LABOR LAW—STATE COURT INJUNCTIONS—LABOR INJUNCTIONS IN GEORGIA

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No specific statute in Georgia provides for the grant of an injunction in labor disputes; however, a court exercising the powers of equity may issue an injunction restraining any act which is "illegal or contrary to equity and good conscience" if there is no adequate remedy at law.[1] Notice must be given to the party sought to be enjoined except in *ex parte* proceedings where the injunction must be granted immediately to prevent irreparable harm.[2] An *ex parte* order has the full force of an injunction until dissolved or modified.[3]

A specified reference to a labor injunction is found in GA. CODE ANN. section 54-902 (1961 Rev.).[4] That act affords to any person whose employment is or may be affected by any contract prohibited by the act[5] the right to apply for an injunction against its enforcement.[6]

The question whether conduct in labor disputes may be enjoined is determined largely on the basis of common law. State court authority to issue injunctions is further limited by the preemption aspect of the federal labor policy which includes granting of any relief against acts which are unlawful under federal and state law.[7] Section 4 of the Norris-La Guardia Act expressly prohibits the issuance of injunctions against strikes and peaceful picketing in a labor dispute.[8]

Emphatically the concept of federal pre-emption declares that conduct which is arguably an unfair practice is within the exclusive jurisdiction of the National Labor Relations Board.[9] The Supreme Court has consistently found exceptions to the doctrine but state courts no longer have jurisdic-

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1. GA. CODE ANN. §55-101 (1933).
2. GA. CODE ANN. §55-201 (1933).
3. *Id.*
4. "No individual shall be required as a condition of employment, or of continuance of employment, to be or remain a member or an affiliate of a labor organization, or to resign from or to refrain from membership in or affiliation with a labor organization."
5. "Union shop" and "Yellow dog" contracts are prohibited. See comment, 1 MERCER L. REV. 289 (1950).
6. GA. CODE ANN. §54-908 (1961 Rev.).
7. Aaron, *Labor Injunctions in the State Courts*, 50 VA. L. REV. 951, 1147 (1964).
8. Norris-La Guardia Act §4, 47 Stat. 70 (1932), 29 U.S.C. §101 (1937). "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. . . ."
9. San Diego Bldg. Trades Co. v. Garmon, 359 U.S. 236 (1959).

tion to grant relief in many fields of activity which violates both federal and state laws.[10] It should be noted that in cases arising under the federal statute, the federal courts have refrained from granting injunctive relief in the absence of proof that local authorities are unwilling or unable to furnish adequate protection,[11] or that the plaintiff will suffer irreparable damage if such relief is not granted.[12]

It may be observed that the jurisdiction of state courts to grant injunctions in labor disputes is limited to that vague area not arguably covered by federal law.[13] The exclusiveness of the National Labor Relations Board's jurisdiction relates to matters "arguably protected or prohibited by the National Labor Relations Act."[14] The ever-encompassing doctrine of federal pre-emption has significantly reduced the total number of state court labor injunctions. In fact, in cases concerned with labor disputes affecting interstate commerce the state courts are limited to three obscure areas: (1) those not falling under the National Labor Relations Board's jurisdictional standards of impact on interstate commerce; (2) those involving violence or other breaches of peace; and (3) those involving strike breaches of collective agreements.[15]

JURISDICTION

The Supreme Court has consistently declared that in passing the National Labor Relations Act, that its intention was to vest in the Board the *"fullest jurisdictional breadth constitutionally possible" under* the Commerce Clause.[16] The basic test in determining the application of the NLRA in a given case is whether or not a labor dispute in the case would tend to burden, obstruct, or, in general, affect interstate commerce. If it does, the act readily applies.[17] A detailed survey of the terms "labor dispute,"[18]

10. *Supra* n. 7 at p. 964, 965. 76 HARV. L. REV. 529 (1963).
11. *Supra* n. 7 at 927; Carter v. Herrin Motor Freight Lines, Inc., 131 F.2d 557 (5th Cir. 1942).
12. Great Nor. R.R. v. Lumber Workers, 140 F. Supp. 393 (D.C. Mont. 1955), *aff'd,* 232 F.2d 628 (9th Cir. 1956).
13. Preemption—the NLRB has exclusive jurisdiction over unfair labor practices and the determination of the bargaining representative. Section 14 (c) (1) and (2) of the NLRA authorizes the NLRB to decline to assert jurisdiction and give state agencies authority to assume the declined jurisdiction; See also, *supra* n. 9; United Const. Workers v. Laburnum Const. Co., 347 U.S. 656 (1954).
14. *Id.*
15. *Supra* n. 7 at 1161.
16. National Labor Relations Board v. Reliance Fuel Oil Corp. 371 U.S. 224 (1962), See *e.g.,* Guss v. Utah Labor Board 353 U.S. 1 (1956); Polish Alliance v. Labor Board, 322 U.S. 643 (1944); For a recent Georgia decision regarding the problem of States v. NLRB Jurisdiction see Armstrong Cork Co. v. Joiner 53 CCH Lab. Cas. 97 11,040 (1966), where the Supreme Court upheld the trial court in dissolving an order restaining the union from picketing a manufacturing plant in connection with its dispute with an employer engaged in construction work as a subcontractor at the site of the plant. Such activity was an arguable violation of §7 or §8 of the NLRA in which case, the state's jurisdiction is displaced.
17. CCH GUIDEBOOK TO LABOR RELATIONS (1966 ed.) p. 21.
18. National Labor Relations Act, 49 Stat. 449 (1935) as amended by 61 Stat. 136 (1947) and 73 Stat. 519 (1959).

"Commerce,"[19] and "affecting commerce"[20] will not be undertaken here.

It may be generally stated that the NLRB does not exercise its jurisdiction over small and basically local businesses, because the interstate activities involved do not have a sufficient impact on interstate commerce.[21] The Board has prescribed jurisdictional standards for determining whether or not it will assert its jurisdiction. The test is based upon the dollar volume of the employers' out of state sales and purchases.[22] The Labor-Management Reporting and Disclosure Act of 1959 allows the Board to lower its minimum standards, but forbids it to decline jurisdiction of any labor dispute over which jurisdiction would be asserted under standards controlling on August 1, 1959.[23]

The Board has set jurisdictional yardsticks for several years. As a result of the setting of minimum standards beyond which the board would not go a "no man's land" was created, *i.e.,* often a case would arise in which there was no appropriate tribunal to hear the complaint.[24] The matter was not even settled in 1957 as *Guss v. Utah Labor Board*[25] held that the NLRA completely displaced state power even in cases declined under its jurisdictional yardsticks.

In the light of *Guss,* Congress in 1959 attempted to narrow the *"no-man's land"* with the 1959 amendments to the NLRA providing in section 14 (c) (2), that nothing in the NLRA should be deemed to bar any state or territorial agency or court from asserting jurisdiction over disputes declined by the NLRB under its jurisdictional yardsticks. Legislative history of the Act indicates that state courts and agencies in acting on cases declined by the NLRB, have authority to apply state rather than federal law. (House Conference Report 1147 on Sec. 701 of Labor-Management Reporting and Disclosure Act of 1959).[26]

Thus state courts may, and should in specified cases, exercise their power to grant injunctive relief,[27] but injunctive remedies depend primarily upon whether the dispute does not meet the minimum jurisdictional yardsticks of the NLRA in which case the State's jurisdiction is pre-empted, and even if not, State jurisdiction is exercised only after declination by the NLRB.[28]

VIOLENCE AND INTIMIDATION

Despite preemptive limitations of the national labor policy the states

19. *Id.*
20. *Id.*
21. *Supra* n. 17 at p. 21, Young Men's Christian Assoc. of Portland, Oregon 146 N.L.R.B. 20 (1964).
22. *Supra* n. 17.
23. 73 Stat. 519 (1959).
24. Bethhelem Steel Co. v. New York Labor Board. 330 U.S. 767 (1947).
25. *Supra* n. 16.
26. *Supra* n. 17 at p. 24.
27. *Supra* n. 7 at p. 1163.
28. Pa. L.R.B. v. Butz, 45 CCH Lab. Cas. 77 50,582 (1962).

are not deprived of their police powers to suppress violent conduct.[29] Further pre-emptive limitations do not deprive states of jurisdiction over damage suits against unions by prospective or former union members wrongfully excluded from membership[30] or by those injured by violence and mass picketing.[31] A state court may grant injunctive relief to restore the public order upon disturbance by violence, threats of violence, mass picketing, obstruction of streets or picketing of homes.[32] It should be pointed out that even states having detailed anti-injunction statutes withhold protection from injunctive relief in labor disputes in which picketing is accompanied by threats, violence, or unlawful seizure of property.[33]

With the above principles in mind it is not surprising that the decided rule in Georgia is that picketing or other concerted activities may be enjoined, where the conduct is so entangled with acts of violence as to restrain persons from engaging in, remaining in, or performing the duties of a lawful occupation.[34] This is true to such an extent that past violence may be grounds for enjoining a present picketing that is wholly peaceful.[35] Misconduct by employees to the irreparable damage of the employer will be enjoined by a court of equity.[36] In *Local Union 3871, United Steelworkers of America v. Fortner,*[37] workmen quit the service of their employer and, as a means of inducing other employees from remaining in or entering into such employment, established pickets at or near the employers' premises. The pickets blocked the employers' entrance informing the petitioners that they would not be allowed to pass through the gate. The lower court did not err in continuing in force an interlocutory injunction which restrained the defendants from preventing the petitioners, by threats, violence, intimidation, or other unlawful means from pursuing their lawful enterprise.

In one of Georgia's earliest cases[38] in this area, dissatisfied machinists set up pickets around the plaintiff's plant and accosted every stranger who evinced an intention to enter the manufacturing plant, for the purpose of inducing him to abandon any intent to seek employment with the plant. The intimidation of prospective employees was violent and to the extent that part of the plaintiff's plant was forced to be closed for lack of machinists. The court found that the language used by the strikers was clearly

29. United Auto., Aircraft & Agricultural Imp.. Workers v. Wisconsin Employ. Relations Board, 351 U.S. 266 (1956); International Union, United Auto, Aircraft & Agricultural Imp. Workers v. Anderson 351 U.S. 959 (1956).
30. International Assn. of Machinists v. Gonzales 356 U.S. 617 (1958).
31. International Union, UAW-CIO v. Russell 356 U.S. 634 (1958).
32. Mine Workers, Dist. 50, Const. Workers v. Laburum Const. Co. 347 U.S. 656 (1954).
33. *Supra* n. 7 at p. 977.
34. Brown Trans. Corp. v. Truck Drivers and Helpers, Local 728, 218 Ga. 581, 129 S.E.2d 767 (1963); Local Union No. 3871, United Steel Workers of America v. Fortner, 202 Ga. 206, 42 S.E.2d 734 (1947); Jones v. Van Winkle Gin & Machine Works, 131 Ga. 336, 62 S.E. 236, (1908), 17 L.R.A. (N.S.) 848, 127 Am. St. Rep. 235 (1908).
35. Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc., 312 U.S. 287, 61 Sup. Ct. 552, 85 L. ed. 836 (1940).
36. Local Union No. 2871, United Steel Workers of Am. v. Fortner, 202 Ga. 206, 42 S.E.2d 734 (1947).
37. *Id.*
38. Jones v. E. Van Winkle Gin & Machine Works, *supra* n. 34.

intimidation, and intended to coerce compliance with their request not to work for the plaintiff. The supreme court upheld the injunction, but modified it to the extent that it would preclude legitimate argument and moral suasion. Apparently the court foresaw *Thornhill v. Alabama*[39] and its extensions.

Injunctions in labor disputes, insofar as the concerted activity is lawful and peaceful,[40] are idle procedures. This is especially true in light of the free-speech holdings of *Thornhill*[41] and *Carlson v. California*.[42] But evidence is sufficient to warrant the issuance of a state court injunction restraining a union from picketing an employer's premises where the only dispute was between the union and the subcontractor engaged in work upon the employer's premises.[43] The permissible scope of state remedies in this area is strictly confined to the direct consequence of violence or threats of violence, and does not include consequences resulting from associated peaceful picketing or other union activity.[44]

Strikes in Breach of Contract

Section 4 of the National Labor Relations Act shields labor unions from the force of injunctions upon the breach of a collective agreement. Strikes, picketing, or boycotting in breach of a collective agreement, involves a "labor dispute" under the act above referred to and such activity cannot be enjoined without a showing of requirements which conditions the issuance of an injunction under the act.[45] "The problem of accommodating that restriction on the power of federal courts with seemingly conflicting policies of other federal laws has not reached its most critical phase in connection with the enforcement of rights and obligations arising out of section 301 of the Labor Management Relations Act of 1947."[46] *In light of section 301 the issue arises whether the state court may grant injunctive relief and damages, for a violation of a no-strike clause in a proceeding based on section 301.* It has been decided by the Supreme Court of the United States that the Norris-La Guardia Act does not preclude federal courts from either ordering specific performance of agreements to arbitrate[47] or enforcing arbitration awards.[48]

39. Thornhill v. Alabama, 310 U.S. 88 (1940). For an extension of the Thornhill Doctrine see, International Brotherhood of Teamsters v. Wohl, 315 U.S. 769 (1942).
40. American Federation of Labor v. Swing, 312 U.S. 321 (1941).
41. *Supra*. n. 39.
42. 310 U.S. 106 (1940); *See generally, supra* n. 39, *supra* n. 35, *supra* n. 40, Carpenters and Joiners Union v. Retters Cafe, 315 U.S. 722 (1942).
43. Fleming v. H. W. Lucy Const. Co., 215 Ga. 460, 111 S.E.2d 97 (1959).
44. United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966).
45. Wilson & Co. v. Bird, 105 F.2d 948 (3d Cir. 1939).
46. *Supra* n. 7 at p. 981; 29 U.S.C. §185 (1958) Section 301 (a) of the L.M.R.A. authorizes the bringing of suits for violation of contracts between an employer and a union representing employees in an industry affecting commerce, or between such unions. in any federal district court having jurisdiction of the parties, without respect to the amount in controversy or to the citizenship of the parties. Section 301 (b) provides in part that a union may sue or be sued in federal courts as an entity and on behalf of the employees it represents.
47. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
48. United Steelworkers v. Ent. Wheel and Car Corp., 363 U.S. 593 (1960).

Sinclair Refining Co. v. Atkinson,[49] however, held that injunctions against strikes in violation of express or implied no strike clauses are not permitted by the Norris-La Guardia Act. An action under section 301, is an action under federal law but such action may be brought in either state or federal courts.[50] Various state courts have concluded that in the absence of state prohibitions they are not precluded from granting injunctive relief. As section 301 contemplates a uniform body of federal law binding on the states, these courts feel they are only required to observe federal substantive law and are free to apply remedies under state law.[51] *McCarroll v. Los Angeles Co. Dist. Council of Carpenters*[52] states at p. 332:

> Nothing in the nature of the rights created by section 301 requires that injunctive relief be denied in their enforcement. Such relief would of course not impair any federal contract right, nor would it expand it in conflict with any policy that we have been able to discern in the statute. To the contrary, the principal purpose of the statute is to encourage the formation and effective enforcement of collective bargaining agreements. See *Textile Workers v. Lincoln Mills of Alabama*, 77 S.Ct. 912.

Decisions[53] following *McCarroll* note that the state courts are not limited in actions under section 301 of the Taft-Hartley Act to remedies prescribed in the federal courts. The trend of cases hold that *Sinclair*[54] *did not hold that injunctive or damage remedies were not available.*[55] The court in *Dugsdale Const. Co. v. Operative Plasterers and Cement Masons Local 538 of Omaha, Neb.* stated at p. 662, "it seems clear that *Sinclair* did not hold that injunctive or damage remedies in the state were no longer available." The court further pointed out at page 662 that:

"The purpose of a collective bargaining agreement with no work stoppage and mandatory arbitration provisions is to preserve industrial peace. The state is vitally interested in such provisions and their reasonable enforcement."

Thus the correct conclusion has been reached that the state court has concurrent jurisdiction of disputes under section 301 and may grant injunctive relief as well as damages for such violation. Georgia has long recognized that the existence and rights of unincorporated associations and labor organizations in dealings with employers does not prevent the application of general legal and equitable principles and relief to a contract of

49. 370 U.S. 195 (1962).
50. Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962).
51. COX & BOX, CASES AND MATERIALS ON LABOR LAW (6th ed. 1965); *See e.g.* McCarroll v. Los Angles Co. Dist. Council of Carpenters 49 Cal.2d 45, 315 P.2d 322 (1957.
52. *Id.*
53. Shaw Elec. Co. v. Local 98, Int'l. Bbd. of Elec. Workers, 418 Pa. 1, 208 A.2d 769 (1965), noted 11 VILL. L. REV. 180 (1965); C. D. Perry & Sons, Inc. v. Robilotte, 39 Wisc.2d 147, 240 N.Y.S.2d 331 (1963).
54. *Supra* n. 47.
55. Dugsdale Const. Co. v. Operative Plasterers & Cement Masons Local 538 of Omaha, Neb., 135 N.W.2d 656 (1965).

collective bargaining.[56] In 1940 the Georgia Supreme Court pointed out that the federal Railway-Labor Act does not vest in the National Railway Adjustment Board exclusive jurisdiction to determine seniority rights of employees of a railroad under a collective-bargaining contract and that such rights in a proper case will be protected by injunction in a court of equity.[57]

It is observed that the breach of a collective bargaining agreement by a railroad may be enjoined by the state court to prevent irreparable injury to the union.[58] Likewise a suit brought to enjoin unions from enforcing a union shop contract provision requiring members to pay dues which were used to support political views opposed by the members was properly brought as a class action by a group of employees affected by the contracts.[59] However, a local union is not entitled to injunctive relief upon allegations that a rival local had threatened to strike in violation of state right-to-work law in order to compel payment of special fees for permission to perform work where there had not in part been a strike threat. The evidence being in conflict the trial court did not err in denying the temporary injunction.[60]

CONCLUSION

Many cases earlier decided would no doubt be decided differently with respect to the doctrine of federal pre-emption. Professor Aaron suggests that there are several situations in which the state courts may, and should, exercise their powers to grant injunctive relief.[61] Anti-injunction legislation has cured abuses in a great number of areas formerly occupied by the state court injunction. The tendency, as stated above, is clearly away from the use of state court injunctions. Despite this trend, the state court injunction is an effective remedy in the above-discussed category of cases.

Professor Aaron in his concluding article[62] declares a need for labor relations acts[63] covering intrastate enterprises and those interstate businesses

56. O'Jay Spread Co. v. Hicks, 185 Ga. 507, 195 S.E.564 (1937).
57. Evans v. Louisville & N.R.R. 191 Ga. 395, 12 S.E.2d 611 (1941). For recent explorations of of the current jurisdictional problems see *Aaron, supra* n. 7., a detailed summary 11 VILL L. REV. 180 1965).
58. Central of Ga. Ry. Co. v. Culpepper, 209 Ga. 844, 76 S.E.2d 482 (1953).
59. Machinists v. Street, 215 Ga. 27, 108 S.E.2d 796, 367 U.S. 740 (1959).
60. Carpenters Local 3024 v. United Brotherhood of Carpenters and Joiners of America, 220 Ga. 596, 140 S.E.2d 876 (1965). GA. CODE ANN. §55-108 (1933).
61. *Supra* n. 7, at 1163, Aaron suggests "cases marked by a pattern of continuing violence . . . and cases involving violations of state law for which a court injunction is the only effective remedy available. There are also areas of interstate activity and those cases declined by the N.L.R.B. in which the state may act under section 14 (c) of N.L.R.A. as amended."
62. *Supra* n. 7.
63. *Supra* n. 7 at 1164, Professor Aaron urges "these acts should invest the state labor relations boards with primary jurisdiction over unfair labor practices and with discretionary authority (as distinquished from a manatory duty) to seek interim injunctive relief in cases of serious violence or extreme economic hardship. In no case should such boards be permitted to apply for an injunction without first holding a hearing and affording both parties the opportunity to present evidence and argument."

which do not meet the jurisdictional standards of the NLRB. In addition, Aaron recognizes an urgent need for the establishment or improvement of state mediation services. In the light of the tremendous development of labor-management relations in recent years, it is suggested that the appropriate committee of the Georgia General Assembly should review existing laws and facilities. The industrial growth expected in the Southeast in the future should more than justify a concerted effort to modernize labor relations statutes. In Georgia, as in many other states, the use of the labor injunction could be more clearly defined.