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INJUNCTIONS AND REMOVAL UNDER SECTION 301(a) OF TAFT-HARTLEY

Under the Wagner Act,[1] the federal courts could hear cases or controversies arising from a labor dispute only when the National Labor Relations Board petitioned for enforcement of an order or when a party appealed a Board decision. In 1947 Congress enacted the Taft-Hartley Act,[2] under which the federal district courts were given jurisdiction over controversies arising out of contract violations.[3] As a result of this Act, two forums are available to hear suits under Section 301 for violation of the terms of a collective bargaining agreement, aside from a proceeding before the National Labor Relations Board: the state courts and the federal district courts. Employers have favored the state courts, while unions, fearing unfavorable state court action, have sought to remove the cases to the federal courts. These removal situations arise because of the availability of injunctive relief in the state courts. Removing a case to a federal court also presents a problem, as different courts have different standards for determining removal.

The United States Court of Appeals for the Third Circuit recently considered a case dealing with a state court injunction in a Section 301 suit and the subsequent removal of the case to the district court. The case was *American Dredging Co. v. Local 25, Marine Div., Int'l Union of Operating Eng'rs,*[4] and the controversy arose when the defendant struck in violation of a "no-strike" clause in the union's contract with the plaintiff. The plaintiff sued in a Pennsylvania state court to obtain an injunction "and such other relief as the Court may deem appropriate." The injunction was granted, and three days later the defendant removed the case to the United States Court for the Eastern District of Pennsylvania. District Judge Kraft held that the plaintiff was an employer under Section 301(a) of the Taft-Hartley Act, that

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[1]National Labor Relations Act (Wagner Act), 49 Stat. 449 (1935), 29 U.S.C. § 141 (1958).

[2]Labor Management Relations Act (Taft Hartley Act), 61 Stat. 156 1947), 29 U.S.C. §§ 141-97 (1958).

[3]Section 301(a) of the Taft-Hartley Act provides that "suits for violation of contracts between an employer and a labor organization representing employees in any industry affecting commerce. . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." By this section, a federal forum was provided for the litigants. Id. at § 185.

[4]338 F.2d 837 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965), reversing 224 F. Supp. 985 (E.D. Pa. 1964). This case has also been commented on in 78 Harv. L. Rev. 1665 (1965).

the defendant represented employees engaged in interstate commerce, and that the district court would have had original jurisdiction over the case. The court dismissed the case on the pleadings and not on the merits. The plaintiff appealed from the district court's refusal to remand the case to the state court.

In its motion to remand, the plaintiff had amended its original complaint, asking only for injunctive relief. Holding the case had been improperly removed, the Court of Appeals for the Third Circuit, with one judge dissenting, remanded to the state court. The majority held that the district court did not have jurisdiction, since it did not have "power to entertain the suit, consider the merits and render a binding decision thereon." Furthermore, the majority concluded that the plaintiff's complaint was not based upon a federal right and thus was not properly removed to the district court.

In his dissent, Judge Hastie contended that the state could grant relief only if it were compatible with federal labor policy. In his opinion, this policy includes the denial of injunctive relief in labor disputes, and so the state court should have dismissed the suit. He also believed that the complaint did rely upon a federal right, so that the district court would have had original jurisdiction, and thus the case was properly removed to the federal court.

In *Charles Dowd Box Co. v. Courtney*,[5] the Supreme Court decided that Section 301(a) was not intended to and did not confer exclusive jurisdiction on the federal courts, thereby recognizing that the state courts are also appropriate forums in which to bring a Section 301 suit.[6] Soon after deciding the *Dowd* case, the Supreme Court in *Sin-*

[5]368 U.S. 502 (1962), affirming 341 Mass. 337, 169 N.E.2d 885 (1960). The Court noted at 506 that the Taft-Hartley Act "provides that suits of the kind described 'may' be brought in the federal courts, not that they must be." The majority also stated on the same page that "the statute does not state nor even suggest that such jurisdiction shall be exclusive." The Supreme Court decision is discussed in Comment, 20 Wash. & Lee L. Rev. 138 (1963).

[6]Several state courts have exercised jurisdiction since adoption of § 301(a): Connecticut Co. v. Division 425, Street Employees, 147 Conn. 608, 164 A.2d 413 (1960); Local 774, Int'l Ass'n of Machinists v. Cessna Aircraft Co., 186 Kan. 569, 352 P.2d 420 (1960); Harbinson-Walker Refractories v. Local 702, Brick Workers, 339 S.W.2d 933 (Ky. 1960); Miller v. Kansas City Power & Light Co., 332 S.W.2d 18 (Mo. Ct. App. 1960); Anchor Motor Freight Corp. v. Local 445, Teamsters Union, 5 App. Div. 2d 869, 171 N.Y.S.2d 506 (1958); Steinberg v. Mendel Rosenzweig Fine Furs, Inc., 9 Misc. 2d 611, 167 N.Y.2d 685 (Sup. Ct. 1957); General Elec. Co. v. United Auto Workers, 93 Ohio App. 139, 108 N.E.2d 211 (1952); Local 8, Longshoremen's Union v. Harvey Aluminum Corp., 226 Ore. 94, 359 P.2d 112 (1961); Springer v. Powder Power Tool Corp., 220 Ore. 102, 348 P.2d 1112 (1960); Clark v. Hein-Werner Corp., 8 Wis. 2d 264, 99 N.W.2d 132 (1960).

clair Ref. Co. v. Atkinson,[7] considered the effect of Section 301(a) on Section 4 of the Norris-LaGuardia Act and held that Section 301(a) was not intended to render inapplicable the anti-injunction section of the Norris-LaGuardia Act.[8] Read together, Section 301 (a) of the Taft-Hartley Act and Section 4 of the Norris-LaGuardia Act mean that a suit arising from the breach of a collective bargaining agreement *may* be brought in a federal court, but that the federal court cannot give injunctive relief. Thus, the holding in the *Sinclair* case eliminated federal court injunctions.

Since federal-state jurisdiction is concurrent in Section 301(a) cases and since the federal courts cannot grant injunctive relief, the problem arises as to the type of relief the state court may grant under Section 301(a). The leading case on this problem is *McCarroll v. Los Angeles County Dist. Council of Carpenters*,[9] wherein a union contract provided that the plaintiff was to have freedom in hiring workers, after first requesting men from the union hiring hall. Differences arose from this clause and the union called a strike. The plaintiff sought an injunction to terminate this strike. In affirming the granting of the injunction, Judge Traynor, speaking for the majority of the Supreme Court of California, held a state court could grant any appropriate relief under Section 301(a), and that Section 4 of the Norris-LaGuardia Act did not apply to state courts but only to United States federal courts. The state court, therefore, could issue an injunction in a case in which a federal court would be unable to grant the injunctive relief desired. Another case supporting state court action recognizes that "state courts retain the jurisdiction they have always had to enforce contracts notwithstanding Section 301 of the Labor Management Relations Act...."[10] These and similar decisions hold that state courts may apply Section 301(a) free from the Norris-LaGuardia Act restrictions placed upon federal courts.

Some federal courts have remanded labor cases to state courts to enable the granting of injunctions. In *Associated Tel. Co. v. Communi-*

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[7]370 U.S. 195 (1962). This case involved a strike by a union in violation of the collective bargaining agreement. By a 5-3 decision, the Supreme Court decided that the federal court was powerless to grant injunctive relief.

[8]47 Stat. 70 (1932), 29 U.S.C. § 101 (1958). Section 4 of the Norris-LaGuardia Act states that "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...." Sinclair, supra note 7, held that the federal courts could hear the case under § 301(a) of the Taft-Hartley Act, subject to the above restrictions of the Norris-LaGuardia Act.

[9]49 Cal. 2d 45, 315 P.2d 322 (1957).

[10]Philadelphia Marine Trade Ass'n v. Local 1291, Longshoremen's Union, 382 Pa. 326, 115 A.2d 733, 737 (1955).

cation Workers,[11] an injunction was granted by a state court to enjoin a strike in violation of a "no-strike" clause of the contract. The case was removed to the district court which concluded that a federal right was relied upon by the plaintiff, the case was improperly before it, and should be remanded to the state court. In remanding the case, the court said that Congress did not intend to give the district courts jurisdiction which would not serve a useful purpose. Thus, the state court could apply Section 301(a) without regard to the Norris-LaGuardia Act.[12]

In the *American Dredging Co.* case, Judge Hastie contended that the state and federal courts should apply the same federal labor law. In *Textile Workers Union v. Lincoln Mills,*[13] the collective bargaining agreement contained a clause for arbitration of grievances. Grievances arose, but the employer refused to submit them to arbitration. The union sued to compel specific performance of the contract. The suit arose under Section 301(a) and the Supreme Court interpreted that Section to mean that the federal courts were authorized to fashion a body of labor law out of the policy of prohibiting federal injunctions against strikes. By the *Lincoln Mills* decision, the Court indicated the labor problem was national in scope, demanding that case law conform with national labor policies.

In light of *Lincoln Mills,* a strong argument has been made that state courts cannot issue injunctions in labor disputes, because, to do so, would frustrate national labor policy.[14] Federal labor laws, recognizing the value of strikes to unions, permit such strikes and prohibit federal courts from enjoining them. If a state court is allowed to enjoin a strike which a federal court could not enjoin, then such action would frustrate present labor policies.[15] The Supreme Court has not

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[11]114 F. Supp. 334 (S.D. Cal. 1953).

[12]Another case so holding is Castle & Cooke Terminals Ltd. v. Local 137, Longshoremen's Union, 110 F. Supp. 247 (D. Hawaii 1953). This case was decided before Associated Tel. Co. v. Communication Workers, supra note 11, but advanced the same proposition: a federal or state court could apply § 301(a) free from the restrictions of the Norris-LaGuardia Act. Obviously these cases have been overruled by the Sinclair case, supra note 7, in regard to the application of the Norris-LaGuardia Act to federal courts. These cases, however, should still be valid precedent for the proposition that the restrictions of the Norris-LaGuardia Act do not apply to state courts.

[13]353 U.S. 448 (1957). "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." Id. at 456.

[14]Local 174, Teamsters Union v. Lucas Flour Co., 369 U.S. 95 (1962).

[15]Judge Carter, dissenting in the McCarroll case, supra note 9, did not feel that a state court administering federal law could give relief unavailable in a federal court. He contended that the federal anti-injunction policy should govern state

passed on this point, but the *McCarroll* case[16] and the majority in the *American Dredging Co.* case have taken the opposite view, holding that a state court may issue injunctions in labor disputes.

With the law as it now is, the problem arises as to the standards to be applied by federal courts in determining which cases may properly be removed from the state courts. The Federal Removal Act provides, in part, that "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."[17] It is settled law that, under this statute, the federal court must have had original jurisdiction in order to entertain a removal action.[18] Some courts interpret the word "jurisdiction" to mean that the court must have been able to grant the requested relief, if warranted. This means that the federal court must have been able to make a final decree on the merits.[19] Under this view, if the plaintiff only asks for an injunction, the federal courts do not have original jurisdiction over the case, since they would be unable to grant injunctive relief and would be forced to dismiss the complaint.

Another approach, leading to the same conclusion, is that, for a case or controversy to arise under the laws of the United States, the federal right relied upon must be plainly stated on the face of the com-

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courts applying § 301(a). He did not believe that § 301(a) could or should be applied in a case without applying the restrictions of the Norris-LaGuardia Act at the same time.

On the other side of this argument it could be said that had the framers of the Taft-Hartley Act wished to bind the state courts they could have done so. They could have required that any state court applying § 301(a) apply it in the same manner as would a federal court, subject to the same restrictions.

[16]The Supreme Court denied certiorari in the McCarroll case, 355 U.S. 932 (1958). Although the Court has frequently said that its denial of certiorari is not to mean that the Court agrees with the decision, such a denial does mean that the case is still good law. Perhaps the Court is just waiting to see the kind of case law which will evolve from the courts, or perhaps it does agree with cases like McCarroll. In any event, until it acts it must be assumed that McCarroll represents the prevailing view on state court actions under § 301(a).

[17]Removal Act, 62 Stat. 938 (1948), 28 U.S.C. § 1441(b) (1958).

[18]Boone v. Wachovia Bank & Trust Co., 163 F.2d 809 (D.C. Cir. 1947); Fulkerson v. American Chain & Cable Co., 72 F. Supp. 334 (W.D. Pa. 1947); Chicago & N.W. Ry. v. Fachman, 125 N.W.2d 210 (Iowa 1963); Helton v. Crawley, 241 Iowa 296, 41 N.W.2d 60 (1950); Board of County Comm'rs v. Black (Sivalls & Bryson, Inc., 169 Kan. 225, 217 P.2d 1070 (1950).

[19]Douglas v. International Bhd. of Elec. Workers Union, 136 F. Supp. 68 (W.D. Mich. 1955) (dictum). "If, however, the relief prayed for in the complaint is limited to specific performance of a no-strike clause, it seems that original jurisdiction does not exist." Note, 72 Harv. L. Rev. 354, 367 (1958).

plaint.[20] Thus, the federal right relied upon must be discoverable from the complaint and not from the answer or the petition for removal.[21] If the plaintiff has a choice of a federal or state right, the court must look to his complaint to determine under which he wishes to proceed. The underlying reason for this requirement appears to be the desire of courts to allow the plaintiff to select his forum. Once the plaintiff has made his selection, the courts which adhere to this view are reluctant to compel him to change, unless a federal question is clearly presented.

A different approach would be to require only that the case be of the class of cases which the court has jurisdiction to entertain.[22] Such an approach is represented by the decision of the Federal District Court of Colorado in *Swift & Co. v. United Packinghouse Workers.*[23] The plaintiff and defendant had entered into a collective bargaining agreement which included a "no-strike" clause. The defendant, breached the contract clause and the plaintiff filed suit in a state court to enjoin the strike. The court held that removal by the defendant was appropriate, since the complaint set forth a cause of action which the plaintiff could have brought in a federal district court. Courts interpreting "jurisdiction" in this manner and allowing removal contend that a case is removable even though the necessary consequence of removal is a dismissal of the complaint.[24] Contending otherwise would be interpreting the Taft-Hartley Act as tolerating remand to the state court to enable it to grant an injunction which the federal court could not grant.[25]

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[20]Alabama ex rel. Flowers v. Robinson, 220 F. Supp. 293 ((N.D. Ala. 1963); Peter Kiewit Sons' Co. v. Colorado & S. Ry., 199 F. Supp. 261 (D. Colo. 1961); Collins v. Public Serv. Comm'n, 129 F. Supp. 722 (W.D. Mo. 1955); Sandsberry v. Gulf C. & S.F. Ry., 114 F. Supp. 834 (N.D. Tex. 1953); Old Reading Brewery, Inc. v. Lebanon Valley Brewing Co., 102 F. Supp. 434 (M.D. Pa. 1952); Adams v. Long, 65 F. Supp. 310 (W.D. Mo. 1943).

[21]Romick v. Berkins Van & Storage, Inc., 197 F.2d 369 (5th Cir. 1952); Stouffer v. Exley, 184 F.2d 962 (9th Cir. 1950); Olsen v. Doerfler, 225 F. Supp. 540 (E.D. Mich. 1963); Marsden v. Southern Flight Serv., Inc., 192 F. Supp. 418 (M.D.N.C. 1961); Bill v. Carr, 88 F. Supp. 578 (D. Conn. 1949).

[22]United States v. New York & O.S.S. Co., 216 Fed. 61 (2d Cir. 1914); United States v. Association of Am. R.R., 4 F.R.D. 510 (D. Neb. 1945); Scott v. Southeastern Greyhound Lines, 5 F.R.D. 11 (N.D. Ohio 1945).

[23]177 F. Supp 511 (D. Colo. 1959).

[24]Tri-Boro Bagel, Inc. v. Bakery Drivers Union, 228 F. Supp. 720 (E.D.N.Y. 1963). This case involved a complaint asking for injunctive relief as did the complaint in American Dredging Co. The court held that the case had been removed properly and that it had jurisdiction, even though it would have to dismiss the case, since it was unable to grant injunctive relief.

[25]Crestwood Dairy, Inc. v. Kelley, 222 F. Supp. 614 (E.D.N.Y. 1963). In denying remand to the state court from which the case had come, the court said: "The

Courts supporting removal to the federal system contend the complaint need not specifically state on its face that the plaintiff is relying upon a federal right. They hold that, if the complaint actually invokes federal law, the plaintiff cannot word his complaint to avoid a federal forum.[26] Although presumably no longer good law in light of the holding in *American Dredging Co.*, such avoidance of a federal forum was attempted in *Food Fair Stores, Inc. v. Retail Clerks Council No. 11*,[27] a district court decision from the Third Circuit. This case also involved a violation by the union of a "no-strike" clause in its contract with the plaintiff. An injunction was granted by a Pennsylvania state court, and the defendant removed the case to the United States Court for the Eastern District of Pennsylvania. In denying the plaintiff's motion for remand, the court said its jurisdiction "does not depend upon the ingenuity of the form of a complaint in equity."[28]

Proponents of labor injunctions contend that the plaintiff has the right to choose his forum. In reply to this contention, it would seem that the defendant should be allowed to have his federal rights enforced in a federal court. If the plaintiff is to select the forum, it seems unfair to force the defendant to waive his right to a federal forum merely because of the wording of the complaint.[29] If the basic right asserted is one based on federal law, the defendant should have the benefit of the federal forum.[30] The suggestion that plaintiff should be permitted to compel defendant to litigate a federal claim in a state court when Congress has explicitly made available a federal forum is indefensible."[31]

'jurisdictional' form of the prohibitions of that Act upon granting injunctions are not to be interpreted as tolerating remand to the state court for the purpose of enabling it to grant the injunctions that the Norris-LaGuardia Act would preclude a federal court from granting...." Id. at 617.

[26]Adams v. California, 176 F. Supp. 456 (N.D. Cal. 1959) (holding that it was the real nature of the claim and not the characterization given it by the plaintiff which must determine jurisdiction). Accord: Levitt & Sons, Inc. v. Congress of Racial Equality, 221 F. Supp. 541 (D.Md. 1963). These cases do not deal with labor disputes but are cited as examples for the proposition that the true nature of the complaint is controlling and not the appearance given it by the plaintiff.

[27]229 F. Supp. 123 (E.D. Pa. 1964). At the time of the decision in the American Dredging Co. case, the court pointed out that two district judges in Pennsylvania supported removal to the federal courts while three opposed it. Food Fair Stores, supra, was not cited for support, but only as an example of an attempt to avoid a federal forum by the wording of the complaint.

[28]Id. at 127.

[29]Pocohontas Terminal Corp. v. Portland Bldg. Trade Council, 93 F. Supp. 217 (D. Me. 1950).

[30]Produce Terminal Realty Corp. v. New York, N.H. & H.R.R., 116 F. Supp. 451 (D. Mass. 1953) (denying remand and holding that the right was a federal right which the defendant could enforce in a federal court).

[31]Fay v. American Cystoscope Makers, Inc., 98 F. Supp. 278, 281 (S.D.N.Y. 1951).