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Constitutional Law - Union Organizers on Department Store Parking Lot Convicted under State Trepass Statute - People v. Goduto, 21 Ill. 2d 605, 174 N.E. 2d 385 (1961)

DePaul College of Law

CASE NOTES

CONSTITUTIONAL LAW–UNION ORGANIZERS ON DEPARTMENT STORE PARKING LOT CONVICTED UNDER STATE TRESPASS STATUTE

Defendants, nonemployee union organizers of local 1550, Retail Clerks International Association, AFL–CIO, entered upon a parking lot leased by Sears Roebuck and Company and adjacent to their store for the sole purpose of passing out union leaflets to the employees of Sears. Sears leased the lot for use of its employees and customers and does not permit any type of soliciting without its permission. The store superintendent informed the defendants of this fact and ordered them to leave three times, the third time warning them he would call the police. Each time the defendants refused to leave. The defendants were arrested and subsequently convicted of criminal trespass under the Illinois statute which makes such a refusal to leave, when one is unlawfully upon the land of another, a misdemeanor.[1] At no time did the defendant union organizers apply to the National Labor Relations Board for a determination of their rights to be on the property.

On appeal to the Supreme Court of Illinois, the defendants contended that the trial court did not have jurisdiction because Congress, by its enactment of the National Labor Relations Act[2] and its extensive amendments,[3] has deprived the states of the power to interfere with the labor activity involved by this type of trespass prosecution. The Supreme Court of Illinois held that because of the threat of violence created when the defendants repeatedly refused to leave, the state was justified, in the interest of maintaining domestic peace, to enforce its criminal trespass statute. *People v. Goduto*, 21 Ill. 2d 605, 174 N.E. 2d 385 (1961).

In *Amalgamated Meat Cutters, AFL v. Fairlawn Meats, Inc.*,[4] the United States Supreme Court expressly reserved its opinion as to whether or not a state can enforce an action under a no trespass rule where no effort has

[1] Ill. Rev. Stat. ch. 38 § 565 (1959) "Whoever . . . is unlawfully upon the enclosed or unenclosed land of another and is notified to depart therefrom by the owner, or occupant, or by his agent or servant, and neglects or refuses to do so . . . shall be guilty of a misdemeanor. . . ."

[2] 49 Stat. 449 (1935), 29 U.S.C. § 151 (1958).

[3] Labor Management Relations Act (Taft-Hartley Act) 61 Stat. 136 (1947); Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) 73 Stat. 519 (1959), 29 U.S.C. § 151.

[4] 353 U.S. 20 (1957).

been made to invoke the jurisdiction of the National Labor Relations Board. The case came to the Supreme Court after the Ohio state courts had enjoined a union from picketing certain stores on the grounds that the picketing was an unfair labor practice and also because it was being performed on property owned or leased by the employer. It was held by the United States Supreme Court that since only the National Labor Relations Board can determine whether a labor activity constitutes an unfair labor practice, the Ohio state courts lacked jurisdiction. The Supreme Court reserved its opinion of the injunction against trespass because it found that the Ohio courts had proceeded on the erroneous premise that they could reach the union's conduct in its entirety, and the action was therefore not aimed at trespass.[5] When the Illinois courts convicted the defendants in the *Goduto* case, it was the first time that any state had exercised its power over persons engaged in a labor activity solely by means of a trespass statute. This naturally raises the problem of the propriety of this action by the Illinois state courts.

In many matters concerning labor activities, the question of just what has been left to the states and what has been delegated by the National Labor Relations Act to the exclusive control of federal agencies and courts is not yet clear. In *International Ass'n of Machinists v. Gonzales*,[6] the court stated that:

> The statutory implications concerning what has been taken from the states and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation.[7]

Section 7 of the National Labor Relations Act states that employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, *self organization*, and the right to bargain collectively through representatives of their own choosing.[8] Section 8(a) enumerates a series of unfair labor practices of employers, and section 8(b) lists unfair labor practices of unions.[9] Whenever an activity is protected by section 7 or prohibited by section 8, the states lack jurisdiction over this activity.[10] If the activity is arguably subject to section 7 or section 8, the states must yield to the primary jurisdiction of the National Labor Relations Board for a clear determination of

[5] *Id.* at 25, 26.

[6] 356 U.S. 617 (1958).

[7] *Id.* at 619.

[8] 49 Stat. 452 (1935), 29 U.S.C. § 157 (1958).

[9] 49 Stat. 452 (1935); Labor Management Relations Act (Taft-Hartley Act) 61 Stat. 140 (1947), 29 U.S.C. § 158 (1958).

[10] Garner v. Teamsters Union, Local 776, 346 U.S. 485 (1953); Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1959).

the question of whether the activity has been pre-empted by federal legislation.[11] Under section 701 (a) of the Labor Management Reporting and Disclosure Act of 1959,[12] which amended the National Labor Relations Act, the states are permitted to exercise their jurisdiction over any labor dispute which the National Labor Relations Board, by *ad hoc* decision or rule, elects not to take jurisdiction. This amendment eliminates the "no man's land" which was created when the National Labor Relations Board refused to hear cases, even though they involved activities protected by section 7 or prohibited by section 8, because they did not meet certain standards set up by the Board. Before this amendment the states could not take jurisdiction in these cases because these activities were still considered to be solely within the jurisdiction of the National Labor Relations Board.[13] This amendment was not brought before the court in the *Goduto* case, but the Illinois Supreme Court assumed that section 701(a) did not grant the state jurisdiction in this particular case. However, the state courts have consistently been allowed to assert jurisdiction over labor activities when such activities have involved violence[14] or a threat of violence.[15] There was no violence in the present case but the Illinois courts, in their examination of trespass, found that the defendants' repeated refusals to leave constituted an imminent threat of violence.

Trespass was a crime at common law only when it was accompanied by, or tended to produce, a breach of the peace.[16] This was a recognition by the common law that besides being an invasion of private property rights, this type of trespass was a threat to society. The statutes which make trespass a crime also have as a primary goal the prevention of such threats,[17] and secondarily, the protection of property rights. Criminal sanctions are proper in both of these areas. Furthermore, the owner or occupier of land has the right to use force to remove trespassers.[18] Upon examination of what might occur if the individual owner or occupier attempted to remove trespassers by force,[19] the Illinois Supreme Court, in

[11] San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959).

[12] (Landrum-Griffin Act) § 701 (a) 73 Stat. 541, 542 (1959), 29 U.S.C. § 153 (c) (1958).

[13] Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957).

[14] United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954); United Auto. Workers v. WERB, 351 U.S. 266 (1956).

[15] Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957).

[16] Busick v. Illinois Cent. R.R., 201 Ill. App. 63 (1915).

[17] Dotson v. State, 6 Cold. 545 (Tenn. 1869).

[18] Woodman v. Howell, 45 Ill. 367 (1867); Long v. People, 102 Ill. 331 (1882); People v. Hart, 156 Ill. App. 523 (1910); People v. Roote, 170 Ill. App. 608 (1912).

[19] Marshall Field & Co. v. NLRB, 200 F.2d 375 (7th Cir. 1953).

the *Goduto* case, found a situation of imminent violence is present where one is unlawfully upon the land of another and refuses to leave.

In the *San Diego Bldg. Trades Council v. Garmon*,[20] one of the landmark cases of the United States Supreme Court's Delphic approach, it was recognized that the states have the power to keep order within their borders. This case originated in California where a businessman was suing a union for damages suffered by his business as a result of allegedly unfair labor practices, namely, picketing and secondary boycotts imposed by a union supposedly not authorized to represent his employees. The Supreme Court of California granted damages, under a state tort statute providing for such, but on appeal to the United States Supreme Court this decision was reversed. The Supreme Court held that the granting of damages in such cases would be as effective in controlling union activities as the granting of injunctions. It further found that such state control was in conflict with the desire Congress had that labor activities affecting interstate commerce, in the interest of uniformity, be controlled only by the National Labor Relations Board. However, the Supreme Court was careful to reserve to the states their right of traditional police power to control violence. It cited its previous holdings in labor cases where violence or threat of violence[21] was involved and said:

> State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction.[22]

A case which expressly holds that the state may take jurisdiction over labor activities when violence is involved is *United Auto. Workers v. WERB*.[23] Here the Wisconsin Employment Relations Board was allowed to enjoin the pickets of the Kohler Company in Sheboygan, Wisconsin because the pickets threatened those willing to work for the company with bodily harm and denied free entrance and exit to the company's factory. This injunction was affirmed by the United States Supreme Court even though the National Labor Relations Board could have granted the same remedy. The majority opinion, therefore, concentrated on the violence and threats of violence involved. Mr. Justice Douglas, in the dissenting opinion, found no conflict in the fact that the states could control violence, but found conflict in the fact that Wisconsin was being allowed to grant a remedy, namely the enjoining of an unfair labor practice, which he felt that Congress had intended to lie only with the National Labor Relations Board. He agreed that the states may invoke their criminal statutes.

[20] 359 U.S. 236 (1959).

[21] *Ibid.*

[22] *Id.* at 247.

[23] 351 U.S. 266 (1956).

Of course the States may control violence. *They may make arrests and invoke their criminal law to the hilt.* They transgress only when they allow their administrative agencies or their courts to enjoin the conduct that Congress has authorized the federal agency to enjoin.[24]

Since the state in the present case is seeking to prevent violence by invoking its criminal law, it not only finds precedent in the majority opinion of the *Kohler* case but it has the support of the dissent. Also, there is no conflict with the dissent because the employer can obtain no preventative relief from the National Labor Relations Board because the union organizers are not involved in one of the enumerated unfair labor practices of section 8(b).[25] Therefore, there is no duplication of a like federal remedy involved. However, in cases brought before the Board by unions alleging unfair labor practices of employers, employer property rights have been expressly recognized.[26] In these cases, the unions were petitioning the Board because the employers had ejected nonemployee union organizers from adjacent parking lots and factory doorways. The Board held that where there was a valid no-solicitation rule, the organizers were trespassers and would be ejected as such. The leading case on nonemployee union organizers, *NLRB v. Babcock & Wilcox Co.*,[27] came to the United States Supreme Court on the same facts. Nonemployee union organizers had been ejected from an adjacent company parking lot by the employers and the union had obtained an injunction from the National Labor Relations Board to force the employers to cease this practice. Because the United States Supreme Court found that there were other usual and reasonable means available to the unions to reach the employees, the Supreme Court reversed the decree of the National Labor Relations Board and held that section 7 required only that employers refrain from interference with the employees' exercise of their own rights. Furthermore, the Supreme Court held that section 7 does not require the employer to permit the use of its facilities for organization by nonemployees when other means are readily available.[28] These cases expressly acknowledge the property rights of employers. However, these are empty rights if they cannot be protected. Because, under the Labor Management Relations Act of 1947,[29] the distribution of union leaflets by nonemployee union organ-

[24] *Id.* at 276 (dissenting opinion). (Emphasis added.)

[25] Labor Management Relations Act (Taft-Hartley Act) 61 Stat. 140 (1947), 29 U.S.C. § 158 (1958).

[26] Marshall Field & Co. v. NLRB, 200 F.2d 375 (7th Cir. 1953); McKinney Lumber Co., Inc., 82 N.L.R.B. 38 (1949), E. A. Labs., 88 N.L.R.B. 673 (1950).

[27] 351 U.S. 105 (1956).

[28] *Ibid.*

[29] (Taft-Hartley Act) 61 Stat. 140 (1947), 29 U.S.C. § 158 (1958).

izers on an adjacent parking lot is not an unfair labor practice, the employer cannot obtain any preventative relief from the National Labor Relations Board. Thus, if the state is not allowed to exercise its jurisdiction, the employer owner or occupier must resort to self help for the protection of his rights. As seen this creates a threat of violence to the community. Since the United States Supreme Court has expressly recognized the power of the states to control such threats,[30] the State of Illinois should be allowed to eliminate such a threat by the use of a criminal statute designed for this purpose.

However, one of the elements of the Illinois criminal trespass statute[31] is that a person be unlawfully upon the land of another. Thus, the Illinois Supreme Court was presented with the question of whether the trespass of the defendants in the *Goduto* case was justified or excused since nonemployee union organizers are sometimes protected by the National Labor Relations Act.[32] In the *Babcock & Wilcox Co.* case, the Supreme Court stated that only in certain circumstances will the employers' property rights give way before the rights guaranteed unions in section 7. One such instance is where it can be shown that a no-solicitation rule is being unfairly applied or is discriminatory. Another is when there is no reasonable means of contacting employees, other than on the property of the employer.[33] In such a situation, nonemployee union organizers are protected by section 7. Interference with this activity is prohibited by section 8.[34] The state courts do not have the power to decide when a no-solicitation rule is being unfairly applied. Primary determination of such questions rests with the National Labor Relations Board,[35] but the Board cannot make such a determination unless the union applied to it alleging an unfair labor practice on the part of the employer.[36] This is the usual procedure followed by unions in such cases,[37] but there had been no such

[30] United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954); United Auto. Workers v. WERB, 351 U.S. 266 (1956); Youngdahl v. Rainfair Inc., 355 U.S. 131 (1957).

[31] Ill. Rev. Stat. ch. 38 § 565 (1959).

[32] NLRB v. Babcock & Wilcox Co., 351 U.S. 105 (1956).

[33] *Ibid.*

[34] *Ibid.*

[35] Garner v. Teamsters Union, Local 776, 346 U.S. 485 (1953); Weber v. Anheuser-Busch, Inc., 348 U.S. 468 (1955); Guss v. Utah Labor Relations Bd., 353 U.S. 1 (1957); San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959).

[36] NLRB v. Hopwood Retinning Co., 98 F.2d 97 (2d Cir. 1938); Consumers Power Co. v. NLRB, 113 F.2d 38 (6th Cir. 1940).

[37] NLRB v. Babcock & Wilcox Co., 222 F.2d 316 (5th Cir. 1955); NLRB v. Seamprufe, Inc., 222 F.2d 858 (10th Cir. 1955); NLRB v. Ranco, Inc., 222 F.2d 543 (6th Cir. 1955); NLRB v. Great Atl. & Pac. Tea Co., 277 F.2d 759 (5th Cir. 1960).

petition by the defendants in the *Goduto* case. Therefore, the point in issue is whether or not the Illinois state courts can convict the defendants of trespass without a prior determination by the National Labor Relations Board of their right to be on the property. Because the defendants did not follow the procedure established by Congress to protect their rights, the Illinois Supreme Court held that they could exercise jurisdiction. This seems to be the logical decision, for to deny the jurisdiction of the states because of the unions' failure to apply for a determination of its rights would make the states' interest in the prevention of violence subject to the course of action decided upon by the labor union. The cases have repeatedly held that the states' interest in the safety of the public and prevention of violence is predominant.[38]

Therefore, the Illinois courts properly took jurisdiction over the acts of the defendants in the *Goduto* case because their repeated refusals constituted a threat of violence to the community. Furthermore, although the Illinois state courts did not have the power to determine whether or not the defendants' trespass was excused under section 7 of the National Labor Relations Act, the defendants were properly convicted because of their failure to apply to the National Labor Relations Board for a determination of their rights. This follows since the rights of the states to control violence have been held to take precedence over rights granted labor unions in section 7.[39] It was the course of action decided upon by the labor union which created the situation where their rights under section 7 could not be determined. It would be incongruous to find that the state's interest in the protection of the public was subject to the course of action decided upon by the labor unions, since the states have a duty to protect the peace and order of society.[40]

[38] United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954); United Auto. Workers v. WERB, 351 U.S. 266 (1956); Youngdahl v. Rainfair Co., 355 U.S. 131 (1957).

[39] *Ibid.*

[40] A petition for certiorari in the case of People v. Goduto is presently pending before the United States Supreme Court. 30 U.S.L. Week 3097 (U.S. Sept. 22, 1961) (No. 437).

CONSTITUTIONAL LAW–SAFETY RESPONSIBILITY LAW AS A DEPRIVATION OF DUE PROCESS

The defendant, a resident of Colorado, was involved in an automobile accident while driving within the state. Within a one year period after the first accident, the defendant was involved in a second in which he was charged with driving while under a license suspension order issued by the