St. John's Law Review

Volume 33
Number 1 *Volume 33, December 1958, Number 1*

Article 3

Federal Pre-Emption and Labor Disputes

St. John's Law Review

NOTES

FEDERAL PRE-EMPTION AND LABOR DISPUTES

Introduction

The supremacy clause of the United States Constitution [1] has been construed to mean that where Congress enacts legislation within its jurisdiction and manifests its intention to pre-empt the field, all state action must yield if it parallels,[2] supplements [3] or conflicts with [4] the higher federal law. As early as 1820 the Supreme Court,[5] in answering the question whether a state government could parallel federal action, decided that when Congress has created comprehensive federal regulation with rights and remedies, it has expressed its judgment as to the extent to which regulation is desired, and a duplicative state law is as conflicting and void as would be one in derogation of the federal law.

The real problem arises where Congress has not expressly stated that its legislation is to pre-empt the field. This lapse on the part of Congress creates a void that the courts have attempted to fill. As Justice Frankfurter remarked, there is no clear path between federal and state jurisdiction that is "susceptible of delimitation by fixed metes and bounds." [6]

In the field of labor relations, the comprehensive nature of the Taft-Hartley Act [7] gives rise to more possibility of conflict than did the Wagner Act.[8] The boundary lines have been dislocated, leaving

---

[1] U.S. CONST. art. VI: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ."

[2] See, *e.g.*, La Crosse Tel. Corp. v. Wisconsin Emp. Rel. Bd., 336 U.S. 18 (1949); Bethlehem Steel Co. v. New York Lab. Rel. Bd., 330 U.S. 767 (1947).

[3] See, *e.g.*, Guss v. Utah Lab. Rel. Bd., 353 U.S. 1 (1957); Capital Serv., Inc. v. NLRB, 347 U.S. 501 (1954).

[4] See, *e.g.*, International Union, UAW v. O'Brien, 339 U.S. 454 (1950); Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945). *Cf.* Hines v. Davidowitz, 312 U.S. 52 (1941).

[5] Houston v. Moore, 4 U.S. (5 Wheat.) 1, 21-23 (1820).

[6] Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 480 (1955).

[7] Labor Management Relations Act (Taft-Hartley Act), 61 STAT. 136 (1947), 29 U.S.C. §§ 141-97 (1952).

[8] National Labor Relations Act (Wagner Act), 49 STAT. 449 (1935). The Wagner Act only protected the rights of employees to organize and strike. The reason for such little federal-state collision in the field of labor relations was a general absence of state law protecting the employee's rights. Isaacson, *Federal Pre-Emption Under the Taft-Hartley Act*, 11 IND. & LAB. REL. REV. 391-92 (1958).

the courts with the problem of re-establishing them over this greater area. Congress helped in this problem when considering the enactment of the Taft-Hartley Act. It was aware of the pre-emption doctrine which the Court had applied under the Wagner Act.[9] The Supreme Court took notice of this fact when it stated that Congress "knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned . . . .'" [10]

Pre-emption Under the Wagner Act

Since Congress knew of the rulings under the Wagner Act, it can be assumed that by implication they were approved and incorporated in the Taft-Hartley Act. The Court had laid down three general boundaries for the guidance of the lower courts. In *Allen-Bradley Local v. Wisconsin Emp. Rel. Bd.*,[11] the Court decided that where Congress had generally pre-empted a field it did not preclude a state from exercising its traditional police power over public safety where violence was involved.[12] The second area concerned the right of a state to prohibit an act that Congress has specifically authorized. In *Hill v. Florida ex rel. Watson*,[13] a Florida court enjoined a labor union from functioning until it complied with a state law providing that a union that does not register and pay a license fee could not function within the state. Since the freedom of the workers to bargain collectively through their union was impaired by the state's action, such action violated the Wagner Act.[14] The third postulate provided that a state could not act where the federal government refused to act. In *Bethlehem Steel Co. v. New York Lab. Rel. Bd.*,[15] the state board recognized a collective bargaining agent although the National Labor Relations Board refused to do so. In disallowing the

[9] See UAW v. Wisconsin Emp. Rel. Bd., 351 U.S. 266, 273 n.10 (1956); Bus Employees v. Wisconsin Emp. Rel. Bd., 340 U.S. 383, 397-98 (1951). Congress specially provided for state participation in labor relations on occasions when the Board should cede jurisdiction. Labor Management Relations Act (Taft-Hartley Act) § 10(a), 61 STAT. 146 (1947), 29 U.S.C. § 160(a) (1952).

[10] Bus Employees v. Wisconsin Emp. Rel. Bd., *supra* note 9, at 397-98.

[11] 315 U.S. 740 (1942).

[12] The acts of violence were, *inter alia*, threats of bodily harm, obstruction of entrances and exits and threats of property damage. Allen-Bradley Local v. Wisconsin Emp. Rel. Bd., 315 U.S. 740 (1942). See UAW v. Wisconsin Emp. Rel. Bd., *supra* note 9, at 268-69. *Cf.* Algoma Plywood & Veneer Co. v. Wisconsin Emp. Rel. Bd., 336 U.S. 301 (1949); International Union, UAW v. Wisconsin Emp. Rel. Bd., 336 U.S. 245 (1949); Rice v. Santa Fe Elev. Corp., 331 U.S. 218 (1947).

[13] 325 U.S. 538 (1945).

[14] Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945). *Accord,* Bus Employees v. Wisconsin Emp. Rel. Bd., 340 U.S. 383 (1951); International Union, UAW v. O'Brien, 339 U.S. 454 (1950).

[15] 330 U.S. 767 (1947).

concurrent jurisdiction on the ground that the federal action was exclusive, the Court recognized that federal power had not been dormant, but rather the NLRB's refusal to act was a determination within its discretionary power.[16]

Since the Taft-Hartley Act—The Garner Case

Since 1950 the Supreme Court has endeavored to clarify the line of demarcation between state and federal power over the wider area encompassed by the Taft-Hartley Act. Before the Court formulated a rule to be followed there was conflict, and many state courts assumed jurisdiction over disputes which they felt were not covered by federal law.[17] However, the Court has now decisively stated that power over some conduct under the act is exclusively reserved to the federal agency, and state action is foreclosed. Foreclosure was first enunciated in *Plankinton Packing Co. v. Wisconsin Emp. Rel. Bd.*[18] The Court held that a state labor relations statute, of the same tenor as the Taft-Hartley Act, could not be invoked against an employer who usually came under the jurisdiction of the NLRB. Subsequently, this principle of jurisdiction over employers' unfair labor practices was applied to the unfair labor practices of a union in *Garner v. Teamsters Union.*[19] In this case the petitioner, engaged in interstate commerce, sought a state injunction to prevent the union from continuing the peaceful picketing of his business. There was no labor dispute and his employees were free to join the union, although few wished to do so. It was found that the primary reason for the picketing was to coerce the petitioner [20] into influencing his employees to join the union. This was a violation of state law [21] and also constituted an unfair labor practice under federal law.[22] The Court concluded that a state court may not adjudge the same controversy and

---

[16] Bethlehem Steel Co. v. New York Lab. Rel. Bd., 330 U.S. 767 (1947). *Accord,* Guss v. Utah Lab. Rel. Bd., 353 U.S. 1 (1957).

[17] Van de Water & Petrowitz, *Jurisdiction in Industrial Relations Cases,* 31 So. CAL. L. REV. 111, 124 n.71 (1958).

[18] 338 U.S. 953 (1950), *affirming per curiam* 255 Wis. 285, 38 N.W.2d 688 (1949).

[19] 346 U.S. 485 (1953).

[20] When the peaceful pickets were placed in front of petitioner's entrance, drivers and other carriers refused to cross the line. Business fell off 95%. *Id.* at 487.

[21] PA. STAT. ANN. tit. 43, § 211.6 (1952).

[22] "It shall be an unfair labor practice for a labor organization or its agents—

. . .

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . . ." Labor Management Relations Act (Taft-Hartley Act) § 8(b), 61 STAT. 140 (1947), 29 U.S.C. § 158(b) (1952). Subsection (a)(3) declares it to be an unfair labor practice for an employer, by discrimination in hiring or tenure, to encourage membership in any labor organization.

extend its own relief [23] where the situation is covered by the federal law, since such action would be disruptive of the uniformity which Congress considered necessary.[24] "The conflict lies in *remedies,* not rights . . . . But when two separate *remedies* are brought to bear on the same activity, a conflict is imminent." [25] The Court concluded: [W]hen federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right.[26]

The Supreme Court's Application of the Garner Rule

In *United Constr. Workers v. Laburnum Constr. Corp.*,[27] decided at the same term as the *Garner* decision, the Court pointed up one of the areas under the Taft-Hartley Act that "leaves much to the states," [28] although Congress withdrew from the states much that had previously rested with them.[29] The union's agent demanded that the construction corporation's employees join the union, and that it be recognized as the sole bargaining agent. When these

---

[23] The Board has the power, upon the filing of a complaint, to petition the district court for an injunction to stop an unfair labor practice. Labor Management Relations Act (Taft-Hartley Act) § 10(j), 61 STAT. 149 (1947), 29 U.S.C. § 160(j) (1952).

[24] For the need of uniformity see, *e.g.,* International Union, UAW v. Russell, 356 U.S. 634 (1958) (dissenting opinion); Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); Capital Serv., Inc. v. NLRB, 347 U.S. 501 (1954).

[25] Garner v. Teamsters Union, 346 U.S. 485, 498-99 (1953). (Emphasis added.) In a recent New York case, Pleasant Valley Packing Co. v. Talarico, 5 N.Y.2d 40, 152 N.E.2d 505, 177 N.Y.S.2d 473 (1958), the Court of Appeals held that there was state jurisdiction when defendant's union picketed for the purpose of compelling the employer to recognize that union instead of the one duly certified by the NLRB. The *Garner* case was distinguished on the grounds that in the present case ". . . the complaint alleges that the defendants demand that plaintiff recognize the defendant union . . . . [and] to do so would not necessarily entail coercion by the plaintiff upon its employees. . . ." *Id.* at 47, 152 N.E.2d at 508, 177 N.Y.S.2d at 477. It was further stated that the picketing did not constitute an unfair labor practice since there was no strike. Three judges dissented. The separate dissenting opinion of Judge Fuld pointed out there was an unfair labor practice within the meaning of the Taft-Hartley Act, even though there was no strike. Labor Management Relations Act (Taft-Hartley Act) § 8(b)(4)(A), 61 STAT. 141-42 (1947), 29 U.S.C. § 158(b)(4)(A) (1952), provides that it is an unfair labor practice for a labor organization to ". . . induce or encourage the employees . . . to engage in a strike or a concerted refusal in the course of their employment . . . [for the purpose of] forcing or requiring any employer . . . [to] cease doing business with any . . . person. . . ." Judge Fuld's interpretation of § 158(b)(4)(A) had previously been given in International Bhd. of Elec. Workers v. NLRB, 341 U.S. 694, 701-02 (1951); NLRB v. Associated Musicians, 226 F.2d 900, 904 (2d Cir. 1955).

[26] Garner v. Teamsters Union, *supra* note 25, at 500-01.

[27] 347 U.S. 656 (1954).

[28] Garner v. Teamsters Union, *supra* note 25, at 488.

[29] *Ibid.*

demands were refused threats and intimidation followed [30] until the corporation had to abandon the project it had undertaken. The corporation sued in the state court for damages due to these practices. The issue before the Court was whether federal pre-emption precluded state jurisdiction over common-law tort when the act complained of was also an unfair labor practice. This question was resolved in favor of the corporation, the Court deciding that the state could take jurisdiction since there was no *remedy* [31] that conflicted with or paralleled a federal remedy.[32] However, the dissent indicated that even when violence occurred the state court only had authority to apply remedies which had no counterpart under the Taft-Hartley Act, since "for each wrong which the federal Act recognizes the parties have only the remedy supplied by that Act. . . ." [33]

This seeming conflict with the *Garner* case may be explained by later cases which declare it to be only a re-affirmation of the right of the state to control violence by the exercise of its police power.[34]

In *Weber v. Anheuser-Busch, Inc.*,[35] which also followed the *Garner* case, there was a jurisdictional dispute between two unions. The day after a strike was called the corporation filed an unfair labor charge. The NLRB found that no dispute existed within the mean-

---

[30] The Virginia court found as a fact that the union's activities constituted tortious misconduct consisting of violence and actions which put the employees in fear of their lives and safety. United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656, 660 n.4 (1954). Compare these violations with those involved in the cases cited in note 12, *supra*.

[31] *Laburnum* sustained the state's jurisdiction on the theory that ". . . there was no compensatory relief under the federal Act and no federal administrative relief with which the state remedy conflicts." Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 477 (1955).

[32] "[T]he exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'" Kelly v. Washington *ex rel.* Foss Co., 302 U.S. 1, 10 (1937). See Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945) (dissenting opinion).

[33] United Constr. Workers v. Laburnum Constr. Corp., *supra* note 30, at 671 (dissenting opinion).

[34] The *Laburnum* case emphasized ". . . where the violent conduct was reached by a remedy having no parallel . . . ." Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 480 (1955). *"Laburnum* sustained an award of damages under state tort law for violent conduct." San Diego Bldg. Trades Council v. Garmon, 353 U.S. 26, 29 (1957). After the *Laburnum* opinion, the Ninth Circuit in a per curiam opinion denied a rehearing by limiting the *Laburnum* rule to situations where there were threats of violence and which were therefore within the police power. Born v. Laube, 214 F.2d 349 (9th Cir. 1954) (per curiam), *cert. denied,* 348 U.S. 855 (1954). See also Morse v. Local 1058 Carpenters, 78 Idaho 405, 304 P.2d 1097 (1956); Tallman Co. v. Latal, 365 Mo. 552, 284 S.W.2d 547 (1955). But in the following cases state jurisdiction was upheld even where there was no violence. Denver Bldg. & Constr. Trades Council v. Shore, 132 Colo. 187, 287 P.2d 267 (1955); Benjamin v. Foidl, 379 Pa. 540, 109 A.2d 300 (1954).

[35] 348 U.S. 468 (1955).

ing of the pertinent section of the Taft-Hartley Act. But before the Board made this finding, the corporation petitioned the Missouri state court to enjoin the strike as a violation of the state's restraint of trade statute. The state court granted the relief prayed for by the petitioner. The Supreme Court held that because the Board only ruled on one section of the Act did not mean that other sections had not been violated and any such further action was vested exclusively in the NLRB. It is plain from the language in this case that federal pre-emption will not be made to turn upon the grounds for invoking state action, but upon the question of dual *remedy*.

> [W]here the moving party itself alleged unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction . . . in the first instance.[36]

In *Gus v. Utah Lab. Rel. Bd.*,[37] the Court re-emphasized the pre-emption doctrine in a labor case where, due to NLRB inaction, a state court granted relief from an unfair labor practice within the meaning of the Taft-Hartley Act.[38] The state remedy was set aside on the ground that Congress had created an agency with exclusive jurisdiction and the power to cede it, which power, however, is "the exclusive means whereby States may be enabled to act concerning the matters which Congress has entrusted to the National Labor Relations Board." [39]

It would seem that the cases under the Taft-Hartley Act previously discussed turned on the question whether there was a duplication of remedy. If a federal remedy exists then state action is precluded.[40] However, in two recent cases, *International Ass'n of Machinists v. Gonzales* [41] and *International Union, UAW v. Russell*,[42]

---

[36] Weber v. Anheuser-Busch, Inc., *supra* note 34, at 481. But see Pleasant Valley Packing Co. v. Talarico, 5 N.Y.2d 40, 152 N.E.2d 505, 177 N.Y.S.2d 473 (1958), in which the majority declared: "We are of the mind that any doubt should be resolved in favor of jurisdiction, leaving it to the Supreme Court to finally resolve the matter." *Id.* at 47, 152 N.E.2d at 508, 177 N.Y.S.2d at 478.

[37] 353 U.S. 1 (1957).

[38] Budget limitations and administrative considerations have precluded the NLRB from exercising its jurisdiction over all cases in which interstate commerce was present. Congress has recognized this practice. Guss v. Utah Lab. Rel. Bd., 353 U.S. 1, 14 (1957) (dissenting opinion). See Note, *Discretionary Administrative Jurisdiction of the N.L.R.B. Under the Taft-Hartley Act*, 62 YALE L.J. 116 (1952).

[39] Guss v. Utah Lab. Rel. Bd., *supra* note 38, at 9.

[40] "[F]or each wrong which the federal Act recognizes the parties have only the remedy supplied by that Act . . . . If the parties not only have the remedy Congress provided but the right to sue for damages as well, the controversy is not settled . . . ." United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656, 671 (1954) (dissenting opinion).

[41] 356 U.S. 617 (1958).

[42] 356 U.S. 634 (1958).

the issue before the Court was whether a partial federal remedy precluded the comprehensive state remedy from being interposed without a conflict.

The Gonzales Case

The petitioner brought an action in a state court for restoration of his membership in the union [43] after an allegedly wrongful expulsion, and to recover damages for loss of wages as well as physical and mental suffering. A state law provided for mandatory reinstatement and damages for wrongful expulsion. The Taft-Hartley Act provided for reimbursement for back pay.[44] The Supreme Court concluded that although there was an unfair labor practice within the provisions of the act, state action was not precluded, since the NLRB could not grant the complete relief that the state court was empowered to grant. To deprive a party of state remedies for *all* damages incurred, leaving only the possibility of partial federal relief, would be a mutilation of the "comprehensive relief of equity." The Court further reasoned that the conflict with federal policy was remote because: (1) the subject matter was breach of contract and the suit did not purport to remedy union conduct; [45] and (2) the same degree of conflict is present in the restoration of membership as in the award of damages. In either case the conflict was too remote, too contingently related to the public interest to justify depriving state courts of jurisdiction.[46]

In the dissenting opinion the Chief Justice applied the rule of the *Garner* case by pointing out that allowing a state remedy to be

---

[43] Although the question of reinstatement was not before the Court, it indicated that a state court had jurisdiction to reinstate a wrongfully discharged union member. This is in accord with the weight of authority. See, *e.g.*, Real v. Curran, 285 App. Div. 552, 138 N.Y.S.2d 809 (1st Dep't 1955); Thorman v. International Alliance, 49 Cal. 2d 629, 320 P.2d 494 (1958); Mahoney v. Sailors' Union, 45 Wash. 2d 453, 275 P.2d 440 (1954).

[44] Labor Management Relations Act (Taft-Hartley Act) § 10(c), 61 STAT. 147 (1947), 29 U.S.C. § 160(c) (1952).

[45] International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 618 (1958). "[T]he presence or absence of pre-emption is a consequence of the effect of state action on the aims of federal legislation, not a game that is played with labels or an exercise in artful pleadings." *Id.* at 632 (dissenting opinion). "[F]ederal power cannot be curtailed by states even though the grounds of intervention be different than that on which federal supremacy has been exercised." Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 480 (1955).

[46] International Ass'n of Machinists v. Gonzales, *supra* note 45, at 619. The Board has no power to order the restoration of union membership rights so there cannot be any conflict. On the other hand, it does have power to award back pay which does create a conflict. *Id.* at 632 (dissenting opinion). The important distinction between the purposes of federal and state regulations has been described as follows: "Although even these state court decisions may lead to possible conflict between the federal labor board and state courts they do not present potentialities of conflicts in kind or degree which requires a hands off directive to the states." Isaacson, *Labor Relations Law: Federal Versus State Jurisdiction*, 42 A.B.A.J. 415, 483 (1956).

applied to a situation within the purview of the act permits a duplication of remedy, making conflict unavoidable.[47] One of the avowed purposes of the act was to "protect the rights of the individual employees in their relations with labor organizations whose activities affect commerce. . . ." [48] The facts of the case at bar fell within this purpose and when "Congress was prescribing a complete code of regulations it did not contemplate actions in the state court for the same conduct." [49] Congress vested exclusive power in the agency it provided to carry out its will. The minority further believed that duplication of relief and award of damages for which Congress did not provide would deter employees from resorting to the federal machinery and thereby "frustrate the remedial pattern of the Federal Act." [50]

Before the *Gonzales* decision most of the lower courts had concluded that since there was a federal remedy, state action was precluded.[51] *Born v. Laube*,[52] the leading case in this area, concerned a petition for reinstatement, loss of wages and exemplary damages. The court found that an unfair labor practice was involved and decided that the federal remedy was exclusive. "[I]t is evident that since the Act provides a procedure for redress and a corresponding remedy, both the procedure and the remedy are exclusive in the absence of an express provision or Board delegation to the contrary." [53]

The other view can best be stated by a California case,[54] which allowed the petitioner to recover damages when a union picketed his business in order to pressure him into coercing his employees to join the union. The court concluded such conduct was tortious within the meaning of the rule of the *Laburnum* case. The holding was based on the belief that the union's activities were in violation of the declared policy of the state, thereby giving the state court jurisdiction despite the fact that the business enterprise was engaged in interstate commerce.[55]

---

[47] International Ass'n of Machinists v. Gonzales, *supra* note 45, at 623 (dissenting opinion).

[48] Labor Management Relations Act (Taft-Hartley Act) § 1(b), 61 STAT. 136 (1947), 29 U.S.C. § 141(b) (1952).

[49] International Ass'n of Machinists v. Gonzales, *supra* note 45, at 629 (dissenting opinion).

[50] *Id.* at 632 (dissenting opinion).

[51] See Born v. Laube, 213 F.2d 407 (9th Cir. 1954); Schatte v. International Alliance, 182 F.2d 158 (9th Cir. 1950); Real v. Curran, 285 App. Div. 552, 138 N.Y.S.2d 809 (1st Dep't 1955); Morse v. Local 1058, Carpenters, 78 Idaho 405, 304 P.2d 1097 (1956); Sterling v. Local 438, Liberty Ass'n of Steam Fitters, 207 Md. 132, 113 A.2d 389 (1955); Mahoney v. Sailors' Union, 45 Wash. 2d 407, 275 P.2d 440 (1954).

[52] 213 F.2d 407 (9th Cir. 1954).

[53] *Id.* at 410.

[54] Garmon v. San Diego Bldg. Trades Council, 49 Cal. 2d 595, 320 P.2d 473 (1958).

[55] *Ibid.* See Seven-Up Bottling Co. v. Grocery Drivers Union, 49 Cal. 2d 625, 320 P.2d 492 (1958); Selles v. Local 174, Teamsters Union, 50 Wash. 2d

The Russell Case

The second pronouncement by the Supreme Court on the matter of pre-emption and parallel state remedy came in the *Russell* [56] case. The striking union maintained a picket line around the factory where petitioner worked. The pickets prevented the hourly wage earners from reaching the plant by threats of bodily harm and damage to their property. The state court awarded damages for loss of wages and mental anguish plus *punitive* damages. The Supreme Court affirmed, even though there was a federal remedy for this unfair labor practice.[57] The majority reasoned that the fact that back pay, which is only a partial remedy, can be awarded under the Taft-Hartley Act, was not sufficient to distinguish this case from the *Laburnum* case. They further insisted that since any federal award was discretionary with the Board if it effectuated the policies of the act, this remedy was merely incidental to Congress' primary purpose.

The majority believed there was no possibility of conflict since federal pre-emption is applicable only in two areas: (1) where one forum would enjoin conduct as illegal which another forum might find legal; and (2) where state courts would restrict the exercise of rights guaranteed by the act.[58] The Court allowed the award of punitive damages as within the jurisdiction of the state court on the ground that *all* damages caused by a union's tortious conduct can be awarded since there was no clear declaration of a congressional policy for pre-emption.

The minority, as in the *Gonzales* case, believed that since there was a federal remedy any state action would be a duplication and cause conflict. But here the minority went even further, stating that even if there were no federal remedy the state still could not act since a gap in the scheme created by Congress does not give the state power to correct the omission.[59] The dissent further advanced the theory that adding additional remedies would upset the remedial scheme as effectively as "frustrating or duplicating existing ones." [60]

660, 314 P.2d 456 (1957); Kuzma v. Millinery Workers Union, 27 N.J. Super. 579, 99 A.2d 833 (1953) (dictum). The majority in the *Selles* case rested its opinion on the facts that the NLRB may award back pay in its discretion, and that the case involved a private right. The distinction between private and public rights was rejected in the *Garner* case. Garner v. Teamsters Union, 346 U.S. 485, 500 (1953).

[56] International Union, UAW v. Russell, 356 U.S. 634 (1958).

[57] The remedy is that of a back pay award. Labor Management Relations Act (Taft-Hartley Act) § 10(c), 61 STAT. 147 (1947), 29 U.S.C. § 160(c) (1952).

[58] International Union, UAW v. Russell, 356 U.S. 634, 644 (1958).

[59] *Id.* at 650 (dissenting opinion). See Guss v. Utah Lab. Rel. Bd., 353 U.S. 1 (1957).

[60] International Union, UAW v. Russell, *supra* note 58, at 650 (dissenting opinion).

The main point of the dissenting opinion is the impact that the decision would have on the purpose and objects of the act—uniformity. The approval of the use of punitive damages, which have been outlawed in some states,[61] can not lead to uniformity. Also militating against uniformity is the fact that the courts of different states have diverse attitudes towards labor organizations, which will inevitably be given voice in the verdicts.[62] In the minority's opinion, that which Congress intended to promote—industrial peace—would be prevented by the Court's decision. Labor disputes were intended to come to a speedy conclusion, not to drag on and on in the courts, ". . . keeping old wounds open, and robbing the administrative remedy of the healing effects, it was intended to have." [63] A plaintiff was unlikely to seek a quick termination of the unfair labor practice "if he is *assured* compensatory damages and has the prospect of a lucrative punitive recovery as well." [64] In the *Russell* case the petitioner was one of *thirty* employees who filed suit, the total damages claimed being 1,500,000 dollars.[65]

Conclusion

The Supreme Court, in the *Garner* and *Laburnum* cases, had shed some light on the shadow area along the boundary of state-federal jurisdiction. Both the *Gonzales* and *Russell* cases have continued the process of clearing up this area. The Court, in these cases, felt that a congressional remedy was not exclusive and a state remedy could be interposed without causing a conflict. This conclusion was reached because the federal remedy was not adequate to grant the comprehensive relief that the state court could grant. "[A]n employee's right to recover, in the state courts, *all* damages caused him by . . . [the wrongful action of the defendant] can not fairly be said

---

[61] Louisiana, Massachusetts, Nebraska and Washington reject the doctrine completely while Indiana and Connecticut apply it to a limited extent. McCORMICK, DAMAGES 279 (1935).

[62] International Union, UAW v. Russell, *supra* note 58, at 651 (dissenting opinion). "[T]he basic issue in the *Russell* case . . . is . . . if the state courts, many of which are generally hostile to labor unions . . . are permitted to award punitive damages, they will be given what is tantamount to an unchallengeable right to deplete union treasuries and to inflict what may well be a mortal blow upon the particular union activity. To vest the state courts with such powers is to make the exercise of concerted activities so fraught with peril that unions will choose to forego strike activities rather than risk an adverse money judgment." Isaacson, *Federal Pre-Emption Under the Taft-Hartley Act,* 11 IND. & LAB. REL. REV. 391, 398 (1958).

[63] United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656, 671 (1954). In the *Russell* case nearly six years had elapsed from the time of service until the decision. International Union, UAW v. Russell, 356 U.S. 634, 654 (1958) (dissenting opinion).

[64] International Union, UAW v. Russell, 356 U.S. 634, 653-54 (dissenting opinion). (Emphasis added.)

[65] *Id.* at 656-58 (dissenting opinion).

to be pre-empted without a clearer determination of congressional policy than we find here." [66] The Supreme Court's statement of five years ago still seems relevant: "The . . . Act . . . leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." [67]

MODIFICATION AND DISCHARGE OF CLAIMS IN NEW YORK

The field of modification and discharge of claims in New York is today unsettled [1] despite the fact that the common-law doctrines have been largely superseded by statutes.[2] This note will point out the common-law doctrines, the statutory changes, and the areas in which the common law has been left untouched. The subjects herein considered include modification, release, and accord and satisfaction.

Rescission

A contract may be terminated by rescission. If the parties to an existing contract, either orally or by a writing mutually agree to terminate their duties under it, they have rescinded it.[3] Neither party is then under any duty to perform his part of the contract.[4] Each promise, in the case of a bilateral contract, provides the necessary consideration.[5] Termination may be effected even if the parties immediately enter into a new contract on almost identical terms.[6] Today the

---

[66] *Id.* at 646.

[67] Garner v. Teamsters Union, 346 U.S. 485, 488 (1953).

[1] See, *e.g.*, Yonkers Fur Dressing Co. v. Royal Ins. Co., 247 N.Y. 435, 160 N.E. 778 (1928); Langlois v. Langlois, 5 A.D.2d 75, 169 N.Y.S.2d 170 (3d Dep't 1957); Pape v. Rudolph Bros., Inc., 257 App. Div. 1032, 13 N.Y.S.2d 781 (4th Dep't 1939) (per curiam), *aff'd mem.*, 282 N.Y. 692, 26 N.E.2d 817 (1940); Armour & Co. v. Schlacter, 159 N.Y.S.2d 135 (County Ct. 1957).

[2] See, *e.g.*, N.Y. DEBT. & CRED. LAW § 243; N.Y. PERS. PROP. LAW §§ 33(2), 33-a, 33-b, 33-c.

[3] 5 CORBIN, CONTRACTS § 1236 (1951).

[4] *Ibid.*

[5] RESTATEMENT, CONTRACTS § 406, comment *a* (1932). The term "abandonment" has been used interchangeably with rescission, and the effects are the same. See Rodgers v. Rodgers, 235 N.Y. 408, 139 N.E. 557 (1923).

[6] Schwartzreich v. Bauman-Basch, Inc., 231 N.Y. 196, 131 N.E. 887 (1921). As between a modification of a contract and an abandonment of it "very little difference may appear. . . . There is . . . a marked difference in principle. Where the new contract gives any new privilege or advantage to the promisee, a consideration has been recognized, though in the main it is the same contract." *Id.* at 203, 131 N.E. at 889.