CASE NOTES

LOCAL GOVERNMENT—EXERCISE OF POLICE POWER

Defendant, owner of a self-service coin-operated laundry, was convicted of keeping open a self-service laundry after eleven o'clock p.m. in violation of a Griffin city ordinance requiring a self-service laundry to have an attendant between eleven p.m. and seven a.m. or else close during those hours. On appeal, held: reversed. In order for an ordinance passed under the police power of a municipality to be valid it must be reasonable. This ordinance was unreasonable and void, even though policing of the city would be easier under the ordinance.[1]

The instant case involves the extent to which a municipality can exercise its police power. All privately owned land is held subject to control by the state through the police power or the power of eminent domain.[2] The main difference between the exercise of the police power and the exercise of the power of eminent domain is that in the latter instance just and adequate compensation must be paid to the landowner, while in the exercise of the police power no compensation is ever paid. The justification for the exercise of the police power is the maxim *salus populi est suprema lex,* "the health of the people is the first law."[3] Blackstone defined the police power as "the due regulation and domestic order of the kingdom whereby the individuals of the state, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, and industrious, and inoffensive in their respective stations."[4] Police power is inherent in every civilized society, and a necessary attribute of sovereignty.[5]

At common law one could do with his land as he pleased.[6] The only regulation on private ownership of land at common law was the prohibition against public and private nuisances.[7] If the use a landowner made of his land at common law did not create a nuisance but caused damage to someone else, it was *damnum absque injuria.*[8] As

1. Heard v. Bolton, 107 Ga. 863, 131 S.E.2d 835 (1963).
2. SMITH, REAL PROPERTY SURVEY 243 (1956).
3. 11 AM. JUR., *Constitutional Law,* §251 (1937).
4. 4 BLACKSTONE COMMENTARIES 162 (1765).
5. License Cases, 5 How. 504, 12 L.Ed. 256 (1867); Noble State Bank v. Haskell, 219 U.S. 104, 31 S.Ct. 186, 55 L.Ed. 112 (1910).
6. 5 POWELL, REAL PROPERTY 494 (1962).
7. SMITH, REAL PROPERTY SURVEY 243 (1956).
8. Thompson v. Androscroggin R.I. Co., 54 N.H. 545 (1874); Bliss v. Grayson, 24 Nev. 422, 56 P. 231 (1899).

society became more complex it was necessary for the state and municipal governments to regulate to some extent the ownership rights in land. These regulations, however, were viewed with caution because under the Constitution private property cannot be taken without due process of law.[9] By a long line of decisions individual property rights are said to be subject to reasonable regulations designed to promote public interest.[10] It has been held that regulations reasonably adapted to protect and promote the public health, morals, safety, or welfare are valid and do not violate the due process clause.[11] If the regulation, however, bears no substantial relation to any of these objectives it is unconstitutional.[12] The main inquiry when an ordinance is passed under the police power is into the reasonableness of the ordinance, *i.e.,* it must be reasonable, not capricious.[13] It is often difficult to draw the line between reasonableness and unreasonableness. It is always a question of degree.[14] The test set forth by Justice Holmes was that of the reasonable man, *i.e.,* "could such a reasonable man consider the legislative action a proper or welfare measure on the score of public health."[15] The reasonableness of the ordinance is ascertained from the particular circumstances of each case. No set rule of reasonableness promulgated in any one case will apply to another because the circumstances are so varied.[16] It is immaterial that individuals had a right to engage in such activity at common law, even though the rights at common law may be a factor in determining reasonableness.[17] Regulation in some cases may be so restrictive as to amount to a taking, and when it does, it is confiscation, and compensation must be paid the landowner under the state's power of eminent domain.[18] The best way to gain an insight into the reasonableness of

9. UNITED STATES CONSTITUTION, Amendment XIV, §1. " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . . "
10. Miller v. Schoene, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed. 568 (1927); Foster's Inv. v. Boise City, 63 Idaho 201, 118 P.2d 721 (1941); Beltran v. Stroud, 63 Ariz. 249, 160 P.2d 765 (1945); Hickey v. Riley, 160 P.2d 371 (1945).
11. L'Hote v. New Orleans, 177 U.S. 587, 20 S.Ct. 788, 44 L.Ed. 899 (1900); Greeley Sightseeing Co. v. Riegelmann, 119 Misc. 84, 195 N.Y. Supp. 845 (1922); Fieldman v. City of Cincinnati, 20 F.Supp. 531 (1937); Falco v. Atlantic City, 99 N.J.L. 19, 122 A. 610 (1923); Patton v. City of Bellingham, 179 Wash. 566, 38 P.2d 364 (1934).
12. Eaton v. Sweeny, 257 N.Y. 176, 177 N.E. 412 (1931); Avenue Bay Const. Co. v. Thatcher, 278 N.Y. 222, 15 N.E.2d 587 (1938); Breinig v. County of Allegheny, 332 Pa. 474, 2 A.2d 842 (1938).
13. Paramount Film Distributing Corp. v. City of Chicago, 172 F.Supp. 69 (1959).
14. 24 NEB. L. REV. 182 (1945-46).
15. Lochner v. New York, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905).
16. ROTTSCHAEFER, CONSTITUTIONAL LAW 457 (1939).
17. *Supra,* n. 5; *Supra,* n. 13.
18. Alexander Co. v. City of Owatonna, 24 N.W.2d 244, 559 (1946).

regulatory ordinances is to analyze and compare the court decisions concerning the question of reasonableness.[19]

The result in the principal case is sound. It is normal for a landowner to be able to use his land as he pleases, and any regulation is abnormal.[20] The complex society of today, however, demands some regulation; but, since these regulations are abnormal and in derogation of the common law idea of ownership they should be construed strictly. The courts should view with caution any exercise of the police power so as to protect the landowner's inherent right of ownership—that of using his land as he pleases. In the principle case the court appears to have done just this.

THOMAS N. TAYLOR

BANKS—JOINT ACCOUNT—LIABILITY OF JOINT DEPOSITOR FOR WITHDRAWALS

Husband Ilija Krimer used his personal funds to open a joint bank account with his wife, Anna Krimer, in the name of "Anna Krimer or Ilija Krimer, payable to either or the survivor." No withdrawals were made until two years later at which time the husband withdrew the proceeds and opened a new account with his son. After the husband's death, the wife sued to recover the proceeds withdrawn from the joint bank account. The New York Court of Appeals, in reversing the lower court, held that the withdrawal of moneys from a joint account did not destroy the joint tenancy, if one was created, even though made by the depositing tenant. The court held that the wife had survivorship rights in at least one-half of amount withdrawn.[1]

New York has been the leader in the establishment of joint bank account law. The Legislature has provided for statutory recognition of a joint tenancy in a bank account. The New York statute established a conclusive presumption of an intention to vest title in the survivor in an account opened in statutory form.[2] As to funds with-

19. Feldman v. City of Cincinnati, 20 F.Supp. 531 (1937); Smith v. Collier, 118 Ga. 306, 45 S.E. 417 (1903); Chaires v. City of Atlanta, 164 Ga. 755, 139 S.E. 559 (1927); Beard v. City of Atlanta, 91 Ga. App. 584, 86 S.E.2d 672, appeal transferred, 211 Ga. 25, 83 S.E.2d 594 (1955).
20. SMITH, REAL PROPERTY SURVEY 244 (1956).
1. Bricker v. Krimer, 13 N.Y.2d 22, 191 N.E.2d 795 (1963).
2. N.Y. BANKING LAW §239(3) (1950): "The making of the deposit in such form, shall in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding to which either the savings bank or the surviving depositor is a party, of the intention of both depositors to vest title to such deposit and the additions thereto in such survivor."

drawn from such an account during the joint lives of the two named persons, there is still, after the death of either of them, the presumption that the funds withdrawn by one had in fact belonged to both.[3] However, the presumption in this case is rebuttable.[4] The withdrawal of moneys from the joint account does not destroy the joint tenancy, if one was created. It merely opens the door to a showing by competent evidence, if available, that no joint tenancy was intended to be created.[5] The New York court remanded the principal case for a new trial to consider the question of whether the husband intended to and did in fact establish a joint tenancy by opening the account. If it is proven that the husband did not intend to establish a joint tenancy by opening the account with his wife, then the wife cannot recover. She will be aided by the statutory presumption that the husband intended a joint tenancy when he opened the account. If the presumption is not overcome, the husband's estate will be liable to the wife for one-half of money thus withdrawn.[6] In such event the wife would be entitled to at least her moiety of the account withdrawn without her consent.[7]

The rights of the parties during their lives have frequently been litigated in the state of New York. After a reading of the statute, one would believe that by the opening of an account in the statutory form, both parties acquire an immediate half-interest in the account. However, the intention of the depositor is still important notwithstanding the form of the account. During the depositors' joint lives, the form of the deposit is not conclusive on the fact of ownership.

There are two types of statutes which have been passed by the legislatures governing joint accounts. The first type, which has been discussed in conjunction with the New York case, provides that the opening of a bank account in joint and survivorship form creates a joint tenancy.[8] Georgia has the most popular type which is designed as a bank protection statute.[9] The courts have construed it to protect the bank in making payment to the survivor without affecting the actual rights of the parties to the deposit.[10] The adoption

3. Moskowitz v. Marrow, 251 N.Y. 380, 167 N.E. 506 (1929).
4. Matter of Porianda's Estate, 256 N.Y. 423, 176 N.E. 826 (1931).
5. *Supra*, n. 4.
6. Michaels v. Michaels, 69 N.Y.S.2d 668 (1946).
7. In re Suter's Estate, 258 N.Y. 104, 179 N.E. 310 (1932).
8. *Supra*, n. 2.
9. GA. CODE ANN. §13-2039 (1933): "When a deposit has been made, or shall hereafter be made, in any bank in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, of any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the persons so paid shall be a valid and sufficient release and discharge to the bank for any payment so made."
10. Clark v. Bridges, 163 Ga. 542, 136 S.E. 444 (1927).

of the UNIFORM COMMERCIAL CODE in Georgia will have no affect on this Georgia statute.[11]

The development of the law of joint bank accounts has been one of the courts, trying to fit the arrangement into common property categories. The courts have played a game of leap-frog from one theory to another seeking one that properly describes the concept. They have applied the law of gifts, trusts, joint tenancies and contracts to test the validity of the joint bank account transaction.

The joint bank account does not fit into any of the common law categories for transferring property. It does not qualify as a common law gift, because the donor does not surrender dominion.[12] It is not a trust because there is no intention on the part of the depositor to enter into such relationship.[13] Neither is it a common-law joint tenancy, because the four unities, time, interest, title and possession, essential for creating this joint interest are lacking. There is no real unity of interest. This is borne out by the fact that the depositor has the power to withdraw all of his funds during his lifetime so long as he has no donative intention and the sole purpose of the joint account was the convenience of the depositor.[14] While the parties may enter into a contract providing for the payment of the funds,[15] the contract itself does not operate as a conveyance of the funds from one joint payee to the other joint payee.[16]

The joint bank account transaction is a combination of all these common-law categories for transferring property. It is in the nature of a gift because it is gratuitous. It is similar to a joint tenancy because of the creation of joint interests. It possessses some characteristics of a revocable trust. The joint account blends these common property categories together into a concept which is *sui generis.* It should be accepted as such. Joint and survivorship bank accounts are here to stay. The legislatures should follow the example of New York in defining the nature of this unique concept and outlining the rights of all persons claiming any interest in the joint account.

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11. GA. UNIFORM COMMERCIAL CODE, ENC. ED. §427.
12. *Supra,* n. 10.
13. Murray v. Gadsen, 197 F.2d 194 (D.C. Cir. 1951).
14. Bedirian v. Zorian, 287 Mass. 191, 191 N.E. 448 (1934).
15. Nash v. Martin, 90 Ga. App. 235, 82 S.E.2d 658 (1954).
16. KEPNER, *The Joint and Survivorship Bank Account, A Concept Without A Name,* 41 CAL. L. REV. 596 (1953).

INTEGRATED BAR—STANDING TO SUE—WHICH COURT?

A local bar association and an individual attorney brought an action against title companies for a declaratory decree that certain practices of the title companies constituted the unauthorized practice of law. The circuit court dismissed the action, holding that neither a non-profit corporation nor an individual attorney had standing to bring such a suit and that only The Florida Bar could do so. The district court of appeal reversed the circuit court[1] and certiorari was granted to the Supreme Court.[2]

The Florida Supreme Court, in reversing the district court of appeal, held that the Supreme Court's power of "exclusive jurisdiction over the admission to the practice of law and the discipline of persons admitted"[3] as provided by law and the fact that The Florida Bar is the official arm of the Supreme Court[4] thus made The Florida Bar that court's exclusive means of entertaining and disposing such matters.

The district court of appeal had recognized that the Supreme Court had "exclusive jurisdiction over the admission to the practice of law and the discipline of those admitted"[5] and also the power to punish for contempt anyone indulging in the unauthorized practice of law.[6] The district court of appeal, recognizing the above-mentioned facts, concluded that this did not preclude other courts from exercising the same power. However, the opinion of the Supreme Court stated that to allow other courts to exercise this exclusive power would be a misinterpretation of the word "exclusive."

As to another feature of the case, namely, whether or not the respondents were proper parties plaintiff since none of them had shown a damage not being suffered by the general public, the appellees contended that the rule with reference to public nuisances should prevail[7] and in the absence of showing that the injury to them was different in kind, as distinguished from degree, from that suffered by the general public, the appellants could not prevail. The contention was based on dictum of the Supreme Court in a prior case[8] stating that the purpose of prohibiting the practice of law by those unqualified

1. North Dade Bar Ass'n. v. Dade-Commonwealth Title Ins. Co., 143 So.2d 201 (1962).
2. North Dade Bar Ass'n. v. Dade-Commonwealth Title Ins. Co., 152 So.2d 723 (1963).
3. FLA. CONST., art. V, §23.
4. *Preamble, Integration Rule and By-Laws of Fla. Bar,* 31 FLA. STAT. ANN., *Rules.*
5. *Supra,* n. 3.
6. State ex rel. The Florida Bar v. Sperry, 140 So.2d 587 (1962), reversed, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed. 428 (1963).
7. RESTATEMENT, TORTS, Ch. 40 (1939).
8. *Supra,* n. 6, at 595.

is for the protection of the public and not the protection of the members of the legal profession. The district court held that the rule as to public nuisances was not applicable in this case, but stated that the public's right to protection was being asserted here. Thus the district court concluded the suit was properly brought.

The Supreme Court disagreed with the district court's conclusion that the rule with reference to the interest that needs be shown to entitle an individual to bring suit to enjoin a public nuisance[9] is not applicable to a factual situation such as the one at bar. The Supreme Court concluded that there seems to be no basic difference. Also, the court did not accept the statement of the district court of appeal which stated that since "every lawyer . . . has a special interest in the proper functioning of the judicial processes" he therefore "ought not to be barred from the privilege of calling the court's attention to those who strike at its strongest ally—a cohesive and dedicated bar."[10] The court continues by stating that the holding that he cannot individually sue does not preclude him from directing the Supreme Court's attention to any violation. He simply must travel through the channels prescribed by law.[11]

The first problem both the district court of appeal and the Supreme Court handled was the question of jurisdiction. Although the question was not raised, it had to be resolved. The Supreme Court explicity has exclusive jurisdiction over the admission to the practice of law and the discipline of those admitted.[12] The Supreme Court had previously held that it had the power to punish for contempt anyone engaged in the unauthorized practice of law.[13] The question was whether it had exclusive jurisdiction. The question was discussed by the district court in view of similar cases tried previously in Florida[14] and other jurisdictions.[15] However, as the Supreme Court recognized, the question was one unique to the statutory provisions of the individual states. The question in this form was one that had not been confronted by the court since the integration of the bar. The court concluded, in light of the statutory provisions,

9. *Supra*, n. 7.
10. *Supra*, n. 1, at 206.
11. *Supra*, n. 2, at 727.
12. *Supra*, n. 3.
13. *Supra*, n. 6.
14. Keyes Co. v. Dade County Bar Ass'n., 46 So.2d 605 (1950); Cooperman v. West Coast Title Co., 75 So.2d 818 (1954); Jacksonville Bar Ass'n. v. Wilson, 102 So.2d 292 (1958).
15. Bar Ass'n. of Dallas v. Hexter Title and Abstract Co., 175 S.W.2d 108 (1943); Bar Ass'n. of Montgomery Co. v. District Title Ins. Co., 224 Md. 474, 168 A.2d 395 (1961); for most complete citation of authority see West Virginia State Bar v. Earley, 144 W.Va. 504, 109 S.E.2d 420 (1959).

that not only does the court have jurisdiction, but that it has *exclusive jurisdiction.* The court, in reaching this conclusion, took into consideration what they considered one of the basic purposes behind the integration of the bar—"to provide order to the entire subject."[16]

In holding that neither the individual lawyer nor the voluntary bar association was the proper party plaintiff, the court was saying that the interest that needs be shown to entitle an individual to bring suit to enjoin a public nuisance was simply lacking because neither had the type of interest that must be shown. The lawyer or the association, however, is not precluded from making the proper court aware of the unauthorized practice.

The entire problem of the case at bar was that the statutory provisions did not expressly prescribe the channels through which such an action should be brought and by whom. The decision, in construing the provisions, is a reasonable one. No doubt, in looking back to the movement in Florida to integrate the bar and subsequently the accomplishment of it, the court's decision was in line with what was intended. The court reasoned that without the power to prevent the practice of law by those unauthorized to do so, the express power to control admissions to practice would be meaningless. The reasoning is sound, but states integrating their bar should expressly provide in their organic law for this exclusive power or the lack of it.

HUGH LAWSON, JR.

LABOR LAW—JURISDICTION—STATE RIGHT-TO-WORK LAW

Petitioner negotiated a collective bargaining agreement with the employer, which contained an "agency shop" clause. Respondents, nonunion employees, challenged the legality of this clause under the Florida right-to-work law.[1] The Florida Supreme Court held that the clause was illegal under Florida law and that the Florida courts had jurisdiction of the question.[2] On certiorari[3] the United States Supreme

16. *Supra,* n. 2.

1. FLA. CONST. §12, 25 FLA. STAT. ANN. *Declaration of Right*—
"The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

2. 141 So.2d 269 (1962).

3. 371 U.S. 909, 83 S.Ct. 253, 9 L.Ed.2d 169 (1963).

Court affirmed.[4] The merits of the state law involved were disposed of by the Court in an earlier consideration of the case.[5] As to the jurisdictional question, the Court stated that the Congressional intent expressed in, and legislative history of, Section 14 (b) [6] "did not deprive the States of any and all power to enforce their laws restricting the execution and enforcement of union-security agreements."[7]

The Court in the instant case followed its reasoning in *Algoma Plywood Co. v. Wisconsin Employment Relations Board*.[8] There the Court held that:

> The special legislative history of the union-security provisions of the National Labor Relations Act allowed State power to exist alongside of federal power. Section 14 (b) was included to forestall the inference that federal policy was to be exclusive on this matter of union-security agreements. But if there could be any doubt that the language of the section means that the Act shall not be construed to authorize any 'application' of a union-security contract, such as discharging an employee, which under the circumstances 'is prohibited' by the State, the legislative history of the section would dispel it.[9]

Section 14 (b) plainly authorizes the States to preclude such union-security agreements as authorized in Section 7[10] and Section 8 (a) (3) [11] of the National Labor Relations Act. The Court held in *National Labor Relations Board v. General Motors Corporation*[12] that the restrictions authorized upon rights granted employees by Section 7, and

4. Retail Clerks Int'l. Ass'n., Local 1625, AFL-CIO v. Schmerhorn, 32 U.S. L. Week 4018 (U.S. Dec. 3, 1963).
5. Retail Clerks Int'l. Ass'n., Local 1625, AFL-CIO v. Schmerhorn, 373 U.S. 746, 83 S.Ct. 1461 (1963).
   The Court here affirmed that Florida law did forbid union-security arrangements such as had been executed between petitioner and the employer. The "agency shop" clause here contracted was subject to state substantive law.
   The Court retained the jurisdictional question for later reargument, which resulted in the instant case now under consideration. 373 U.S. 746, 747-748, 83 S.Ct. 1461, 1467 (1963).
6. Section 14 (b) provides: "Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which such execution or application is prohibited by State or Territorial law." National Labor Relations Act, §14 (b), 61 Stat. 151 (1947), 29 U.S.C. §164 (b) (1958).
7. Retail Clerks Int'l. Ass'n., Local 1625, AFL-CIO v. Schmerhorn, 32 U.S. L. Week 4018, 4019 (U.S. Dec. 3, 1963).
8. 336 U.S. 301, 69 S.Ct. 584, 93 L.Ed. 691 (1949).
9. *Id.* at 312, 314.
10. National Labor Relations Act, §7, 61 Stat. 140 (1947), 29 U.S.C. §157 (1958).
11. National Labor Relations Act, §8 (a) (3), 61 Stat. 140 (1947), 29 U.S.C. §158 (a) (3) (1958).
12. National Labor Relations Board v. General Motors Corp., 373 U.S. 734, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963).

not prohibited by Section 8 (a) (3), were the "practical equivalent" of those which the States were authorized in Section 14 (b) to preclude. It would, therefore, "be odd to construe Section 14 (b) as permitting a state to prohibit the agency clause but bar it from implementing its own law with sanctions of the kind involved here. Thus it left open the power of a state to preclude it. Since it is plain that Congress left the States free to legislate in that field, we can only assume that it intended to leave unaffected the power to enforce those laws. Otherwise the reservation . . . would become empty and largely meaningless."[13]

The requirement of uniformity that is otherwise overriding in the implementation of the national labor policy does not require a different result here. The Congress gave to the States, in Section 14 (b), power to outlaw a union-security agreement that otherwise would be permissible under federal law. "Where Congress gives state policy that degree of overriding authority, we are reluctant to conclude that it is nonetheless enforceable by the federal agency in Washington."[14] As the Court states, this result is not inconsistent with *San Diego Building Trade Council v. Garmon.*[15] The Court, in *Garmon,* held that conduct "arguably subject" to Section 7 or Section 8 of the National Labor Relations Act was subject to the exclusive competence of the National Labor Relations Board, and state as well as federal courts must yield thereto. The instant case is distinguished from *Garmon* in that *Garmon* "did not present the problems posed by Section 14 (b),"[16] and the factual situation of the instant case is peculiarly within the province of the Congressional intent expressed in Section 14 (b).[17]

The significance of the recognition and admission of State power by the Court in the instant case must be kept in perspective in this important field of labor-management relations. In the construction of Section 14 (b), as regards the vesting of State power over union-security agreements, the key words are: "the execution or application." "State power, recognized by Section 14 (b), begins *only with actual negotiation and execution of the type of agreement described by Section* 14 (*b*). Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under *Garmon.*"[18] Thus, the point of engagement of State power would be

13. *Supra,* n. 7.
14. *Ibid.*
15. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1958).
16. 32 U.S. L. Week 4018, 4020 (U.S. Dec. 3, 1963).
17. For excellent discussion distinguishing the cases implementing the federal pre-emption doctrine, see 32 U. CINC. L. REV. 349, 353-363 (1963). See further 71 YALE L. J. 330 (1961).
18. *Supra,* n. 16.

"actual negotiation and execution." It is conceivable that the precise point in time of this "actual negotiation and execution" could be a much disputed issue, and thereby result in a premature search for a forum by the parties.

The Court makes the cogent distinction from the instant case, where there was an executed collective bargaining agreement, that "picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain."[19] This would seem to be an unfortunate distinction, for where the National Labor Relations Board fails or refuses to afford relief to the embattled employer, it would seem to be an open invitation for the employer to yield to the pressure of the union, in admitted defiance of state law, by executing a collective bargaining agreement containing a state prohibited union-security clause, and thereby bring his case within the ambit of the instant case. Further guidelines will probably be required of the Court to avoid this undesirable prospect.

The principle of the instant case appears to be sound so far as it goes. It does not seem to change the law, but merely to elucidate thereon. The power of the State granted by Section 14 (b) is thus another exception engrafted upon the federal pre-emption doctrine of *Garmon,* each exception being confined within specific boundaries fitting peculiar factual situations.[20]

FLOYD BANKS MOON

19. *Ibid.;* Local Union 429, Int'l. Bhd. of Electrical Workers, AFL v. Chambers Co., 353 U.S. 969, 77 S.Ct. 1056, 1 L.Ed.2d 1133 (1957), reversing 201 Tenn. 329, 299 S.W.2d 8 (1957); Local No. 438, Construction & General Laborers Union, AFL-CIO v. S. J. Curry, 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963). See further: 12 CATHOLIC U. L. REV. 145 (1963); 14 MERCER L. REV. 456 (1963); 30 TENN. L. REV. 654 (1963).

20. Int'l. Union, U.A.W., AFL v. Wisconsin Employment Relations Board, 336 U.S. 245, 69 S.Ct. 516, 93 L.Ed. 651 (1949); United Const. Workers v. Laburnum Const. Co., 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed. 1025 (1954); Int'l. Ass'n. of Machinists v. Gonzales, 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018 (1958); Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Company, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962).

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