UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 44 | Number 1 Article 20

12-1-1965

Federal Jurisdiction -- Labor Law -- Jurisdiction to Remove Suits to Enjoin Strikes to Federal Court

Dennis Jay Winner

As demonstrated by *Byrd,* if the federal practice has a strong federal or constitutional basis, it is likely to prevail.[49]

In summary, it would seem that *Hanna* is indicative of the Court's respect for the federal rules which it promulgated. For example, in the strict *Hanna* situation the federal rule prevails, and in the "outcome-determinative" class of cases there is no disrespect to the Federal Rules because there is no conflict. The balance test is also illustrative of the Court's respect for a uniform system of federal procedure. If the federal practice is not applied in a particular situation, it is only because the practice is not as essential to the maintenance of uniformity in federal procedure as the state rule is to the policy of intrastate uniformity in result.

JAMES L. NELSON

Federal Jurisdiction—Labor Law—Jurisdiction to Remove Suits to Enjoin Strikes to Federal Court

In *American Dredging Co. v. Local 25, Marine Div., Int'l. Union Operating Eng'rs*[1] the defendant union had ceased work, and the plaintiff, there being a no-strike clause in their contract, sought to enjoin the strike by a suit in the Pennsylvania state court. The defendant removed to federal court under section 1441(b) of the Judicial Code.[2] Plaintiff moved to remand under section 1447(c) of the Judicial Code.[3] The district court denied the motion,[4] holding that it had jurisdiction under section 301(a) of the Labor Management Relations Act of 1947[5] and that the case was, therefore, prop-

[49] Smith, *supra* note 16.

[1] 338 F.2d 837 (3d Cir. 1964), *cert. denied,* 380 U.S. 985 (1965), *reversing* 224 F. Supp. 985 (E.D. Pa. 1963).

[2] (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.
28 U.S.C. § 1441(b) (1958).

[3] "If at any time before final judgement it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case . . . ." 28 U.S.C. § 1447(c).

[4] 224 F. Supp. 985, 989 (E.D. Pa. 1963).

[5] (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States

erly removable under section 1441(b). The district court then denied a motion for temporary injunction,[6] relying on section 4 of the Norris-LaGuardia Act[7] and *Sinclair Ref. Co. v. Atkinson.*[8] The Court of Appeals for the Third Circuit reversed the district court,[9] ruling that the federal courts had no jurisdiction and that, therefore, the case should have been remanded to the Pennsylvania court. The court based its decision on four basic issues of law: (*1*) whether the wording of the Norris-LaGuardia Act and *Sinclair* preclude federal jurisdiction in this area; (*2*) whether a decision that the case is removable would lead to an absurd or unjust conclusion by removing plaintiff's right to get an injunction; (*3*) whether there is "federal question" jurisdiction in the first place; and (*4*) whether a state court would have the power to grant an injunction if the case were to be remanded.

The first point the court made was that section 4 of the Norris-LaGuardia Act[10] and the *Sinclair* decision do not simply reject the right of the federal courts to give injunctions to stop strikes, but instead eliminate the entire jurisdiction of federal courts in these cases.[11] In other words, does the phrase, "no court . . . shall have jurisdiction to issue . . . injunctions,"[12] take away the entire power of the court to hear the case, or does it merely remove "equity jurisdiction"?[13] The court here said that the statute leaves the federal courts powerless to take any jurisdiction in these cases.[14]

---

having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[6] 224 F. Supp. at 989.

[7] 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[8] 370 U.S. 195 (1962).

[9] 338 F.2d 857.

[10] No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[11] 338 F.2d at 840-42.

[12] 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[13] The problem of the misuse of the word "jurisdiction" to mean power to give equitable remedies has been frequently discussed by legal scholars. See, *e.g.*, CHAFEE, SOME PROBLEMS OF EQUITY 296-380 (1950); MCCLINTOCK, EQUITY, § 40 (2d ed. 1948).

[14] 338 F.2d at 840.

There has been a split of authority on this issue. A majority of cases[15] have agreed with the decision in *American Dredging,* but a substantial minority[16] and many renowned scholars[17] have taken the opposite view. However, all of these cases on both sides were either before the *Sinclair* decision or were decisions of district courts and, thus, cannot be relied on as authoritative precedent.

The court in *American Dredging* partly relied on *Sinclair.* In *Sinclair* the issue was whether section 301 of the Labor Management Relations Act[18] impliedly overruled section 4 of Norris-LaGuardia.[19] The Court, by a five-to-three decision, held that the Norris-LaGuardia Act was in no way overruled and that the Court would make no accommodation between the two statutes. The Court stated, "The District Court was correct in dismissing count 3 of petitioner's complaint for lack of jurisdiction under the Norris-LaGuardia Act."[20] The court of appeals relied on this as authority that the Supreme Court thought that the Norris-LaGuardia Act totally removed jurisdiction.[21]

It must be pointed out, however, that at no time in *Sinclair* nor in any other decision, so far as this writer's research discloses, has the Court discussed the issue of how "jurisdiction" is used in section 104. Also, the Court has made statements in other cases which would seem to indicate that the words mean equity jurisdiction only.[22]

---

[15] Direct Transit Lines, Inc. v. Starr, 219 F.2d 699 (6th Cir. 1955); Merchants Refrigerator Co. v. Warehouse Union, 213 F. Supp. 177 (N.D. Cal. 1963); National Dairy Prods. Corp. v. Heffernan, 195 F. Supp. 153 (E.D.N.Y. 1961); Swift & Co. v. United Packinghouse Workers, 177 F. Supp. 511 (D. Colo. 1959); Hat Corp. of America v. United Hatters, 114 F. Supp. 890 (D. Conn. 1953).

[16] Food Fair Stores, Inc. v. Retail Clerks Dist. Council No. 11, 229 F. Supp. 123 (E.D. Pa. 1964); Tri-Boro Bagel Co. v. Bakery Drivers Union, 228 F. Supp. 720 (E.D. N.Y. 1963); Crestwood Dairy Inc. v. Kelley, 222 F. Supp. 614 (E.D. N.Y. 1963); H. A. Lott, Inc. v. Hoisting & Portable Eng'rs Union, 222 F. Supp. 993 (S.D. Tex. 1963); Pocohontas Terminal Corp. v. Portland Bldg. & Constr. Trade Council 93 F. Supp. 217 (D. Maine 1950).

[17] See, *e.g., Aaron, Strikes in Breach of Collective Agreements—Some Unanswered Questions,* 63 COLUM. L. REV. 1027 (1965); CHAFEE, SOME PROBLEMS OF EQUITY 367-74 (1950). See also Comment, *Jurisdiction of Federal Courts to Enjoin Labor Disputes,* 32 TENN. L. REV. 284 (1965).

[18] 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[19] 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[20] 370 U.S. at 215.

[21] 338 F.2d at 840.

[22] *E.g.,* "The Norris-LaGuardia Act—considered as a whole and in its various parts—was intended drastically to curtail the equity jurisdiction of

In addition to the above, the Third Circuit relied on the use of the word "jurisdiction" in section 2 of the Norris-LaGuardia Act[23] and upon the fact that the Supreme Court had defined jurisdiction just six years before the passage of the act as: "power to entertain the suit, consider the merits and render a binding decision thereon. . . ."[24] The court then assumed that Congress knew of this definition when it passed the act, and the court relied on section 2 to show it did use it in this manner.[25] This assumption by the court seems falacious, for in section 7 of the act[26] the term "jurisdiction" is again used. It seems clear from a careful reading of section 7 that Congress only intended the term to mean equity jurisdiction. Moreover, the use of the word in section 7 shows that the act only intended to limit the power of the courts to grant the equitable remedy of injunction because in section 7 Congress is clearly not trying to define the jurisdiction of the court, but only supplying the conditions under which the equitable remedy of injunction may be given.

The second holding of the court of appeals is based upon the principle that courts should not interpret statutes to lead to absurd or unjust conclusions. The court concluded that an absurd and unjust conclusion is reached by a decision that the court had removal jurisdiction because the court would then be depriving the plaintiff of injunctive relief available in the state courts. Such a conclusion would leave the federal court with a case under con-

federal courts in the field of labor disputes." Milk Drivers' Union v. Lake Valley Farm Prods., Inc., 311 U.S. 91, 101 (1940). "[I]ts [the Norris-LaGuardia Act's] prime purpose was to restrict the federal equity power." Brotherhood of R.R. Trainmen v. Toledo, P. & W. R.R., 321 U.S. 50, 58 (1944).

[23] In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

. . . therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

47 Stat. 70 (1932), 29 U.S.C. § 102 (1958).

[24] General Inv. Co. v. New York Cent. R.R., 271 U.S. 228, 230 (1926).

[25] 338 F.2d at 840-41.

[26] No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of the witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto if offered, and except after findings of fact by the court to the effect . . .

47 Stat. 71 (1932), 29 U.S.C. § 107 (1958).

sideration for which it could not give a remedy. The court pointed out that to have jurisdiction is to have not only the ability to hear the case but also to provide a remedy for it.[27]

The question whether a state is precluded by Norris-LaGuardia from issuing an injunction has never been decided by the Supreme Court.[28] If the Third Circuit is correct in saying that the state court does have this right, is it unjust to conclude that the federal courts nevertheless have jurisdiction? When a case is removed from a state court to a federal court certain rights are invariably lost.[29] Yet the jurisdiction of the federal courts is not dissolved because of this loss of right. Why should this be a determinative issue in the present case alone?

There is no doubt that the court was correct in stating that it would be an absurd conclusion to say that federal courts had jurisdiction in this case but had no remedy available which could be granted. But certainly there are adequate remedies other than injunction against the strike which the federal courts could grant. The district court held that it could not grant an injunction but could give money damages, for the complaint had asked for any other appropriate relief.[30] The district court also noted that even if the complaint did not make this request, the court could still grant other appropriate relief under rule 54(c) of the Federal Rules of Civil Procedure.[31] The Third Circuit held this rule inapplicable since the Federal Rules of Civil Procedure are not to be used to expand jurisdiction.[32] The court of appeals also asserted that the only way money damages would be useful to gain jurisdiction in this case is by use of section 1441 (c) of the Judicial Code,[33] if damages were a separate controversy within the meaning of the act. The court held that this would not be a separate controversy and

[27] 338 F.2d at 843.

[28] This writer's research discloses no Supreme Court case dealing with this issue.

[29] *E.g.*, if plaintiff filed a bill in equity in North Carolina, and defendant then removed the case to federal court, plaintiff's right to a jury trial in North Carolina would be lost in federal court. N.C. CONST. art. 4, § 1; N. C. GEN. STAT. § 1-172 (1943); Worthy v. Shields 90 N.C. 192 (1884); Byrd v. Blue Ridge Rural Elec. Co-Op., Inc., 356 U.S. 525, 538 (1958).

[30] 224 F. Supp. at 988.

[31] FED. R. CIV. P. 54(b).

[32] "These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein." FED. R. CIV. P. 82.

[33] 28 U.S.C. § 1441(c) (1958).

thus section 1441(c) could not be used in this case.[34] Both of these assertions of the Third Circuit are correct, except that the court misconstrued what the district court held. The district court did not hold that other relief could be given in this case so that it could gain jurisdiction under section 1441(c), nor did it use rule 54(c) to expand jurisdiction. What the district court actually held was that it could give money damages with or without the use of the procedural rule 54(c) and, therefore, the "absurd conclusion" of having jurisdiction without a remedy does not exist. In fact the district court had another and perhaps more effective remedy which it could use. The contract between plaintiff and defendant in this case provided for compulsory arbitration of grievances.[35] The court could, therefore, grant an injunction forcing arbitration.[36]

The third basis for the court's holding was that, assuming that Norris-LaGuardia only restricts the power to issue an injunction and not the jurisdiction of the court, the federal courts still do not have jurisdiction over the case because there was no diversity of parties and no federal question and therefore the case did not come within the constitutional bounds of federal jurisdiction.[37]

The question of what is a federal question has plagued the federal judiciary from shortly after the framing of the Constitution until the present day.[38] There is no rule or definition which adequately covers this question. Nevertheless, some guidelines have been established.[39] The Third Circuit determined in *American*

[34] 338 F.2d at 849. Although it is not entirely clear, distinct causes of action apparently are required for there to be separate controversies. American Fire & Cas. Co. v. Finn 341 U.S. 6 (1951).

[35] See Brief for Appellant p. 2, Brief for Appellee p. 7.

[36] It was conclusively decided in Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957), that section 301 of the Labor Management Relations Act meant that federal courts could give specific performance to arbitration agreements: "It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained in that way." *Id.*, at 455. If arbitration were enforced, could the strike be stayed pending the arbitration? This question is unanswered by the Court as far as this writer's research can determine.

[37] U.S. CONST. art. III, § 2.

[38] *E.g.*, Gully v. First Nat'l Bank 299 U.S. 109 (1936); Shulthis v. McDougal 225 U.S. 561 (1912); Gold-Washing & Water Co. v. Keyes 96 U.S. 199 (1878); Osborn v. Bank of United States 22 U.S. (9 Wheat.) 738, 824 (1824).

[39] *E.g.*, the federal question must be on the face of the complaint; the ultimate substantive issue must be of federal law; and the right created by federal law must be a substantive element of the case. Gully v. First Nat'l Bank 299 U.S. 109, 112-13 (1936). See for good discussions of federal

Dredging that the plaintiff may, in drawing his complaint, base it on the law he wishes.[40] If he casts it in such a way that the decision must be based on a construction of the Constitution, a federal statute, or a treaty, or in some other way based on federal law, then and only then has a federal question been raised. The Third Circuit concluded that the plaintiff in this case based his complaint solely on state law and in no way did the plaintiff base his case on section 301 of the Labor Management Relations Act or on any other federal law. This conclusion seems highly dubious, for in no way does it take into account the decisions subsequent to the passage of section 301 which have vastly affected the whole field of suits arising out of labor contracts. The cases, *Textile Workers Union v. Lincoln Mills,*[41] *Charles Dowd Box Co., Inc. v. Courtney,*[42] and *Local 174, Teamsters Union v. Lucas Flour Co.,*[43] basically have decided the questions of which forum labor contract cases may be tried in and what law is to be applied.

From these cases it is clearly shown that the court was amiss in concluding that the suit on the issue of breach of a labor contract's no-strike provision is not a question of federal law, no matter how the complaint in the case was framed. For these three cases show that labor contract cases, which are clearly the cases covered by section 301(a), are to be determined by federal law alone. Even though they may be tried in a state court, they still must be tried on federal law. To carry this one step further, since

---

question jurisdiction, 1 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 25 (Wright ed. 1960); 1 MOORE, FEDERAL PRACTICE § .60 (2d ed. 1964).

[40] 338 F.2d at 846, citing Gully v. First Nat'l Bank 299 U.S. 109 (1936).

[41] 353 U.S. 448 (1957). This case said:

> The question then is, what is the substantive law to be applied in suits under § 301(a)? We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights.

Id. at 456-57.

[42] 368 U.S. 502 (1962). Here it was decided that § 301 (a) did not give federal district courts exclusive jurisdiction, but jurisdiction is instead concurrent with the state courts.

[43] 369 U.S. 95 (1962). In this, the last decision of what is commonly called the trilogy, the Court held that "incompatible doctrines of local law must give way to principles of federal labor law. . . . The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute," and "we cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Id.* at 102-05.

all labor contract cases must be tried on a federal standard, there is necessarily always a federal question and, therefore, always federal jurisdiction.

The last of the contentions of the court is in actuality an attempt to rebut the dissenting opinion. Judge Hastie in his dissent[44] contended that the state courts have no power to enjoin strikes, and therefore, plaintiff was not unjustly deprived of his right to an injunction as the majority contended. Judge Hastie reached this conclusion by reasoning that the *Sinclair* decision brought prohibition of injunctions in section 4 of Norris-LaGuardia into the federal common law called for by the *Lincoln Mills* decision. The majority opinion unfortunately never discusses the question of whether this prohibition has become part of the federal common labor law. Instead it goes to great lengths to show that the Norris-LaGuardia Act was not originally intended to affect state proceedings. This is probably true, but in no way answers Judge Hastie's contention.

In the final analysis only the Supreme Court will be able to say whether the Norris-LaGuardia Act will be extended to the states by way of *Lincoln Mills*.[45] The Court may limit itself purely to a construction of the statute.[46] On the other hand, the balancing of public policies may force the Court to make the prohibition part of the federal common labor law as Judge Hastie contended. If the Court decides to extend this anti-injunction by dictating which remedies state courts may give, it will cause much friction between our federal and state court systems. But, if the Court allows the state courts to enjoin strikes, this will cause a preference for the state forum to such an extent that it is very doubtful that the federal court will be used at all for these cases. Thus the decision of *American Dredging,* the lack of removal jurisdiction and that states' re-

[44] 338 F.2d at 857-58.

[45] Although the Supreme Court has never discussed the question of whether state courts may enjoin strikes, state courts generally have said that they could grant the injunctions. *E.g.,* McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied,* 355 U.S. 932 (1958); and other cases collected at 32 A.L.R.2d 822 (1953). Legal scholars have generally opposed this view. *E.g.,* Aaron, *Strikes in Breach of Collective Agreements—Some Unanswered Questions,* 63 COLUM. L. REV. 1027, 1029-40. (1965).

[46] If the question is limited to statutory construction, the Supreme Court will probably construe the words "court of the United States" as limiting only federal courts. See, *e.g.,* Minneapolis & St. Louis R.R. v. Bombolis, 241 U.S. 211 (1916); Counselman v. Hitchcock, 142 U.S. 547 (1892).

tention of the power to enjoin strikes, circumvented the policy expressed by Congress in section 301 of the Labor Management Relations Act.

The problems discussed in this case are fundamental to the litigation of labor disputes in the courts. It would appear to this writer that if and when the Supreme Court or Congress answers these questions, the answers should reach the conclusions opposite those of the court of appeals. This must be done if for no other reason than a consistent public policy.

The Supreme Court in *Lincoln Mills*[47] and *Lucas Flour*[48] decided that labor contract suits are to be decided by federal common law. Yet if suits on breach of no-strike provisions are not allowed in federal courts, the irony is created of state courts creating federal common labor law in this area. This, of course, would put the tremendous, time-consuming responsibility of review of this state-created federal common law squarely on the shoulders of the Supreme Court.

The perplexing problems discussed in *American Dredging* can be solved finally only by a Supreme Court decision unless, of course, Congress legislates an answer. Since even a temporary injunction is likely to break a strike before any appeal can be processed through the courts, it seems unlikely that the question presented by a state injunction of a strike will ever reach the Court before becoming moot. Moreover, the question of whether the federal courts have removal jurisdiction over such a case can obviously be reached by the Court only through the federal system. Consequently, it is difficult to imagine why the Supreme Court, faced with both of these questions in this case, did not grant certiorari. It is clear that the answers are paramount in litigation of breaches of no-strike clauses in labor contracts. Therefore, they demand the attention of the Court in the immediate future.

DENNIS JAY WINNER

[47] 353 U.S. 448 (1957).
[48] 369 U.S. 95 (1962).