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# Labor Law - Injunctions - Norris-La Guardia Act Does Not Require Federal District Courts to Remand Claims for Injunctive Relief to State Court When Validly Removed in Conjunction with Claim for Damages

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*discretion . . . must be so exercised as to serve that purpose.*"[28] This case and the leading case of *Harris Estate*[29] on which Justice Stern relies, indicate no inquiry as to the incompetent's probable intent. When contrasted with the rule in the instant case, the Pennsylvania rule emerges as the one best suited to the personal welfare of the ward, yet consonant with efficient and intelligent estate management.[30]

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LABOR LAW—INJUNCTIONS—NORRIS-LA GUARDIA ACT DOES NOT REQUIRE FEDERAL DISTRICT COURTS TO REMAND CLAIMS FOR INJUNCTIVE RELIEF TO STATE COURT WHEN VALIDLY REMOVED IN CONJUNCTION WITH CLAIM FOR DAMAGES.

*H. A. Lott, Inc. v. Hoisting & Portable Eng'rs Union* (S.D. Tex. 1963); *American Dredging Co. v. Local 25, Marine Div., Int'l Union of Operating Eng'rs* (E.D. Pa. 1963)

Employers filed suit in a state court against the union and certain of its officers alleging that the defendants had breached and were continuing to breach an existing collective bargaining agreement. The employers sought a temporary injunction against such breaches together with a judgment for damages. The union petitioned the district court for removal predicating jurisdiction on section 301(a) of the Labor Management Relations Act.[1] Plaintiffs then moved to remand the case insofar as it requested

28. *Id.* at 71, 60 A.2d at 9. (Italics Mr. Justice Stern's in quoting from *In re* Harris, 351 Pa. 368, 385, 41 A.2d 715, 723 (1945).)

29. *In re* Harris, 351 Pa. 368, 385, 41 A.2d 715, 723 (1945).

30. It must also be noted, however, that the *Harris* case contains a limitation which could arguably be imposed to limit the action of the trustee in a situation similar to the one involved in *Kenan*. The limitation is that the courts or the trustee cannot "create for the incompetent a large estate of which she could by no possibility have the present benefit in her lifetime, but which ultimately would go to her next of kin some time in the distant future." 351 Pa. at 385, 41 A.2d 723. It is not difficult to imagine a situation in which investments or the contest of a will could create such a large estate, but it is difficult to see how gifts out of the estate which only lessen the tax bite do any more than preserve the estate. It would seem that the limitation would be of little moment in gift cases, but it could conceivably have a great influence on courts asked to approve the request of a trustee to contest a will.

1. The Labor Management Relations Act (Taft-Hartley Act) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958), provides as follows:

> Suits for the violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

injunctive relief, a remedy which federal courts are powerless to grant because of the prohibition of section 4 of the Norris-La Guardia Act.[2]

The district court *held* that when an action for the breach of a collective bargaining agreement is initially brought in a state court, and the plaintiffs seek injunctive relief as well as money damages, the restriction denying federal courts jurisdiction to issue injunctions in a case of this type will not bar their assuming jurisdiction when there is a petition for removal. Where an otherwise nonremovable claim for an injunction is joined with a removable claim for damages both are removable, and a motion to remand the former shall not be entertained. *H. A. Lott, Inc. v. Hoisting & Portable Eng'rs Union*, 222 F. Supp. 993 (S.D. Tex. 1963).

Employer brought suit in a state court against the union for the violation of a no-strike clause in a collective bargaining agreement. The plaintiff sought an injunction and other appropriate relief. The state court issued an *ex parte* injunction temporarily restraining the defendant's work stoppage, and the defendant removed the action to the federal district court. On the same day the employer moved for that court to remand. This motion was denied. The employer then filed a new motion to remand and simultaneously amended its complaint waiving all claims for damages. The plaintiff asserted that since the amended complaint sought injunctive relief alone, the district court lacked jurisdiction to hear the cause under the Norris-La Guardia Act.

The district court retained jurisdiction *holding* that once a case is properly removed to the federal courts, a subsequent amendment of the complaint so that only injunctive relief is sought is not sufficient to divest the court of jurisdiction. *American Dredging Co. v. Local 25, Marine Div., Int'l Union of Operating Eng'rs*, 224 F. Supp. 985 (E.D. Pa. 1963).

Both of the aforementioned cases display the complex procedural and substantive problems confronting state and federal courts with regard to suits brought under section 301 of the Labor Management Relations Act for the enforcement of no-strike clauses contained in collective bargaining agreements. Despite the need for legislative reform, Congress has failed to act in this area, and courts must continue to resolve controversies on the basis of decisional law and national labor policy.

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2. The Norris-La Guardia Act, § 4, 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958), provides in part:

> 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 to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
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> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
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> . . .
>
> (h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
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> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

The development of federal law in this area began with the decision of the Supreme Court in *Textile Workers Union v. Lincoln Mills*[3] where section 301(a) of the Taft-Hartley Act was interpreted as being not only a jurisdictional grant, but a grant of federal substantive rights as well, to be enforced and defined by the federal courts. The Court directed that a body of federal substantive law should be fashioned through a process of judicial inventiveness.[4]

A number of problems arose when the federal courts attempted to carry out the mandate of the Supreme Court, some of which still remain unsolved. One of the most troublesome was that concerning the effect that section 4 of the Norris-La Guardia Act would have upon actions for specific performance brought under section 301(a) in federal district courts. This question was partially resolved in *Sinclair Refining Co. v. Atkinson*[5] where the Supreme Court held that the prohibitions against the granting of injunctive relief prohibited federal courts from granting injunctions in cases of this nature.

The question as to whether the federal restriction on injunctions was to be carried over to the state courts as a part of the federal law governing collective bargaining agreements was yet another problem which courts had to resolve. There have been decisions stating that state and federal courts exercise concurrent jurisdiction in this area[6] and that incompatible doctrine of local law must give way to principles of federal law,[7] but the Supreme Court has yet to give a clear statement concerning the applicability of the Norris-La Guardia Act to state courts.

Prior to the passage of section 301(a) there was no doubt that state courts were not bound by the restrictions of the Norris-La Guardia Act,

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3. 353 U.S. 448, 77 S.Ct. 912 (1957).

4. *Id.* at 456–57, 77 S.Ct. at 918. Federal courts were directed to adhere to our national labor policy in formulating such law. See generally Feinsinger, *Enforcement of Labor Agreements — A New Era in Collective Bargaining*, 43 VA. L. REV. 1261 (1957), for a more thorough discussion of federal labor policy as expressed by legislation.

5. 370 U.S. 195, 82 S.Ct. 1328 (1962). After a careful study of the legislative history and the language of § 301(a) of the Taft-Hartley Act the Court reasoned that despite the fact that the work stoppage was in breach of a collective bargaining agreement, it retained its character as a labor dispute within the meanings of § 4 of the Norris-La Guardia Act. The Supreme Court also held that since Congress had expressly considered and rejected the advisability of repealing the Norris-La Guardia Act, § 301 of the Taft-Hartley Act could not be interpreted as even partially repealing the restrictions against the granting of injunctions.

This result was criticized by Mr. Justice Brennan in a vigorous dissenting opinion. *Id.* at 215, 82 S.Ct. at 1339. He believed that because of Congress' failure to repeal the Norris-La Guardia Act the courts should take the initiative and reconcile the language of both statutes so that the fullest effect could be given to the terms of both. See generally Wellington & Albert, *Statutory Interpretation and the Political Process: A Comment on Sinclair v. Atkinson*, 72 YALE L.J. 1547, 1559 (1963); *The Supreme Court, 1961 Term*, 76 HARV. L. REV. 54, 207–10 (1963).

6. Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 82 S.Ct. 519 (1962). It should be noted that this case expressly refrained from deciding whether state courts are bound by the restrictions of the Norris-La Guardia Act. *Id.* at 514, n.8, 82 S.Ct. at 526, n.8.

7. Local 174, Teamsters Union v. Lucas Flour Co., 369 U.S. 95, 82 S.Ct. 571 (1962).

since both the language of the statute and its legislative history indicate Congress' reluctance to interfere with the general equity power of the state courts to issue injunctions.[8] Mr. Justice Brennan advanced the view that either solution would have adverse consequences in his dissenting opinion in the *Sinclair* case.[9] He theorized that should the Norris-La Guardia Act be interpreted so that it does not apply to state courts, the ideal of a uniform body of federal law would be defeated. State courts may, by offering injunctive relief, be able to monopolize this particular area of litigation, and the results reached by such courts would be dissimilar because of the varying procedural rules found in each state.[10]

The proponents of the view that state courts should be limited by the prohibitions found in the Norris-La Guardia Act have advanced the argument that such restrictions are needed by virtue of the fact that section 301 is an expression of our national labor policy and as such, a uniform rule with regard to procedure as well as substance is necessary.

Other advocates have rested their contentions upon the notion that state courts are impliedly bound by federal decisional law. They reason that the availability of injunctive relief is more than just a procedural matter, rather unions have a federal right not to be enjoined and such right must be enforced by the state courts.[11] Another aspect of the problem meriting consideration concerns whether the granting of an injunction is "outcome determinative" under the case of *Guaranty Trust Co. v. York*.[12]

While it must be conceded that the reasons advanced by those arguing in favor of the application of the Norris-La Guardia Act to the state courts are valid, it is submitted that their proponents have lost sight of the basic purpose for which section 301 was enacted. This legislation was aimed at increasing the responsibility of labor unions by making them suable entities, and any restrictions imposed upon the availability of injunctive relief in the state courts would be in direct opposition to the primary concern of Congress — that unions should be bound by collective bargaining agreements.

This question was decided by the Supreme Court of California in the case of *McCarroll v. Los Angeles County District Council of Carpenters*[13] where it was held that state courts still possess the power to enjoin concerted union activity in breach of a collective bargaining agreement. The court reasoned that the mere fact that a state court can give a more complete and effective remedy does not threaten the goal of uniform determination of federal substantive rights.

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8. Isaacson, *The Grand Equation: Labor Arbitration and the No-Strike Clause*, 48 A.B.A.J. 914, 919 (1962).

9. 370 U.S. 195, 226, 82 S.Ct. 1328, 1345.

10. Mr. Justice Brennan also discussed the effect that the federal removal statute would have, but he felt that if § 4 of the Norris-La Guardia Act were read strictly there could be no removal to the federal courts. *Id.* at 227, 82 S.Ct. at 1345.

11. McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 45, 315 P.2d 322 (1957).

12. 326 U.S. 99, 65 S.Ct. 1464 (1945). See generally Isaacson, *supra* note 8, at 919.

13. McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 45, 315 P.2d 322 (1957).

As stated previously the principal purpose for which the Taft-Hartley Act was enacted was to more effectively enforce collective bargaining agreements; in the light of this express legislative intent, it appears that the view taken by the court in *McCarroll* is the most reasonable one. Though federal courts have interpreted Norris-La Guardia as restricting their power to specifically enforce no-strike clauses, it does not necessarily follow that state courts should be similarly limited. If the contrary view were adopted, section 301 would decrease rather than increase the enforceability of a collective bargaining agreement, since employers would be denied a remedy available in the state courts prior to the enactment of section 301.

The *McCarroll* decision is also significant since it brings into focus the problems with which the courts had to contend in the two instant cases. In the *Lott* case the issue could be phrased as follows: because of the Supreme Court's holding that federal courts are precluded from granting an injunction in cases arising under section 301 by section 4 of the Norris-La Guardia Act, must district courts when faced with cases that have been removed which seek injunctive relief as well as damages remand the injunctive issue or may they hear the entire controversy?

The removal statute[14] provides that an action of this type is removable to the federal courts, because section 301(a) provides them with original jurisdiction. The plaintiff in the *Lott* case argued that the court lacked "jurisdiction" because the Norris-La Guardia Act prevented it from granting the injunction. The court answered that the definition given the word "jurisdiction" was immaterial since section 1441(c)[15] of the removal statute allows the removal of an action in which removable and non-removable claims are joined.[16] In reaching the preceding result, however, the court assumed that the proper interpretation to be given "jurisdiction" as used in the Norris-La Guardia Act is that federal courts are precluded from taking cognizance of an action solely for injunctive relief.[17] While this decision is not unique with regard to the removal issue,[18] the court's interpretation

14. The removal statute provided in § 1441(a):

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

62 Stat. 937 (1948), 28 U.S.C. § 1441(a) (1958).

15. § 1441(c) concerns the joinder of removable and non-removable claims; it contains the following language:

> Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed. . . .

28 U.S.C. § 1441(c) (1958).

16. The court reasoned that since it had jurisdiction to hear the claim for money damages under § 301(a) of the Taft-Hartley Act, it also had jurisdiction of the claim for injunction by virtue of the removal statute despite § 4 of the Norris-La Guardia Act.

17. This is the reading adopted by the court in the case of National Dairy Products Corp. v. Heffernan, 195 F. Supp. 153 (E.D.N.Y. 1961).

18. Crestwood Dairy, Inc. v. Kelley, 222 F. Supp. 614 (E.D.N.Y. 1963). This case also refused to grant a motion to remand saying that the difference between

of the Norris-La Guardia Act does become significant in cases where the plaintiff seeks only an injunction. It should also be noted that the opinion contains a statement saying that an action demanding an injunction could not be entertained by a federal court.[19]

The *American Dredging* case takes us one step further since it is directly concerned with the jurisdictional question raised in the *Lott* case. Here, an employer, after the case had been removed to a federal district court, amended its complaint so as to waive all claims except that for an injunction and motioned the court to remand for lack of jurisdiction. The court, capitalizing upon the pleading error he had made, denied the motion and held that since the action was removable at the time the union had petitioned for removal, a subsequent amendment of the complaint would not divest the court of jurisdiction.[20]

The court stated that federal courts are given subject-matter jurisdiction by section 301 of the Taft-Hartley Act and that the availability of the remedy demanded has no effect upon the grant. In reaching this conclusion the court reasoned that subject-matter jurisdiction is often confused with the power to grant the relief demanded. While this statement may be generally correct, its application here was erroneous. The jurisdictional grant of section 301 may be read so that it does not conflict with section 4 of the Norris-La Guardia Act[21] by interpreting the term "jurisdiction" in the latter act as meaning mere inability to give relief, but it seems that the contrary view adopted by other courts is much more sound. Here the court was able to avoid the issue and obtain jurisdiction by virtue of the provisions of the removal statute, but nothing was accomplished by retention of the suit.

It is submitted that the distinction with regard to jurisdiction drawn above merits little praise when compared to the more practical results reached by other courts.[22] Those cases which have refused to allow removal of actions of this type all display the feeling that it is absurd to have a district court hear a controversy which has been removed from a state court of adequate jurisdiction when, because of prior limitations, the district court is unable to grant the relief demanded.

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federal and state equity systems is not a ground for denying the right to remove to the federal courts.

19. 222 F. Supp. 993, 994 (S.D. Tex. 1963).

20. Associated Tel. Co. v. Communication Workers of America, 114 F. Supp. 334, 340 (S.D. Cal. 1953).

21. If the word "jurisdiction" found in § 4 of the Norris-La Guardia Act is interpreted as meaning that federal courts lack authority to act after taking cognizance of the suit, there is no conflict between the Norris-La Guardia and the Taft-Hartley Acts so far as removal is concerned.

22. Hat Corp. of America v. United Hatters Union, 114 F. Supp. 890, 894 (D. Conn. 1953); Int'l Longshoremen's Union v. Libby, McNeill & Libby, 114 F. Supp. 249, 251 (D. Hawaii 1953); Castle & Cooke Terminals, Ltd. v. Local 137 of Int'l Longshoremen's Union, 110 F. Supp. 247, 250 (D. Hawaii 1953); Phila. Marine Trade Ass'n v. Int'l Longshoremen's Ass'n, 382 Pa. 326, 333-34, 115 A.2d 733, 736-37 (1955).

Thus far the cases discussed demonstrate the manner in which the district courts are applying the Norris-La Guardia restrictions to cases where dual relief has been sought by employers for union breaches of no-strike clauses. In the *Lott* and *American Dredging* cases the courts were able to justify their results because of the federal removal statute, but a recent Pennsylvania case[23] forced the court to squarely face the question as to whether a case in which solely injunctive relief is sought might be removed to a federal district court.

The employer, Food Fair Stores, Inc., instituted an action in a state court under the Pennsylvania Anti-Injunction Act[24] seeking to enjoin mass picketing then taking place at its stores. A common pleas court issued a restraining order, and the union removed the action to the federal district court. The plaintiff motioned to remand advancing the argument that Norris-La Guardia prevented the court from assuming jurisdiction. The district court, citing the *American Dredging* case, held that it had subject-matter jurisdiction to hear the controversy despite its inability to grant the injunction and the probability that such removal would be followed by granting the motion to dismiss.

It is submitted that the results obtained in the *Food Fair* and *American Dredging* cases are exactly the type criticized in the case of *Hat Corp. of America v. United Hatters Union.* The court there stated:

> To hold that a court has original jurisdiction to entertain the case when under the Norris-La Guardia Act it has no jurisdiction to grant the primary relief sought would be to sanction what Mr. Justice Frankfurter has aptly described, although in quite another context, as a "fox-hunting theory of justice that ought to make Bentham's skeleton rattle."[25]

We have seen that federal courts are unable to issue injunctions to restrain union violation of no-strike clauses. If the removal device is used to prevent a state court injunction also, the effectiveness of a collective bargaining agreement is seriously undermined because employers will be reluctant to enter into agreements which are specifically enforceable against them, but not against the unions. Damages alone are not an adequate remedy since they do not compensate the public for the adverse effects of the strike, nor does the threat of a damage suit offer an effective deterrent to union breaches of collective bargaining agreements.

The ban against the issuance of injunctions in the federal courts has been criticized as being no longer necessary in the light of the present day labor situation,[26] and it seems that any extension of the restriction should be discouraged. The *American Dredging* and the *Food Fair* cases both

23. Food Fair Stores, Inc. v. Retail Clerks Dist. Council, No. 35239, E.D. Pa., March 11, 1964.
24. PA. STAT. ANN. tit. 43, § 206d(a).
25. Hat Corp. of America v. United Hatters Union, 114 F. Supp. 890, 894 (D. Conn. 1953).
26. Wellington & Albert, *supra* note 5, at 1555.