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Labor Law - Federal and State Relations - Jurisdiction to Enjoin Peaceful Picketing

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Code also eliminates the requirement that a criminally false statement must relate to present or past facts only.[20] Similarly, the American Law Institute, in the tentative draft of its Model Penal Code, rejects the common law restriction by defining "theft by deception" to include deceptions as to future as well as past and present events.[21]

Chester A. Eggleston

LABOR LAW — FEDERAL AND STATE RELATIONS — JURISDICTION TO ENJOIN PEACEFUL PICKETING

After expiration of the contract between plaintiff company and defendant union representing its truckdrivers, no new agreement was reached and the union went on strike and began peaceful picketing. Plaintiff employer petitioned the National Labor Relations Board to hold representatioin proceedings, alleging that the defendant union had demanded recognition as the bargaining agent of the company's employees. The Board dismissed the petition, finding that a question of representation did not exist because the unit named (one employee) was inappropriate for the purposes of collective bargaining.[1] Plaintiff then sued in a Louisiana state court to enjoin the union's peaceful picketing. The trial court granted a preliminary injunction in order to give either party an opportunity to obtain a ruling from the Board that it would or would not regulate the picketing. Plaintiff employer then filed a charge of unfair labor practices with the Board under section 8(b)(4) of the Labor Management Relations Act.[2] The Board admitted that it had jurisdiction but dismissed the charge as being without merit under that section. The trial court held that the NLRB had exercised jurisdiction over the matter and, therefore, dismissed plaintiff's application for injunction because of lack of jurisdiction. On appeal, *held,* affirmed. Jurisdiction of state courts is preempted if the activity complained of is either protected or prohibited by the

20. " 'False representations' includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme." WIS. CRIM. CODE § 943.20 (1955).

21. A.L.I. MODEL PENAL CODE § 206.2, at 63 (*Theft by Deception*) (Tent. Draft No. 2, 1956).

1. At the time of the strike, only one regularly employed truckdriver worked for the plaintiff.

2. 61 STAT. 141 (1947), 29 U.S.C. § 185(b)(4) (1952).

LMRA.[3] The National Labor Relations Board accepted jurisdiction when it investigated the employer's charge and found that it was without merit. *Mississippi Valley Electric Co. v. General Truck Drivers, AFL*, 229 La. 37, 85 So.2d 22 (1955).

In *Thornhill v. Alabama*,[4] the Supreme Court of the United States declared picketing to be within the constitutional protection of freedom of speech,[5] but also recognized the power and duty of a state to take adequate steps to protect "the privacy, the lives and the property of its residents."[6] Thus, state court injunctions prohibiting picketing have been upheld by the Supreme Court where acts of violence were involved,[7] and, in some instances, where picketing conflicted with the public policy of the state.[8] In *Garner v. Teamster's Union*[9] the Supreme Court held that a state may not, under its labor laws, enjoin nonviolent conduct which has been made an unfair labor practice under the LMRA.[10] However, shortly after the decision in the *Garner* case, a judgment for damages based on common law tort was upheld even where the conduct in question was an unfair

3. The court distinguished the instant case from the case of *Arkansas Oak-Flooring Co. v. United Mine Workers*, in which the Louisiana Supreme Court found that it had jurisdiction to enjoin picketing by the union on the grounds that the union had failed to file the required non-Communist affidavits, financial data, etc., as required by section 9 of the LMRA. Arkansas Oak Flooring Co. v. United Mine Workers, 227 La. 1109, 81 So.2d 413 (1955) discussed in *The Work of the Louisiana Supreme Court for the 1954-1955 Term — Labor Law*, 16 LOUISIANA LAW REVIEW 294, 296 (1956). This case was reversed by the United States Supreme Court after the decision in the instant case, 76 S. Ct. 559 (1956). The United States Supreme Court held that non-compliance with section 9 of the LMRA did not have the effect of eliminating the applicability of the LMRA, but only precluded the union from the administrative remedies of the NLRB. Non-compliance does not interfere with the employee's right to strike under section 13, or to picket peacefully under section 7.

4. 310 U.S. 88 (1940).

5. U.S. CONST. amend. I.

6. Thornhill v. Alabama, 310 U.S. 88, 105 (1940).

7. Allen-Bradley Local 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740 (1942); Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941).

8. International Brotherhood of Teamsters v. Hanke, 339 U.S. 470 (picketing of business run by owner with no employees enjoined); Building Service Union v. Gazzam, 339 U.S. 532 (1950) (picketing sought to compel the employer to coerce employees in the exercise of their free choice); Hughes v. Superior Court, 339 U.S. 460 (1950) (action to compel an employer to hire on the basis of race enjoined); International Union UAWA, AFL v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) (recurrent, unannounced work stoppages); Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949) (injunction issued under state anti-trust laws); Carpenters & Joiners Union v. Ritter's Cafe, 315 U.S. 722 (1942).

9. 346 U.S. 485 (1953).

10. *E.g.*, Building Service Union v. Gazzam, 339 U.S. 532 (1950) (coercion of employer to influence employees in the exercise of their free choice); Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949) (conduct which violates state anti-trust laws).

labor practice under the LMRA, since no remedy in damages is granted under the federal statute.[11] In *Weber v. Anheuser-Busch*[12] the Supreme Court went a step further and held that a state may not prohibit the exercise of rights which may be reasonably deemed to come within the protection of the federal act. This decision came in logical sequence to the *Garner* case, for, although the *Garner* case arose where a state enjoined activity which was also prohibited by the federal act, there was language in the opinion to indicate that picketing not restrained by the act should be free from restraint.[13]

In light of the *Anheuser-Busch* case, the instant decision seems to be correct. The fact that the union was found not guilty on the merits of the specific unfair labor practice complained of was not enough to vest jurisdiction in the state court. The court declined to state whether or not the picketing was within the prohibition or protection of other sections of the federal act, recognizing primary jurisdiction in the NLRB to determine these questions. The court found, however, that the conduct "may be reasonably deemed to come within the protection afforded by the act."[14] This being so, the jurisdiction of the state court was preempted by that of the NLRB under the *Anheuser-Busch* test.

Both the *Garner* and *Anheuser-Busch* cases indicate that the Supreme Court intends to retain its policy of allowing a state court to enjoin picketing where there is violence involved.[15] State court injunctions in other cases should not issue where the activity is prohibited or may reasonably be deemed to be protected under the federal act.

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LOCAL GOVERNMENT — TORTS — IMMUNITY OF MUNICIPALITY FROM LIABILITY FOR NEGLIGENCE

Plaintiff sued defendant city for the wrongful death of her eight-year old son who drowned in a municipal swimming pool.

11. United Construction Workers v. Laburnum Const. Corp., 347 U.S. 656 (1954).
12. 348 U.S. 468 (1955).
13. Garner v. Teamsters Union, 346 U.S. 485, 499 (1953).
14. Mississippi Valley Electric Co. v. General Truck Drivers, 229 La. 37, 85 So.2d 22, 27 (1955).
15. Weber v. Anheuser-Busch, 348 U.S. 468, 477 (1955); Garner v. Teamsters Union, 346 U.S. 485, 488 (1953).