

STATE COURT AWARDS DAMAGES IN LABOR DISPUTE AFTER NLRB REFUSED JURISDICTION

Garmon v. San Diego Bldg. Trades Council,
49 Cal. 2d 595, 320 P.2d 473, cert. granted, 357 U.S. 925 (1958)

Plaintiffs are partners engaged in the retail lumber and building materials business. Their employees are not union members. Defendant unions demanded that plaintiffs enter into a union shop agreement, and upon refusal, began peaceful picketing of plaintiffs' place of business. The National Labor Relations Board refused to resolve the question of plaintiffs' employee representation because plaintiffs' annual amount of interstate commerce business did not meet the minimum standards set by the Board.¹ Suit was simultaneously brought in the superior court in and for the county of San Diego. The court enjoined the unions from further picketing and any other acts tending to injure plaintiffs' business, and awarded \$1,000.00 damages. The Supreme Court of California, in belief that the state courts were free to act in cases of refused NLRB jurisdiction, affirmed.² The court held the unions' activities were an unfair labor practice under Section 8(b)(2) of the National Labor Relations Act and ". . . not privileged under the California law."³ On certiorari the Supreme Court of the United States vacated the judgment and remanded to the California high court.⁴

The decision of the United States Supreme Court in the principal case is founded directly upon *Guss v. Utah*.⁵ The major difference between the two cases is that the *Guss* case did not involve a tort action. In both cases, a state court is refused jurisdiction to grant injunctive relief in a case "affecting" interstate commerce notwithstanding the fact that NLRB had refused to assume jurisdiction. The court stated in the *Guss* case that by "affecting commerce," Congress meant to reach the full extent of its power under the commerce clause.⁶ A finding of general intent to pre-empt the field was reinforced by the court's construction of section 10(a) of the Labor Management Relations Act, as having an "inescapable implication of exclusiveness."⁷ The greatest objection to the *Guss* decision is the undesirable creation of a "no man's land," where injunctive relief can be afforded neither in the state nor in the federal system.⁸ "Since Congress' power in the area of com-

¹ For an outline of jurisdictional standards to April 30, 1957, see 39 L.R.R.M. 44.

² 45 Cal. 2d 657, 291 P.2d 1 (1955).

³ *Id.* at 666, 291 P.2d at 7.

⁴ 353 U.S. 26 (1957).

⁵ 353 U.S. 1 (1957).

⁶ *Id.* at 3.

⁷ *Id.* at 10.

⁸ *Ibid.* For a discussion of the "No Man's land" problem in the principal case prior to the *Guss* decision, see Note, 54 MICH. L. REV. 1180 (1956).

merce is plenary, its judgment must be respected whatever policy objections there may be to creation of a no-man's land," stated the Court.⁹ Thus, the question of injunctive relief is definitely settled in favor of national uniformity. Further action is, by the *Guss* decision, left to Congress.

The unsettled issue squarely presented by the principal case is whether or not a state court has jurisdiction to award damages arising from a labor dispute when the NLRB has refused jurisdiction, even though the business affects interstate commerce. In remanding the case, the United States Supreme Court did not reach the damages question.¹⁰ Acting upon the remand, the Supreme Court of California in a 4-3 decision upheld the award of damages.¹¹ The majority of the court apparently accepted an implied invitation by the United States Supreme Court to find a tort under California law.¹² The dissent, expressed by Judge Traynor, found in the failure to reach the tort question only a pursuit of the United States Supreme Court's "usual policy of judicial economy."¹³

In its latest decision, the California court found the objectives of the union improper and unlawful, since it was in violation of the policy stated in section 923 of the California Labor Code. The court also suggested that if the employees had been at all organized in their dealings with their employer, the unions' activities would have been in violation of the California Jurisdictional Strike Act. The court found no conflict with federal law and on that basis again took jurisdiction to decide the case.¹⁴

The Supreme Court of the United States upheld state court jurisdiction to award damages arising from labor disputes affecting interstate commerce in *United Const. Workers v. Laburnum Const. Corp.*¹⁵ The crucial difference between *Laburnum* and the principal case is that the tortious conduct in *Laburnum* involved violence. The difficulty is crystallized in the attempt to draw the jurisdictional line. Violence at first glance seems to make little difference since a tort is compensable in damages regardless of the type of unlawful conduct involved. Both the majority and dissent in the principal case recognize the trouble involved in a conflict of state and federal policy. The dissent, however, stresses danger and possibility of conflict in diverse tribunals more heavily than actuality of conflict in each isolated case.¹⁶ An artificial jurisdictional

⁹ 353 U.S. 1, 11 (1957).

¹⁰ 353 U.S. 26, 29 (1957).

¹¹ 49 Cal. 2d 595, 320 P.2d 473 (1958), cert. granted, 357 U.S. 925 (1958).

¹² *Id.* at 604, 320 P.2d at 479.

¹³ *Id.* at 616, 320 P.2d at 485.

¹⁴ *Id.* at 604, 320 P.2d at 478.

¹⁵ 347 U.S. 656 (1954).

¹⁶ *Supra* note 11, at 618, 320 P.2d at 487. The possibilities are illustrated by *Baumgartner's Elec. Const. Co. v. DeVries*, 97 N.W.2d 667 (N.D. 1958). In a state having a "right to work" law, not only compensatory, but exemplary damages

line drawn between tort and injunction would do little to further the purpose of uniformity since different tribunals would still have the opportunity to interpret both state and federal labor law and policy. A line drawn at violence, less arbitrary, insures against labor policy conflicts by limiting state jurisdiction to cases involving the exercise of police power and the preservation of public order. If labor policy uniformity is sufficient reason to support creation of a "no man's land" in the area of injunctive relief, it would also seem strong enough to prevent the drawing of an artificial line between tort and injunction. A line drawn at state preservation of order is a more realistic temporary answer. The view of the dissent in the principal case is seemingly consistent with the policy announced by the United States Supreme Court in *Guss v. Utah*. The majority decision reluctantly yields on the injunction issue but maintains a stand on damages which is apparently contrary to the basic policy reasoning in the *Guss* case. As stated by NLRB General Counsel Jerome D. Fenton, "[T]o allow state damage remedies for unfair labor practices generally may, even though no like remedy can be provided by the Board, result in the impairment of a uniform federal labor policy."¹⁷

A recent Congressional appropriation has enabled the NLRB to relax its jurisdictional standards enough to encompass part of the jurisdictional no-man's land.¹⁸ The response of Congress and the Board to the *Guss* decision is encouraging, if only because it lessens the severity of the "no-man's land" problem. It is even more encouraging, however, for the strength it gives to the national uniformity policy expressed in the *Guss* case. As the Board occupies more of its jurisdictional territory, the lack of remedy argument becomes less pressing. The United States Supreme Court should, therefore, find little necessity for the establishment of differing rules for tort damages and injunction.

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were awarded on a set of facts substantially similar to those in the principal case.

¹⁷ Address before the Third Annual Southeastern Conference on Current Trends in Collective Bargaining held at the University of Tennessee in Knoxville. Partially reprinted, 42 Lab. Rel. Rep. 651 (1958).

¹⁸ 72 STAT. 457 (13 U.S. Code Cong. and Ad. News 2859, August 20, 1958). For an outline of the new NLRB standards, effective October 2, 1958, see 42 Lab. Rel. Rep. 633.