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# Labor Relations - Exclusiveness of Jurisdiction of Labor Relations Board - Redress of Injury from Alleged Libel in Course of Labor Organization Campaign through State Remedies

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LABOR RELATIONS—EXCLUSIVENESS OF JURISDICTION OF LABOR RELATIONS BOARD—REDRESS OF INJURY FROM ALLEGED LIBEL IN COURSE OF LABOR ORGANIZATION CAMPAIGN THROUGH STATE REMEDIES.—Before the Court in the case of *Linn v. United Plant Guard Workers of America, Local 114*, — U.S. —, 86 Sup. Ct. 657 (1966), was the question of whether the National Labor Relations Board had exclusive jurisdiction of a labor organizing campaign to the extent that a libel arising therefrom could not be redressed by a state remedy. The Court held that Congress had not preempted the courts from applying state remedies for libel by passing the National Labor Relations Act;[1] however, the Court limited recovery to those cases where the statements allegedly constituting the libel were made with malice and had caused actual damage.

The plaintiff, Linn, was an assistant general manager of Pinkerton's National Detective Agency, Inc. During an organizing campaign, two union officials and a Pinkerton guard allegedly distributed circulars defaming him.[2] The Pinkerton National Detective Agency, Inc. filed an unfair labor practice charge with the Regional Director of the National Labor Relations Board alleging that the distribution of these circulars, along with other material, was in violation of the National Labor Relations Act. However, the Director refused to issue a complaint because he found no evidence that the union had been responsible for the distribution of the circulars.

Subsequent to filing the charge with the Regional Director, Linn instituted an action for libel in a federal district court. The district court dismissed the complaint on the grounds that the National Labor Relations Board had exclusive jurisdiction over the subject matter, and that a state remedy for libel could not be applied by the courts. It held that *San Diego Building Trades Council v. Garmon*[3] was controlling. The district court's decision was affirmed by the 6th Circuit Court of Appeals.[4]

1 Footnote 3 of the Court in *Linn v. United Plant Guard Workers of America, Local 114*, — U.S. —, —, 86 Sup. Ct. 657, 661 (1966) contains an adequate paraphrase of the Act. It states:

> The Congress has declared in the Act that employees have the right to self-organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for mutual aid and protection. §7. In § 8(a) Congress has made it an unfair labor practice for an employer to restrain or coerce employees in the exercise of § 7 rights. Likewise, § 8(b) protects these rights against interference by a labor organization or its agents. And § 8(c) provides that the expression of any views or opinions "shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat or reprisal or force or promise of benefit." In addition, § 9(c)(1) authorizes the Board, under certain conditions, to conduct representation elections and certify the results thereof. Finally, § 10 grants the Board exclusive power to enforce the prohibitions of the Act.

2 The circulars charged Pinkerton managers with falsifying records designating the number of Pinkerton employees. It was also alleged that the managers deprived these unlisted men of voting rights and pay increases, and that they had lied to the union. Linn alleged that he was one of the managers referred to in the circulars.

3 359 U.S. 236, 79 Sup. Ct. 773 (1959).

4 337 F.2d 68 (6th Cir. 1964).

The United States Supreme Court granted certiorari and reversed and remanded,[5] concluding that it was not the intent of Congress to pre-empt the courts from redressing libel arising in a labor dispute. The Court reasoned that the exercise of state authority in this area would not interfere with a uniform regulation of labor relations, that malicious libel is a peripheral concern of the National Labor Relations Board and that the states have a compelling interest in protecting their citizens from libel.

In reaching this result, the Court said that the problem of determining whether the states must yield jurisdiction to the National Labor Relations Board is made ". . . . more difficult by the failure of the Congress to furnish precise guidance in either the language of the [National Labor Relations] Act or its legislative history."[6] However, in the absence of precise congressional guidance, the Court noted other factors which had to be taken into consideration. The Court indicated, by quoting from *Garner v. Teamsters Union*,[7] the route it must follow.

> The . . . Act . . . leaves much to the states, though Congress has refrained from telling how much. We must spell out from conflicting indications of congressional will the area in which state action is permissible.[8]

The Court then noted that ". . . . in framing the pre-emption question before us we [the Court] need look primarily to San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 773 (1959)."[9] Quoting again from the *Garmon* case, the Court stated that it was for the Board and Congress to indicate ". . . . the precise and closely limited demarcations that can be adequately fashioned only by legislation and administration."[10]

With these principles in mind, the Court then considered the actions taken by the National Labor Relations Board in the past with regard to abusive language used in the course of a labor campaign. In this respect, the Board had not censored campaign material used in an election, but rather had left the appraisal of such language to the voters.[11] However, where the freedom of choice in an election had been restricted by uncorrected misrepresentations, the Board had taken appropriate measures.[12]

Generally, the Court recognized that the Board had allowed a wide latitude in the use of abusive or erroneous statements, yet it had held that

[5] Linn was directed to amend his complaint by alleging malice and compensatory damages.

[6] Linn v. United Plant Guard Workers of America, Local 114, — U.S. —, —, 86 Sup. Ct. 657, 661 (1966).

[7] 346 U.S. 485, 74 Sup. Ct. 161 (1953).

[8] *Id.* at 488, 74 Sup. Ct. at 164.

[9] *Supra* note 6.

[10] *Supra* note 6.

[11] Stewart-Warner Corp., 102 N.L.R.B. 1153 (1953).

[12] Hollywood Ceramics Co., 140 N.L.R.B. 221 (1962).

one could not circulate material known to be false,[13] under penalty of forfeiting any protection afforded by the National Labor Relations Act.[14]

In view of these considerations, the Court felt that redressing a libel, circulated with malice in the course of a labor campaign, would be merely a peripheral concern of the National Labor Relations Board, as the Board had held that statements made maliciously would cause forfeiture of any rights under the act.

The Court, however, mindful of the fact that a libel suit or a threat of filing one could be a coercive weapon in the hands of either a union or an employer, was meticulous in stating that it was limiting a party's right to recover to those cases where the allegedly libelous statements were issued and known to be false or where the statements were issued with reckless disregard of whether they were true or false. The Court noted that malicious, defamatory statements can never be condoned.

The right to recover was also limited to those cases where the defamed party could plead and prove that he had suffered actual damage. One of the Court's reasons is, perhaps, best stated by its own words.

> As we have pointed out, certain language characteristic of labor disputes may be held actionable *per se* in some state courts. . . . However, even in those jurisdictions, the amount of damages which may be recovered depends upon evidence as to the severity of the resulting harm. This is a salutary principle.[15]

The Court also felt that the requirement of proof of actual damage would prevent the use of a libel action as a coercive weapon in labor disputes.

The position that redressing libel is only a peripheral concern of the National Labor Relations Board is strengthened by the fact that an individual has no standing in a Board hearing and that injury to an individual's reputation has no relevance to the Board's functions.[16] The Court recognized this situation and concluded that the states have a compelling interest in protecting their citizens from libel.

Mr. Justice Black dissented on the grounds that free speech was abridged and that the decision would have a marked effect on collective bargaining. He felt that the use of a libel suit as a weapon would result in the destruction of effective labor arbitration.

Mr. Justice Fortas, with whom the Chief Justice and Mr. Justice Douglas joined, dissented on the grounds that congressional intent had been abrogated. They feared that the use of libel suits would result in increased war-

[13] See Maryland Drydock Co. v. N.L.R.B., 183 F.2d 538 (4th Cir. 1950).

[14] Walls Mfg. Co., 137 N.L.R.B. 1517 (1962).

[15] Linn v. United Plant Guard Workers of America, Local 114, — U.S. —, —, 86 Sup. Ct. 657, 664 (1966).

[16] *Cf.* Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261, 60 Sup. Ct. 561 (1940).

fare between labor and management. They accepted, however, the proposition that a person should be protected from defamation when he is not a party to a labor campaign or when the defamatory matter is not confined to any issue in dispute.

The majority of the Court was of the opinion that the state courts and the National Labor Relations Board act within independent spheres of jurisdiction. While state courts award damages for libel, the National Labor Relations Board oversees elections in labor campaigns. As neither the state courts nor the Board act within the same sphere, condemnation by a state court in a libel action would not reflect a similar judgment by the Board on the objectives of the parties to the labor dispute.

An individual libeled and damaged during the course of a labor dispute has now been afforded a right to redress his injury by state remedies. However, the preservation of this right is bound to have some effect on labor arbitration. It will become more difficult to deal constructively with new problems while old battles are still being fought in other forums. It is not an empty threat to resort to the state courts as an auxilliary weapon in resolving labor disputes. False claims could be filed for tactical purposes. Tenuous as the claims may be, time and expense will still be needed to combat them.

Yet, it would be unreasonbale to deny a person compensation for damages merely because the libel arose in a labor dispute. Quite naturally then, it is apparent that a balance must be maintained between the promotion of effective arbitration and the protection of an individual's reputation. It is this writer's opinion that a balance was maintained when the Court in the instant case limited the individual's right of redress to those cases where the libel was maliciously asserted and did in fact cause damage. This restriction would tend to cut down on the possibility of false claims being asserted, and it would in no way limit effective campaigning which of necessity must be based on open and free discussion. Only statements in the course of such open and free discussion which are made maliciously were proscribed by the Court in the *Linn* case.

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