce, but the picketing must be peaceful.[6] In cases of violent picketing, the state courts have concurrent jurisdiction with the National Relations Board even though the employer is involved in interstate commerce.

To emphasize the difficulty of drawing the line between state jurisdiction and federal jurisdiction, the Supreme Court in its hearing on the question of jurisdiction said, "if a case falls within the so-called 'no man's land' which is not occupied by federal legislation regarding labor relations, state courts have jurisdiction to enjoin even peaceful picketing if contrary to law or public policy of the state." After the Supreme Court ruled that the plaintiffs' complaint stated a cause of action sufficient to invoke the jurisdiction of the District Court, the plaintiffs again brought their action in the lower court and that court then issued an injunction. Defendants appealed from the order of the District Court granting the injunction and assigned as error the statement by the Wyoming Supreme Court that there was a "no man's land."[7] The defendants contended that there was no such thing as a "no man's land" because federal law blanketed the entire field and that a state only acquires jurisdiction when the National Labor Relations Board cedes jurisdiction to a state agency. The court held that

3. 29 U.S.C. 141 (b).
4. U.S. Const., Amend. I.
5. Wyo. Const., Art. I, §§ 20, 21, 22 and 37.
6. Supra note 1.
7. Supra note 2 (b).

although it may have erred in its statement that there was a "no man's land" which is not occupied by federal legislation, this was not reason sufficient to overturn its decision because states have the right, under their traditional police powers, to regulate picketing they deem to be violent and contrary to public policy.

In deciding the *Bucknam* case the Wyoming Supreme Court relied to a large extent upon a decision of the United States Supreme Court in the case of *United Automobile Workers v. Wisconsin Employment Board*[8] handed down in 1956. In that case, the court, speaking through Mr. Justice Reed, said in effect that a state court may enjoin picketing which it deems to be violent, although the applicable federal statutes also make provisions dealing with precisely the same situation.[9] "The states," said the Court, "are the natural guardians of the public against violence. . . . We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect."[10]

What this language seems to indicate is that there is no "no man's land" which is not occupied by federal legislation, and is therefore available to the states; it indicates that despite the fact that federal law applies, state courts may act in a situation of emergency where there is violence or a threat of violence without fear of entering into an area where the National Labor Relations Board and the federal courts have exclusive jurisdiction. Where there is a situation involving only peaceful picketing, state courts have no jurisdiction because the states could not justify interference under their police powers. A conclusion that may reasonably be reached as a result of the *United Automobile Workers* case is that although the provisions of federal law extend to picketing of all types, both violent and peaceful, in a situation where violence develops the states' judicial processes and the National Labor Relations Board have concurrent jurisdiction.[11]

8. 351 U.S. 266, 76 S.Ct. 794, 100 L.Ed. 1162 (1956).
9. Act of July 5, 1935, c. 372, 49 Stat. 136, as amended June 23, 1947, c. 120, § 101, 61 Stat. 136, U.S.C. 141 et seq. (1952 Ed.)
10. 351 U.S. 266 at 274-5.
11. The Act of September 14, 1959, Titles VI, VII, §§ 602, 603, 604, 701, 73 Stat. 519, entitled Labor-Management Reporting and Disclosure Act of 1959, might be construed as indicating that Congress does not want to pre-empt states from exercising jurisdiction in the field of labor law. In fact, the provisions of this Act specifically provide that state power shall not be diminished or impaired (§ 604), but shall be enhanced to the extent that when the National Labor Relations Board in its discretion declines to assert jurisdiction over any labor dispute with only a minor effect upon commerce the state agency or court may take jurisdiction in such dispute (§ 701).

The Act specifically prohibits picketing for the purpose of extorting money from an employer and provides federal criminal sanctions for violations (§ 602). By virtue of § 604 states continue to retain jurisdiction over certain specified criminal acts which have traditionally been prosecuted in state courts. Among those enumerated is extortion, and it seems reasonable to conclude that, inasmuch as nothing in the Act is to be construed to impair or diminish the authority of any state to enact and enforce general criminal laws, states have the right to prosecute for the crime of extortionate picketing if the same should be within the intendment of their governing statute. This, then, seems to be another area in which states' Judicial processes and the National Labor Relations Board through the Federal courts have concurrent jurisdiction.

In 1957 the Court followed this same trend of thought in the case of *Youngdahl v. Rainfair*[12] in which the Court by way of dicta indicated that a state court had power to enjoin mass picketing which was violent. But, "where the picketing was peaceful, and it could not be said that a pattern of violence was established . . . the state court had entered into a domain pre-empted by the Federal Government." In this case, the Supreme Court of Arkansas had upheld a trial court injunction against mass picketing which evidence showed was peaceful in itself. The problem with which the Arkansas courts were attempting to deal was violence throughout the town, not on the picket line, which came as a result of the strike. What the United States Supreme Court did allow in this instance was a separate, general injunction against the strikers which forbade future acts of violence, intimidation and threats of violence in the outlying areas away from the struck plant proper. Thus, a state court could and did in the *Youngdahl* case enter an injunction to maintain the peace, and the United States Supreme Court approved it as within the state's domain;[13] but the state court could not stop the picketing so long as there was no violence.

Thus, the United States Supreme Court has developed what could be called an "emergency doctrine," the effect of which leaves an important area of labor jurisdiction open to the states. State courts may act where a "pattern of violence" is established. The "pattern of violence" theory contemplates that states, under their traditional police power, have the right to enjoin mass picketing where violence, or the danger of violence, occurs. This is true despite the fact that the National Labor Relations Board has concurrent jurisdiction. But, under this "emergency doctrine" it is equally apparent that states may not enjoin mass picketing, alone, where there is no showing of violence.

The problem presented by the *Bucknam* case is not unique to Wyoming. The courts of other states have been called upon to decide similar questions and have reached similar conclusions. For example, in 1956 the Supreme Court of North Dakota in deciding the case of *Minor v. Building and Contruction Trades Council*[14] held that "an area left open to the states by this chapter[15] is the enforcement of such measures as are necessary for the protection of the citizens of the state." Another 1956 case, decided by the Supreme Court of Mississippi, *United Brotherhood of Carpenters and Joiners of America v. Pascagoula Veneer Company,*[16] brings a flat statement by way of dictum that "the provisions of the chapter[17] do not pre-empt all state control, nor more specifically the state police power."

The lower federal courts have shown remarkable restraint about inter-

12. 355 U.S. 131, 78 S.Ct. 206, 2 L.Ed.2d 151 (1957).
13. 78 S.Ct. 206 at 211.
14. . N.D. .... , 75 N.W.2d 139 (1956).
15. Act of July 5, 1935, c. 372, 49 Stat. 136, as amended June 23, 1947, c. 120, § 101, 61 Stat. 136, 29 U.S.C. 141 et seq. (1952 ed.).
16. 288 Miss. 799, 89 So.2d 711 (1956).
17. Supra note 14.

fering with state court action to enjoin mass picketing where such an injunction was granted to protect public welfare under the police power. A representative holding of a lower federal court is found in the case of *Johnston v. Colonial Provision Company*[18] in which the United States District Court, District of Massachusetts, held in 1954, that the evidence in the case showed a "course of violence," such as, "threats, intimidation, attempts at bodily harm, coercion and property damage," and thus found against the union and refused to enjoin enforcement of a state court injunction. This court indicated that where a "course of violence" exists, the doctrine "that certain questions are within the sole competence of the National Labor Relations Board" does not apply, so that the state courts are not precluded from granting injunctive relief under their police powers.

As a matter of state policy Wyoming specifically grants workers the right to organize for the purpose of protecting freedom of labor.[19] Further, no court of the state may issue injunctions in any case involving or growing out of a labor dispute in which members of organized labor give publicity to a dispute by "speaking, patrolling, or any other method not involving fraud or violence."[20] This is the so-called Little Norris-LaGuardia Act adopted by Wyoming in 1937.[21]

The first time the Wyoming Supreme Court decided any question relating to the law of picketing was in the case of *Hagen v. Culinary Workers Alliance Local No. 337*, in 1952.[22] The plaintiff in this case operated a restaurant in Cheyenne and employed no members of the defendant union. In early July, 1950, the defendant union caused pickets to patrol in front of the establishment in a peaceful manner and demanded that the plaintiff require its employees to join the union, and that thereafter all employees be and remain members of the union. The plaintiff refused, and applied to the District Court for Laramie County for an injunction to restrain the picketing on the grounds that the picketing had an unlawful objective. In resisting the action, the defendants did not raise the issue of state court jurisdiction, but based their defense upon the constitutional guaranties of freedom of speech and peaceable assembly,[23] and also the provisions of the Little Norris-LaGuardia Act expressly allowing picketing.[24] The trial court granted the injunction and the Supreme Court affirmed.

In characterizing the picketing the Supreme Court observed that "Picketing is not merely exercise of the right of freedom of speech, but has a coercive force which goes beyond an effort to persuade by appeal to reason, and the use of that economic weapon may be enjoined if the objective which is sought to be accomplished by its use is unlawful under

18. 128 F. Supp. 954 (1954).
19. W.S. § 27-239.
20. W.S. §§ 27-241 (e) and (i).
21. W.S. §§ 27-239 to 27-245; Section 2, ch. 15, S.L. of Wyo., 1937.
22. 70 Wyo. 165, 246 P.2d 778 (1952).
23. Wyo. Const., Art. I and II.
24. Supra note 20.

state law." As to the Little Norris-LaGuardia Act, the court held that by expressly recognizing the right of an employee to join a union the statute also "impliedly" grants to that employee the right *not* to join. In consequence, it would be unlawful for an employer to force his employees to join a union under state law.[25] This, held the Supreme Court, was the unlawful object.

Although the injunction entered in the *Hagen* case had the effect of stopping the picketing, it also had the effect of making the defendant union cease attempting to generate a labor-management dispute where one did not exist; the picketing was an incidental rather than a primary feature of the case. There was no dispute here in the real sense inasmuch as none of the plaintiff's employees were members of the defendant union. To force these employees to join the union would have been unlawful under state law. We could speculate that the union would have prevailed in this case had even one of the plaintiff's employees belonged to the union and refused to cross the picket line. Then there would have been a real labor dispute, the protective provisions of the Little Norris-LaGuaria Act would have applied, and no injunction could have been issued.[26]

In conclusion, states still retain important jurisdiction where labor-management disputes exist, or where they do not exist and an "outside union" tries to generate one. If a "pattern of violence" can be established by a plaintiff seeking an injunction against mass picketing, state courts have jurisdiction. Further, under existing Wyoming statutes, picketing may be injoined where no real labor dispute exists on the theory that an employer cannot and should not declare that hereafter he will maintain a "closed shop," thereby forcing his employees to join a union. Organized labor will always be able to strike and picket if it does so peacefully. Where a labor dispute exists, if an employer has reason to believe that the pickets will become violent, and a state of tension exists, it is within his right to seek a state court injunction to prevent violence, but not to stop the picketing. State courts need not be apologetic when called upon to decide questions in these areas.

D. THOMAS KIDD

LOSS OF NATIONALITY BY SERVICE IN A FOREIGN ARMY

Most Americans would be surprised to learn that by the voluntary commission of certain insignificant acts they could forfeit one of their most precious rights, their citizenship. Prior to 1907, the Department of State had authority to determine what constituted intentional renunciation of citizenship.[1] However, in that year, Congress specified three acts which,

25. Supra note 21.
26. The Little Norris-LaGuardia Act was raised as a defense in the answer in the *Bucknam* case, but both the District Court and the Supreme Court seem to have ignored it.

1. 1943 U.S. Code Cong. and Adm. News 2886.