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Labor Law—Pre-emption and State Injunctive Enforcement of the "Right-to-Work" Law

When may a state court validly enjoin picketing that is peaceful in its conduct but is intended to accomplish an unlawful purpose? This is a question that has caused considerable confusion since the Taft-Hartley amendments to the National Labor Relations Act in 1947, which specify that certain activity on the part of labor unions constitutes an unfair labor practice. A state court judge who has a petition for an injunction against picketing usually will have two difficult questions to answer. First, assuming that the picketing is for an unlawful purpose, is it protected by the first and fourteenth amendments to the Constitution as a valid exercise of free speech? Secondly, assuming that the picketing sought to be enjoined is not protected by the free-speech doctrine, is it conduct which amounts to an unfair labor practice under the NLRA, thus leaving the state court without jurisdiction?

The North Carolina Supreme Court was faced with the second question of federal pre-emption in the recent case of Douglas Aircraft Co. v. Local 379, International Brotherhood of Elec. Workers, AFL. The plaintiff was engaged in the production of guided missiles under a contract with the United States. The Company's plant was surrounded by a chain link fence. The plaintiff company maintained control of all entrances and exits to the tract because of its responsibility for safeguarding secret information concerning its contracts. On the same tract were buildings occupied by other contractors performing work for the government. A construction firm had a contract with the Army for the erection of buildings on the same tract. Defendant union established picket lines at all the entrances to the tract of land occupied by the plaintiff and its subcontractors. The plaintiff alleged that no labor dispute existed between the construction company and its employees or the plaintiff and its employees; that the picketing was the result of a conspiracy intended to compel the plaintiff to deny admittance to the grounds to non-union employees of the construction company, thereby requiring the construction company to confine its employment to members of defendant union in violation of the North Carolina "Right-to-


Work" law;\(^5\) that many of plaintiff's employees had refused to cross the picket line established by the defendant union, thus hampering the plaintiff in the performance of its contracts.

On the evidence and stipulation of the parties that plaintiff was engaged in interstate commerce within the meaning of the NLRA and that the picketing was peaceful, a temporary restraining order was continued until final hearing. The North Carolina Supreme Court reversed on the ground that under the decision of the United States Supreme Court in *Local 429, International Brotherhood of Elec. Workers, AFL v. Farnsworth & Chambers Co.*,\(^8\) the NLRA places exclusive primary jurisdiction in the National Labor Relations Board\(^7\) in such a case and deprives the superior court of authority to issue the restraining order. In view of its decision in *J. A. Jones Constr. Co. v. Local 755, International Brotherhood of Elec. Workers, AFL*\(^8\) and the general tenor of its opinion in the *Douglas Aircraft* case, it would seem likely that the North Carolina Supreme Court would have upheld the restraining order if there had been no controlling decision of the United States Supreme Court in point. After discussing the general case law development of the federal-state jurisdictional question, the court concluded its opinion by pointing to the case of *Farnsworth & Chambers Co. v. Local 429, International Brotherhood of Elec. Workers, AFL*.\(^9\) Here the Tennessee Supreme Court upheld an injunction against picketing which it found to be for the purpose of compelling a violation of the Tennessee "Right-to-Work" law. The United States Supreme Court reversed the Tennessee court in a per curiam opinion.\(^10\) The North Carolina Supreme Court said it could find no distinction in the facts between the *Farnsworth* case and the case before it,\(^11\) and that "the Court having final authority to ascertain congressional intent has declared the law."\(^12\)

The *Farnsworth* case further clarified the "penumbral area" in jurisdiction of labor disputes which the United States Supreme Court has said "can be rendered progressively clear only by the course of litiga-

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\(^6\) 353 U.S. 969 (1957).
\(^7\) Hereinafter referred to as the NLRB.
\(^8\) 246 N.C. 481, 98 S.E.2d 852 (1957).
\(^9\) 299 S.W.2d 8 (Tenn. 1957).
\(^10\) Local 429, International Brotherhood of Elec. Workers, AFL v. Farnsworth & Chambers Co., 353 U.S. 969 (1957). Despite express congressional authorization to the states to enact "Right-to-Work" laws (see note 14 infra), the Court indicates that the states may be prohibited from exercising injunctive relief when violations of such laws are also subject to the jurisdiction of the NLRB.
\(^11\) The only distinction that could be made in respect to the parties in the two cases is that in *Farnsworth* the picketing was directed at the plaintiff, while in the *Douglas Aircraft* case the picketing was primarily directed at a party other than the plaintiff although the plaintiff was adversely affected by the picketing.
\(^12\) 247 N.C. at 630, 101 S.E.2d at 808.
How far has the Farnsworth case gone in determining the effect of the pre-emption doctrine on state legislation forbidding or restricting union-security agreements pursuant to section 14(b) of the NLRA? It is submitted that the case has answered the federal-state jurisdictional question in the usual situation where a state court might attempt to enjoin picketing on the basis of a state "Right-to-Work" law but has not rendered the "penumbral area" completely clear.

The per curiam opinion in the Farnsworth case cited Garner v. Local 776, Teamsters Union, AFL and Weber v. Anheuser-Busch, Inc. which are the leading cases on federal pre-emption under the NLRA. In Garner, the Court held that if the alleged conduct of a party to a labor dispute was such that it would constitute an unfair labor practice subject to the jurisdiction of the NLRB, the state court was without jurisdiction to enjoin the conduct, even though the conduct also violated a state statute or judicial policy governing labor-management relations. The Weber case further clarified the jurisdictional question by holding that the rule of the Garner case would apply even if the alleged wrongful conduct violated state law or policy in a field other than labor relations. As pointed out by the North Carolina Supreme Court in the Douglas Aircraft case, "Neither the Garner nor the Weber case dealt specifically with an act declared by Congress to be an unfair labor practice, and by a State law authorized by Congress, also defined as unlawful."

The question presented in the Farnsworth case was whether section 14(b), in effect, ceded to state courts jurisdiction to enjoin the union's peaceful picketing on an interstate employer's complaint that state "Right-to-Work" laws are being violated even though such picketing constitutes either protected activity under sections 7 and 13, or an unfair labor practice under section 8 of the NLRA.

13 "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." 61 STAT. 141 (1947), as amended, 29 U.S.C. § 164(b) (1952).

17 Even if the unlawful conduct is such as to subject it to the jurisdiction of the NLRB, the state may still act under its police power to prevent violence or mass picketing. Allen-Bradley Local No. 1111, United Elec. Workers v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942), and it may act through an administrative body regulating labor-management relations, United Automobile Workers v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956). However, any injunction must be aimed at the violence or mass picketing complained of and to the extent that an injunction prohibits all other picketing it enters the pre-empted domain of the NLRB. Youngdahl v. Rainfair, 355 U.S. 131 (1957).
18 247 N.C. at 630, 101 S.E.2d at 808.
this question in the negative, merely indicated that where conduct violates a provision of the NLRA the state court is without jurisdiction even though a state labor policy is involved. This result seems completely in harmony with and goes no further than the results in the Garner and Weber cases. The decision did not in itself hold that picketing in violation or attempted violation of a "Right-to-Work" law would necessarily constitute an unfair labor practice.\(^{20}\)

Prior to the decision in the Farnsworth case, the decisions of the various state courts were in conflict as to whether a state court could enjoin picketing which it determined to be in violation of a state's "Right-to-Work" law.\(^{21}\) In many of the cases upholding the authority of the state courts, the question of interstate commerce was not raised or the parties were obviously not engaged in interstate commerce and therefore no question of pre-emption was present.\(^{22}\) Typically in these

\(^{20}\) For examples of areas where the state may exercise jurisdiction even if the employer is in interstate commerce, see Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd., 336 U.S. 301 (1948). The Court held that since Wisconsin could deny the use of the union shop under the NLRA, it could impose a less severe restriction such as requiring a two-thirds vote of the employees to validate a maintenance of membership agreement. Wisconsin thus had jurisdiction in a damage suit for discharge in violation of the state law regulating union-security agreements. See also Local 232, Automobile Workers, AFL v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949), where the Court held that intermittent work stoppages and slowdowns were conduct neither prohibited nor protected by the NLRA and subject to the jurisdiction of a state labor board.

\(^{21}\) State court held to have jurisdiction, International Ass'n of Machinists, AFL v. Goff-McNair Motor Co., 223 Ark. 30, 264 S.W.2d 48 (1954) (injunction against peaceful picketing to obtain a closed shop agreement); Mascari v. Local 667, Teamsters Union, AFL, 187 Tenn. 345, 215 S.W.2d 779 (1948) (injunction against recognized union on strike to secure a union-security clause as part of a collective bargaining agreement). Exclusive jurisdiction held to be in NLRB, Leiter Mfg. Co. v. International Ladies Garment Workers Union, AFL, 269 S.W.2d 409 (Tex. Civ. App. 1954) (injunction against discharge of employees because of union membership); Texas Constr. Co. v. Local 101, Hoisting and Portable Engineers Union, AFL, 178 Kan. 422, 286 P.2d 160 (1955) (injunction against picketing by stranger union to compel employer to recognize union).

\(^{22}\) In Local 10, United Ass'n of Journeymen Plumbers, AFL v. Graham, 345 U.S. 192 (1953), a labor union picketed a general contractor for the purpose (as found by the Virginia court) of inducing the contractor to break contracts with any of his subcontractors who did not employ all union labor. The Court did not discuss the question of jurisdiction. The Court upheld an injunction issued by the Virginia court on the ground that there was no undue restraint of freedom of speech when the picketing was for an unlawful purpose. The dissenting Justice would have remanded the case for a specific finding of fact, stating, "The difficulty here is that we have no finding of fact. We have only the recitation in the decree that the picketing conflicted with the Virginia statute." Id. at 202-03. Apparently the dissent felt that if the Court was to allow the state to enjoin picketing in violation of the Virginia statute, the decree should be limited to that purpose and should not restrain picketing indiscriminately. See Schlossberg, Current Trends in Labor Law in Virginia, 42 Va. L. Rev. 691, 696 (1956), where the author, in discussing the Graham case, said, "While the work in question seems to have been of such a nature as to have had an effect on interstate commerce, it is significant that counsel for the union did not raise the issue of jurisdiction, nor did counsel for the NLRB take part in the appeal." Since this case was decided before the Garner case, it is doubtful if the same result would be reached if it arose again.
cases, the picketing was instigated by non-employees and the facts found indicated that the majority of the employees of the picketed employer were either opposed to any unionization in general or to unionization by the union causing the picketing. The findings of fact led to the reasonable implication that often the primary purpose of the picketing was not to "educate" the employees but to compel the employer to recognize the union with or without the consent of his employees. In similar cases, where the parties would have been affecting interstate commerce so as to be under the jurisdiction of the NLRB if an unfair labor practice were committed, state courts have often determined they had power to enjoin the picketing. The courts seemed to reach their conclusion by overlooking the immediate purpose of the picketing. Thus the courts would look to the ultimate purpose of securing a union shop or similar union-security agreement, which is not necessarily violative of the NLRA, and would not sufficiently consider the immediate purpose of the picketing to compel an employer to recognize the union and coerce his employees into membership against their wishes, which under section 8(b)(2) constitutes an unfair labor practice subject to the jurisdiction of the NLRB.

North Carolina would seem to be among those states which prior to the Farnsworth case would have determined that the state court had jurisdiction to enjoin picketing in a situation similar to that presented

24 While the Farnsworth case indicates the Court is continuing to limit the scope of state jurisdiction in the pre-emption field, the Court at the same time is apparently giving the states greater freedom in regulating picketing where the conduct does not affect interstate commerce so as to be subject to the jurisdiction of the NLRB. Since Thornhill v. Alabama, 310 U.S. 88 (1940), which held a state ban on picketing invalid as denying the right of free dissemination of information guaranteed under the Constitution, and AFL v. Swing, 312 U.S. 321 (1941), where the Court said that organizational picketing per se could not be enjoined, the Court has narrowed the scope of protected picketing activity by expanding the unlawful purpose doctrine of Giboney v. Empire Storage Co., 336 U.S. 490 (1949). In Local 695, Teamsters Union, AFL v. Vogt, 354 U.S. 284 (1957), the Court upheld a state injunction against picketing that was conducted by one or two pickets with no evidence of violence or intimidation, stating, "[T]he circumstances set forth in the opinion of the Wisconsin Supreme Court afford a rational basis for the inference it drew concerning the purpose of the picketing." Id. at 295. The dissenting opinion pointed out that the Vogt case was another in a series of cases where "the state court's characterization of the picketers' 'purpose' had been made well-nigh conclusive." Id. at 296. See Stern, Enjoinable Organizational Picketing, 31 Temp. L.Q. 12 (1957), where the author refers to the Vogt case as providing a constitutionally protected "non-right" to stranger picket for organizational purposes. See also Smoot, Stranger Picketing: Permanent Injunction or Permanent Litigation, 42 A.B.A.J. 817 (1956). Some of the possible ramifications of the Vogt case are indicated by Daugherty v. Commonwealth, 100 S.E.2d 754 (Va. 1957), where the Virginia Supreme Court approved a statute that prohibited all picketing by non-employees. The court further said there was no question of pre-emption because the NLRA is limited to disputes between employees and their employers.
in the *Douglas Aircraft* case. In *J. A. Jones Constr. Co. v. Local 755, International Brotherhood of Elec. Workers, AFL* the factual situation was similar to that in the *Douglas Aircraft* case. The plaintiff construction company alleged that the purpose of the picketing was to coerce the plaintiff into compelling his subcontractors to hire only union labor. The defendant union demurred to the jurisdiction of the court on the basis that the conduct complained of would, if true, constitute an unfair labor practice over which the NLRB had exclusive jurisdiction and filed an answer denying the allegations of the complaint. The demurrer was overruled and the restraining order continued, from which the union appealed. The North Carolina Supreme Court affirmed the order of the trial court without determining the question of jurisdiction. The court said that the motion to dismiss for lack of jurisdiction of the subject matter was made as a demurrer and that in such a plea, the lack of jurisdiction must appear on the face of the complaint and may not be raised by extrinsic facts. Since the complaint did not indicate whether or not the plaintiff was engaged in interstate commerce, the alleged lack of jurisdiction did not appear on the face of the complaint. The trial judge, after continuing the restraining order, found the facts on which the order was based at the request of the defendant. One of the facts found, which plaintiff admitted, was that the dollar volume of out-of-state purchases made by the plaintiff was in excess of the minimum volume required by the NLRB before it will exercise jurisdiction.

While deciding the *Jones Construction* case on the pleadings point, it would seem doubtful in the light of the conceded volume of plaintiff's interstate business found by the trial judge whether the court would have allowed the injunction to stand on the pleadings point unless it thought there was a reasonable basis to sustain jurisdiction of the state court, even if the facts alleged in the complaint showed the plaintiff to be in interstate commerce. In the *Douglas Aircraft* case there were no

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26 See 19 NLRB Ann. Rep. 2-5 (1955). The NLRB will decline jurisdiction unless the business of the employer involved affects interstate commerce in an amount equal to or greater than specified minimum amounts. An employer who does not meet the minimum requirements of the NLRB may still be subject to its jurisdiction even though it declines to exercise it. The no man's land created by the *Guss* case (see note 50 infra) would not be involved in the *Jones Construction* case since the facts admitted by the employer show his business to be of such a volume as to meet the NLRB's jurisdictional requirements.
27 The court in overruling the demurrer referred to N.C. Gen. Stat. § 1-127 (1953), which provides: "The defendant may demur to the complaint when it appears upon the face thereof . . . that: (1) The court has no jurisdiction of the person of the defendant, or of the subject of the action . . . ." The court then discussed Southerland v. Harrell, 204 N.C. 675, 169 S.E. 423 (1933), where a demurrer to the jurisdiction of the court over the subject matter in a wrongful death action was overruled on the ground that the complaint on its face did not indicate the defendants regularly employed more than five employees so as to give the Industrial Commission jurisdiction. This rule, while a proper procedural device
allegations that the plaintiff was engaged in interstate commerce, and the trial court treated the motion to dismiss for lack of jurisdiction as a demurrer. It is difficult to distinguish the cases on any basis other than that the court in the Douglas Aircraft case had the Farnsworth case before it.

How far then is the state's jurisdiction over injunctive enforcement of "Right-to-Work" legislation limited by the Farnsworth case? As a possible indication that it was not wholly in sympathy with what it determined to be the United States Supreme Court's expression of congressional intent in Farnsworth, the court in the Douglas Aircraft case said, "Congress has ... said the states might ... outlaw union or closed shop agreements ..." and questioned whether Congress intended "to deny to a state a power to enforce a law which it permitted that state to enact?" In answer to its own question as to congressional intent in enacting section 14(b) of the NLRA, the court said the NLRB "has no authority to enforce the laws of North Carolina even though the laws are enacted pursuant to congressional authority ... It seems patent to us that Congress did not intend to authorize a state to enact a statute and at the same moment prohibit it from enforcing the statute."

in the ordinary civil action, seems rather a harsh one where the court is giving equitable relief in the stringent form of an injunction granted well before final hearing on the merits. The Southerland case was a wrongful death action and no preliminary relief affecting the interests and rights of the parties was being granted. The application of such a rule to the granting of a temporary injunction as in the Jones Construction case, where the court had the relevant and conceded jurisdictional facts before it, affects substantial interests of the parties. It is questionable in the light of the Douglas Aircraft case whether the court would have applied a technical procedural rule to the granting of an equitable remedy unless it felt at the time that the court would have had jurisdiction even if the facts outside the complaint were taken into account.

The only factual difference that might have been made between the two cases is that in the Douglas Aircraft case the plaintiff had contracts with the United States and the complaint so alleged. This fact alone, however, would not seem to be sufficient to determine that the Douglas Aircraft Company was subject to the jurisdiction of the NLRB from the face of the complaint.

The only procedural difference between the Douglas Aircraft case and the Jones Construction case that appears from the reports is that in the former the trial court made the findings of fact before the order was made, and in the latter the court made the appropriate finding of fact on motion of the defendant after the order was made. In neither case were the jurisdictional facts disputed.
In *United Constr. Workers v. Laburnum Constr. Corp.* the United States Supreme Court said, “To the extent that Congress prescribed preventive procedure against unfair labor practices, that case [Garner] recognized the Act excluded conflicting state procedure to the same end.”

The *Farnsworth* case does not enlarge the *Garner* case but rather clarifies it by implication. If a union is picketing an employer to induce him to coerce his employees into joining the union, or to compel him to recognize the union when it does not in fact represent a majority of his employees, or some other purpose unlawful under the NLRA, the state court may not assume jurisdiction because it finds the additional unlawful purpose of violating a state law outlawing or restricting union-security agreements.

The NLRA only permits union-security agreements where a labor organization is the representative designated for collective bargaining purposes by a majority of the employees in an appropriate unit and where the affidavits and reports required by the act have been filed. The NLRA further provides that such union-security agreements, even when valid under federal law, are not valid where they are prohibited by state law. Thus, conduct subject to the jurisdiction of the NLRB which also frequently has a purpose in violation of a state “Right-to-Work” law would be:

1. Picketing to coerce employees to join a union, which is a violation of section 8(b)(1) as an attempt “to restrain or coerce . . . employees in the exercise of rights guaranteed in section 157 . . . .”

and Chambers Co. . . .

“The opinions above referred to . . . require us to hold that a district court lacks jurisdiction to enjoin conduct of a labor union directed toward the ultimate purpose of compelling an employer engaged in interstate commerce to enter into an all union agreement. . . .” *Id.* at 359-60. One justice in a concurring opinion, questioning the soundness of the United States Supreme Court’s interpretation of legislative intent, said, “It is an unwarranted conclusion, denying the effect of § 14(b), which permits the states to regulate or prohibit on the one hand, and denies enforcement of such regulations or prohibitions on the other . . . .” *Id.,* “In this area the state acts under the auspices of federal power, and not, as in Weber v. Anheuser-Busch . . . and in Garner . . . by attempting to pit state jurisdiction against federal pre-empted jurisdiction.” *Id.* at 363-64.

36 Id. at 665.
39 Id., § 159(a) (1952).
41 Id., § 9(g), (h), 61 STAT. 146 (1947), as amended, 29 U.S.C. §§ 159(g), (h) (1952).
42 Id., § 158(a) (3) (1952).
Picketing to compel the employer (a) to coerce his employees into union membership, or (b) to sign a union-security agreement with a union that does not qualify as authorized to enter into such an agreement under section 8(a)(3). This is a violation of section 8(b)(2) in that it is an attempt "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection [8](a)(3) . . . ."40

(3) Picketing one employer to induce his employees to refuse to handle goods or perform services where the purpose is to compel a second employer to recognize a union that does not represent his employees, a violation of section 8(b)(4)(B).41

After eliminating all the picketing that would amount to an unfair labor practice under the NLRA, a meager area, if any, is left to state jurisdiction. Assume a case where the picketing is for the purpose of compelling an employer to sign a union-security agreement and the union is the designated representative of a majority of the employees and has otherwise complied with the NLRA.42 If the state where the picketing takes place has legislation prohibiting union-security agreements or permitting them only under certain conditions or within certain limits, it is conceivable that under the Farnsworth case the picketing might validly be enjoined by the state court since there is no specific provision in section 8 of the NLRA making such conduct an unfair labor practice. As the United States Supreme Court said in Local 232, Automobile Workers, AFL v. Wisconsin Employment Relations Bd.,43 there may be conduct that is "neither forbidden by federal statute nor . . . legalized and approved thereby."44

The state is not powerless to effectuate legislation invalidating union-security agreements. As the court said in the Douglas Aircraft case, 45 National Labor Relations Act § 8(b)(2), 61 Stat. 141 (1947), as amended, 29 U.S.C. § 158(b)(2) (1952). Picketing to compel an unlawful union-security contract is a violation of § 8(b)(2). Medford Bldg. and Constr. Trades Council, 96 N.L.R.B. 165 (1951). In Associated General Contractors of America, Inc., 119 N.L.R.B. 133 (1957), a union coerced a contractor into removing from a project a subcontractor whose employees were members of a different union. The Board said the prime contractor's succumbing to the union demands constituted a violation of §§ 8(a)(1) and (3) even though no employer-employee relationship existed between the prime contractor and the employees of a subcontractor.

42 National Labor Relations Act § 8(b)(4)(B), 61 Stat. 141 (1947), as amended, 29 U.S.C. § 158(b)(4)(B) (1952). This section makes it an unfair labor practice for a labor organization to induce conduct by the employees of any employer "where an object thereof is ... forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 159 . . . ." In the Douglas Aircraft case the North Carolina Supreme Court apparently determined that § 8(b)(4)(B) had been violated rather than § 8(b)(2).

43 See notes 35-37 supra.

44 336 U.S. 245 (1949).

45 Id. at 265.
“Restraining orders are not the only remedies available to control obedience to a valid statute. Criminal process and tort actions for damages are also... used for this purpose.” As the Laburnum case points out, a state is not prohibited from providing a remedy for unlawful conduct. It is only when the state remedy duplicates the federal remedy for the same conduct that the state remedy must give way. In North Carolina, under the “Right-to-Work” law, a union-security agreement is void and unenforceable. A violation of the law is punishable as a misdemeanor. A person denied employment in violation of the law has a cause of action for damages sustained by the denial of employment.

The problem of federal-state relations in labor disputes threatens to be a continuing one. This Note has dealt with only one aspect of the problem. State court injunctions against picketing have posed a dilemma for the enjoined party who feels that the state court has acted erroneously and that a more favorable result would be available if the NLRB had assumed jurisdiction. However, even if the enjoined party has a valid argument that his conduct should be subject to the jurisdiction of the NLRB, there is no practical way at present to have the question determined except by appealing through the state courts to the United States Supreme Court. Often the issues are moot by the time of final adjudication and even if decided in favor of the enjoined party he will have nothing but a paper right, the purpose of the injunction having been long since accomplished. On the other hand, if the conduct is wrongful, as alleged, irreparable damage may be done to an employer’s business unless prompt relief is available. Picketing resulting in a secondary boycott can sometimes drive a small employer out of business while he is waiting for the NLRB to determine his rights, and the state courts have often provided the only source of prompt relief.

45 247 N.C. at 629, 101 S.E.2d at 807.
49 In Capitol Service v. NLRB, 347 U.S. 501 (1954), the Court held that the NLRB could request a federal court to enjoin a state injunction where the NLRB deemed it necessary to protect its jurisdiction. But in Amalgamated Clothing Workers v. Richman Bros. Co., 348 U.S. 511 (1955), the Court held that while the NLRB is authorized to apply to a district court for injunctive relief in certain circumstances, this does not authorize private litigants to apply for such relief. Since the NLRB will not assume jurisdiction over an unfair labor practice until a complaint has been filed, a labor organization whose conduct has been enjoined by a state court has no procedural method of getting the NLRB to exercise its jurisdiction.
50 Since the decision in Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957), and companion cases, many a small business is left not only without an efficient remedy against wrongful conduct by a labor union but without any remedy at all.
Continued litigation in the courts apparently will prove a fruitless method of solving the problem areas of the federal-state jurisdictional question. The United States Supreme Court in *Guss v. Utah Labor Relations Bd.* has indicated it will not step in to fill the no-man's land left in the NLRA by the Congress. The ultimate solution will be for Congress to express its intent as to the proper bounds of the NLRB's jurisdiction.

J. Halbert Conoly

Liens—Mechanic's Liens—Acquisition and Priorities—Effect of Regaining Possession

Since *Johnson v. Yates* it has been the rule in North Carolina that a mortgagor in possession with the consent of the mortgagee may subject a mortgaged automobile to a mechanic's lien which will take priority over the chattel mortgagee's interest. In that case it was decided that the statutory term, "owner or legal possessor," included such a mortgagor, in whom the law implied authority from the mortgagee to contract for necessary and reasonable repairs.

In *Barbre-Askew Finance, Inc. v. Thompson,* the chattel mortgagor of an automobile left it with a mechanic under a contract for repairs at a stated price. After the major portion of the work was completed, the mechanic relinquished possession to the mortgagor with the understanding that the automobile was to be returned for completion of repairs. The automobile was subsequently returned and the repairs completed. While it was in the shop for these latter repairs the mortgagor defaulted

In the *Guss* case the Court held that if a dispute affected interstate commerce so as to be subject to the jurisdiction of the NLRB, the states were precluded from acting even where the NLRB had announced in advance that it would decline jurisdiction unless certain specified amounts of interstate commerce were involved. See note 26 supra.

"We are told . . . that to deny the State jurisdiction here will create a vast no-man's-land, subject to regulation by no agency or court. We are told . . . that to grant jurisdiction would produce confusion and conflicts with federal policy . . . . [B]oth may be right. We believe, however, that Congress has expressed its judgment in favor of uniformity. Since Congress' power in the area of commerce among the states is plenary, its judgment must be respected whatever policy objections there may be to creation of a non-man's-land. Congress is free to change the situation at will." See Henderson, *The "No Man's" Land Between State and Federal Jurisdiction,* 8 LAB. L.J. 587 (1957).

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1 183 N.C. 24, 110 S.E. 603 (1922).
2 N.C. Gen. Stat. § 44-2 (1949). "Any mechanic or artisan who makes, alters or repairs any article of personal property at the request of the owner or legal possessor of such property has a lien on such property so made, altered or repaired for his just and reasonable charge for his work done and material furnished, and may hold and retain possession of the same until such just and reasonable charges are paid . . . ." This statute further provides for enforcement by sale.
3 247 N.C. 143, 100 S.E.2d 381 (1957).