Louisiana Law Review

Volume 19 | Number 4
June 1959

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Repository Citation
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol19/iss4/14
the basis of the objection or the motion for a mistrial in the lower court and were not urged to the Supreme Court on appeal.

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LABOR LAW — CONFLICT BETWEEN STATE ANTI-TRUST LAW AND COLLECTIVE BARGAINING AGREEMENT

Plaintiff, a union member, brought an action under the Ohio anti-trust statute to restrain a union and common carriers from carrying out that part of a collective bargaining agreement which prescribed minimum rentals for vehicles leased from drivers. Plaintiff drove equipment which he owned and leased to carriers on terms and conditions that differed substantially from those of the collective bargaining agreement. Plaintiff alleged that the fixing of prices at which the vehicles could be leased violated the state anti-trust law by placing restrictions on vehicles used in commerce. The defendant contended that the contract provisions were to protect against leasing vehicles from an owner-driver at a rental less than the actual cost of operation, thereby making the driver apply part of his negotiated wage to the operating expenses of the vehicle. The Ohio courts enjoined the parties from giving effect to these minimum rental provisions on the basis that the regulation was price fixing, which violated the Ohio anti-trust law. On certiorari to the United States Supreme Court, held, reversed. The objective of the minimum rental provision was the protection of the negotiated wage scale. The Ohio anti-trust law could not be applied to prevent the contracting parties from carrying out their agreement on a subject matter as to which the federal law directs them to bargain. Local 24, Teamsters v. Oliver, 79 S. Ct. 297 (U.S. 1959).

The power to regulate interstate commerce is delegated to the federal government by the Constitution, and under this power Congress has regulated the field of labor-management relations. Congress has not completely occupied the field, but has

2. Appeal to the Ohio Supreme Court was dismissed for want of a debatable constitutional question. Local 24, Teamsters v. Oliver, 167 Ohio St. 299, 147 N.E.2d 856 (1958).
left certain areas free for state action. While the areas preempted by the National Labor Relations Act are not susceptible of fixed metes and bounds the following principles have been established. A state may not prohibit the exercise of rights protected by the NLRA nor enjoin unfair labor practices prohibited under the federal statute, even if the NLRB has declined to assert jurisdiction. A state may regulate conduct which is neither protected nor prohibited by the act. A state may allow recovery in tort against a union even though the union conduct may involve an unfair labor practice. The courts have applied the principle that a state may not prohibit the exercise of rights which the federal act protects in various factual situations. It is clear that a state may not interfere with the employee's rights to bargain collectively, and therefore a state could not enjoin a union from operating in the state merely because of failure to comply with a state statute requiring that the union and its agents obtain a state license to operate. Likewise state laws which prohibited the federally protected right to strike and which prohibited calling a strike unless authorized by a majority of the employees in a state-conducted election were held invalid.

13. Ibid.
14. Motor Coach Employees v. Wisconsin Board, 340 U.S. 383 (1951). A state law which made it a misdemeanor for any group to engage in a strike which would cause an interruption of an essential public service was held invalid.
Finally, it is clear that a state may not enjoin the right to picket peaceably.\textsuperscript{16}

The above cases involved a conflict between state law and federal rights concerned with methods of and freedom to engage in collective bargaining. The instant case is the first to consider a conflict between the terms of a federally sanctioned collective bargaining agreement and a state law. The instant case presented two problems. One was whether the minimum rental provision dealt with a subject matter within the scope of collective bargaining as defined by the federal law. Another was whether the Ohio anti-trust law could be applied if it were found that the subject matter was one which the federal statute included within the scope of collective bargaining. The first problem was one of interpretation of the agreement. The carriers and their employees were obliged under the federal act to bargain collectively with regard to wages, hours, and other conditions of employment.\textsuperscript{17} The state court found that the minimum rental provision constituted a "remote and indirect approach to the subject of wages,"\textsuperscript{18} and was therefore outside the range of the matters on which the federal law required the parties to bargain. The United States Supreme Court held that, considering the history of the minimum rental provision, its objective was to protect the negotiated wage scale. The union was seeking to protect against the carriers' practice of leasing a vehicle from an owner-driver at a rental less than the actual cost of operating, thereby making the driver apply part of his negotiated wage to the operating expenses of the vehicle.\textsuperscript{19} The minimum rental provision only ap-


\textsuperscript{18} 79 S.Ct. 297, 301 (U.S. 1959), quoting from an unreported opinion of the Court of Common Pleas, Summit County, Ohio. The record of the trial is not yet available, but it was probably argued by counsel for the defendant that this contract did not unduly burden commerce. The state court could have found for the defendant by finding that the restraint placed upon commerce by the agreement was reasonable. If from all of the facts and circumstances involved, it is determined that the restraint is reasonable, it will be upheld. See Appalachian Couns, Inc. v. United States, 288 U.S. 344 (1933).

\textsuperscript{19} Mr. Justice Whittaker dissented on the ground that while plaintiff was driving his own tractor in the service of the carriers in performance of an independent contract he was an independent contractor, and not an employee. This being so, he was expressly excluded from coverage by the National Labor Relations Act.

The primary consideration in determining whether or not the statute applies to a particular situation of employment is whether or not the declared policy and purposes of the act comprehend securing to the individual the rights guaranteed by the act. The economic facts of the relation may make it more nearly one of employment with respect to the ends sought to be accomplished by the legislation, and these characteristics may outweigh technical legal classification for purposes
plied to the terms of the lease when the vehicle was driven by a driver who was also the owner. As regards the second problem presented the Court concluded that the Ohio law could not be applied to prevent the parties from carrying out their agreement. The federal law was supreme even though expressed in the details of a collective bargaining contract rather than in terms of an enactment of Congress. Thus insofar as the terms of the collective bargaining agreement were within the contemplation of the federal act, the agreement would supersede any conflicting state law. In reaching this conclusion the Court relied on analogous cases which arose under the Railway Labor Act. The latter act expressly provided that a “union shop” agreement between an interstate railroad and its employees could be entered into, notwithstanding any state law. In *Railway Employees’ Dept. v. Hanson* the United States Supreme Court held that an agreement made pursuant to this express provision of the Railway Labor Act had the imprimatur of the federal law upon it and by force of the supremacy clause of the United States Constitution it could not be invalidated by any state law. In *California v. Taylor*, another case relied on by the Court, the terms of a collective bargaining agreement entered into by a union and a state-owned railroad under the Railway Labor Act conflicted with provisions of the state civil service laws. It was held that the state law could not be applied to prevent the parties from carrying out the terms of the collective bargaining agreement. In the instant case the Court pointed out that it made no difference that the conflict was between federal labor law and state anti-trust law. In *Weber v. Anheuser-Busch, Inc.*, the Court said that it made no difference that the conflict was between federal labor law and state restraint of trade law. Both types seek to adjust relationships in the world of commerce.

The significance of the instant case is in its holding that the terms of a federally sanctioned collective bargaining agreement are controlling when in conflict with a state law. In order for this principle to be applied in future cases it would no doubt be necessary that the Court find, as it did in the instant case, that the terms of the collective bargaining agreement are within the unrelated to the statute’s objective. See Labor Board v. Hearst Publications, 322 U.S. 111, 128 (1944).

21. Ibid.
contemplation of the federal act. The Court was careful to point out that this was not a case in which a collective bargaining agreement was in conflict with a local health or safety regulation. If such a conflict did exist between a local health or safety regulation and the terms of a federally sanctioned collective bargaining agreement, which one would take precedence? The Court leaves this question unanswered. The real basis for the decision in the instant case seems to be that if any sort of limitation is to be placed on the arrangements that unions and employers may make pursuant to the National Labor Relations Act it is for Congress to make and not the states.

Aubrey McCleary

NEGLIGENCE — LIABILITY OF PROPRIETOR OF PLACE OF AMUSEMENT FOR INJURY TO PATRONS CAUSED BY ACTS OF THIRD PERSONS

Two recent decisions have dealt with the duty of proprietors of places of public amusement to their patrons. In an Arizona case plaintiff sued for personal injuries sustained when she was run over by an automobile while attending defendant's drive-in theater. The seven-year-old plaintiff had been allowed by her mother to sit on a blanket in front of their car to view the movie. No signs warned patrons not to sit outside their cars and no attendants of the defendant requested the plaintiff to return to her car. The aisles were not lighted and a sign at the entrance required patrons to drive with their lights out while in the theater. Upon a jury's finding that the defendant was negligent, the Superior Court entered judgment for plaintiff. On appeal to the Supreme Court, held, affirmed. The proprietor of a drive-in theater is under a duty to protect patrons sitting outside their cars against the danger of being run over by other automobiles, where, because of the condition of the premises, such danger is foreseeable. M.G.A. Theaters Inc. v. Montgomery, 83 Ariz. 339, 321 P.2d 1009 (1958). In a second case, plaintiff, a spectator at a baseball game, sued the baseball club for personal injuries sustained when she was pushed from her chair and trampled upon by spectators scrambling for a foul ball. The usher assigned to

25. The court has said, however, that the "intention of Congress to exclude States from exerting their police power must be clearly manifested." Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 749 (1942).