Labor Law - Conflict Between State and Federal Jurisdiction

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Insofar as everyone has the duty to refrain from negligent conduct resulting in injury to another, it seems that a business visitor, negligent in pursuit of its business purpose resulting in injury to a licensee, should not be immuned from liability solely because his invitor is not liable to the party injured. It is now recognized law that anyone conducting an activity upon the premises has the duty to use reasonable care. Where a business visitor fails to use reasonable care in the pursuit of its business purpose, it should be liable for any injuries resulting from its negligence, sustained by one who had a right to be on the premises.

JOHN A. FORMELLA

Labor Law — Conflict Between State and Federal Jurisdiction — Under a directive issued by the National War Labor Board on February 20, 1945, the Plankinton Packing Company entered into a maintenance of membership agreement with the Packing House Workers of America, C.I.O. Local #50. By the terms of this agreement, all employees who were members of the Union on March 9, 1945, and all employees who became members after that date, were required to maintain their union membership as a condition of employment. On March 6, 1945, William Stokes resigned from the Union. Immediately union officers and men began a course of conduct intended to intimidate and to coerce Stokes, and to bring about his discharge from the company. On May 9, 1945, this was accomplished and Stokes was released. A hearing was held before the Wisconsin Employment Relations Board, and on December 6, 1946, an order was issued directing the Plankinton Company to reinstate Stokes and to reimburse him for the amount of his lost wages. On appeal to the Milwaukee Circuit Court this holding was reversed on the grounds that the W.E.R.B. was without jurisdiction. The Wisconsin Supreme Court reversed the Circuit Court, and upheld the jurisdiction of the W.E.R.B. Held: Reversed, per curiam decision. Plankinton Packing Company v. Wisconsin Employment Relations Board, William Stokes, and Local #50, United Packing House Workers of America, C.I.O., 338 U.S. 953, 70 S.Ct. 491 (1950).

This case presents another in a recent line of cases, many of which have arisen in Wisconsin, involving the question of a conflict in jurisdiction between the state and federal governments under State Employment Relations Acts, the National Labor Relations Act and the Labor

1 The judgment is reversed. Bethlehem Steel Co. v. New York Labor Board,
Management Relations Act of 1947. The Federal Government has, of course, entered into the field of labor relations via the commerce clause of the Constitution, and under the supremacy clause any federal legislation on a particular matter must, of necessity, replace state law. The problem thus presents itself: an industry engaged in interstate commerce, and an alleged violation of a State Labor Relations Act, is that alleged violation regulated by federal law, so as to deny a state employment relations board, jurisdiction over the matter?

In the Bethlehem Steel case, cited in the per curiam decision of the principal case, the facts were relatively simple. The National Labor Relations Board, which had asserted a general jurisdiction over foremen unions, refused to certify those unions as collective bargaining agents. A subsequent certification by the state board under New York law was held invalid. The United States Supreme Court stated:

"The State argues for a rule that would enable it to act until the Federal Board had acted in the same case, but we do not think that a case-by-case test of Federal supremacy is permissible here. The Federal Board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so... (its power to decide the issue involved.) We do not believe this leaves room for the operation of the state authority asserted."

The LaCrosse Telephone case, also cited in the per curiam decision of the principal case, arose in Wisconsin, and was similar in its factual situation to the Bethlehem case. One union sought to replace another as the collective bargaining agent. The W.E.R.B. conducted an election, and certified the new union as the representative. The Wisconsin Supreme Court held that the state could exercise its jurisdiction in such matters until the Federal Board had acted, but the United States Supreme Court reversed this holding, citing the Bethlehem case, and emphasizing the supremacy of the Federal Board, even though that board had not acted on the question presented.

2 U.S. Const. Art. 1, §8, Cl. 3.
3 U.S. Const. Art. 6.
4 Bethlehem Steel Company v. New York State Labor Relations Board, supra, note 1.
5 Ibid., at p. 776.
6 LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board, supra, note 1.
7 Ibid., at p. 25. "Since the employers in question (referring to the Bethlehem Steel Co. case) were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the state agency, even though the National Board had not acted in the particular cases before us... Those considerations control the present case."
The above two cases leave little doubt as to the supremacy of the federal law. The particular problem involved, of course, was the certification of unions, and since there was a federal law regulating such matters, any state law was invalid.

Another section of the Wisconsin Employment Relations Act was considered in relation to the Labor Management Relations Act, in *International Union v. Wisconsin Employment Relations Board* (referred to as the Briggs-Straton case.) In that case the Wisconsin Board had ordered the union to cease and desist from instigating certain intermittent and unannounced work stoppages, holding them to be unfair labor practices under Wisconsin Law. The United States Supreme Court used a rather fine distinction in upholding the jurisdiction of the W.E.R.B., deciding that the federal law was concerned with 'objectives' and not 'methods', and that hence state regulation was permissible.

In the principal case another clause of the Wisconsin Employment Relations Act must be considered in relation to the National Act. The Wisconsin State Law, in section 111.06 provides:

1) It shall be an unfair labor practice for an employer . . .
   a) To interfere with, restrain or coerce his employes in the exercise of the rights guaranteed in section 111.04 (right to self-organization, etc.).
   c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure of other terms or conditions of employment: (providing that an all-union contract may be made under certain conditions).

The Federal Law, in Section 8 of the Wagner Act, Title 29, U.S. Code Section 158 provides that it is an unfair labor practice for an employer:

1) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in Section 7. (Section 7 relates to the right of self-organization, etc.)

3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or dis-
courage membership in any labor organization; provided (that nothing in this act shall prevent an employer from entering into a closed shop agreement with the representatives of the employees.)

Perhaps the closest case to the principal case, as far as the facts are concerned, is the Algoma Plywood case.14 In 1943, under pressure of the War Labor Board, the Algoma Plywood Company agreed to a maintenance of membership clause in its contract with Local #1521. In 1947, Victor Moreau was discharged from his employment for non-payment of union dues. He brought an action under section 111.06 (1)(c) of the Wisconsin Statutes, which prohibits an all union shop unless two-thirds of the workers agree to it. There had been no such agreement in the Algoma case. The Wisconsin Board ordered the maintenance of membership clause striken from the contract, and required that Moreau be reinstated. The defendant denied the jurisdiction of the Wisconsin Board on the ground that the National Board had exclusive authority under 10a of the National Labor Relations Act,15 and on the grounds that the Wisconsin Statute, section 111.06 (1)(c) was repugnant to section 158(3) of the National Act. In short it was argued that the state cannot forbid what section 158(3) affirmatively permits, and that since that section permits a union shop, a state act cannot prohibit it. The court, however, examined the purposes of section 158(3), and concluded that it did not deprive the states of their power to regulate union and closed shops.16 Thus the Wisconsin Board was allowed to exercise its jurisdiction where under state law, a union shop is illegal if entered into without an election among the employees.17

Following the Algoma case, it might appear that the principal case holds just the opposite. There is, however, a fundamental distinction between the two cases. In the Algoma case, Victor Moreau was discharged for failing to pay his union dues. Such a discharge constituted an unfair labor practice under Wisconsin Law where there had been no election to determine whether a union shop was desired. In the principal case, the problem of a union shop never arose, since Stokes was NOT discharged under a union shop agreement. Under the con-

17 "... the bill does nothing to facilitate closed shop agreements or to make them legal in a state where they are illegal. It does not interfere with the status quo, but leaves the way open to such agreements as might now be legally consummated."
18 Under the new Labor Management Relations Act of 1947, a similar conclusion would be reached. While section 8(3) of that Act forbids the closed shop and strictly regulates the conditions under which union shop agreements may be entered, section 14(b) was included to forestall the inference that the federal policy was to be exclusive.
tract he had a period of about fifteen days within which he could legally withdraw from the union. When he exercised this option, pressure was placed upon the Company to fire him. It was this pressure which constituted the unfair labor practice under section 158(3) of the Federal Act, and which in turn gave the Federal Board jurisdiction of the case.

Prior to the decision in the principal case, the conflict between state and federal jurisdiction in the matter of union certification had been clearly resolved. While it is perhaps unfortunate that this case was dismissed with a terse per curiam decision, nevertheless it cannot be said to be in conflict with previous decisions. The Algoma case had left 'open' to state regulation, those fields of unfair labor practices not intended to be covered by the Federal Law. The principal case simply limits in one more instance those so-called 'open' fields. While the new Labor-Management Relations Act does contain a provision allowing the Federal Board to cede its jurisdiction to State Boards under certain circumstances, the tendency of the courts today, plus the rather complete condification of the new Act, indicates that federal jurisdiction will be upheld whenever possible.

Richard P. Buellesbach

Evidence — Admissibility of Parol Evidence to Show a Written Contract to Be a Sham—The plaintiff contractor alleged that the defendant made an oral agreement with him whereby he was to construct a house for the defendant's daughter and son-in-law on a cost plus basis. Later the plaintiff was induced to enter into a written contract with the daughter and son-in-law for the specified consideration of $12,500, with the understanding, however, that the written agreement would not be binding; it was only to keep the defendant's brother from learning the cost of the house or for whom it was to be built. The defendant denied that an oral agreement existed, contending that the written agreement embodied the complete contract except that he had orally agreed to pay the plaintiff an additional $2,500 as a gratuity to induce completion of the building. The plaintiff sued for the difference between the amount the defendant had paid and the consideration specified in the oral contract. Held: Parol evidence was admissible to show that the written contract was to be of no binding force and was entered into only as a sham. Mardon et al. v. Ferris, 43 N.W. (2d) 904 (Mich., 1950).

18 29 U.S.C. 158(3) "By discrimination in regard to hire or tenure of employment: or any term or condition of employment to encourage or discourage membership in any labor organization..."