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Labor Law—Labor Management Relations Act 303—Non-Applicability of State Statute of Limitations.—Fischbach & Moore, Inc. v. International Union of Operating Eng'rs

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its departure by the fact that relations with a friendly foreign government are involved. In view of the extreme extraterritorial effect which the Board's ruling might have, and the intervention of the State Department, the court seems justified in this unprecedented departure. But the implication of the court's language in arriving at its decision,

> We cannot believe Congress would have wished to limit the role of the courts in that situation to cases where the Board had violated a 'clear statutory command,'[41]

seems to create authority for blanket judicial determination "whether in a particular case Congress would or would not have wished them to intervene . . . ."[42]

It is to be hoped that such language will be strictly limited to the peculiar facts of this case, lest the inroads to judicial review, and subsequent defeat of the time-saving objectives of national labor policies, be too readily accessible to the "ingenuity of counsel."[43]

JOHN D. O'REILLY, III

Labor Law—Labor Management Relations Act § 303—Non-Applicability of State Statute of Limitations.—*Fischbach & Moore, Inc. v. International Union of Operating Eng'rs.*[1]—Two corporations and a joint venture prosecuted this claim under Section 303 of the Labor Management Relations Act of 1947 (LMRA—popularly known as Taft-Hartley)[2] for damages arising out of alleged unfair labor practices by defendant unions. The union activities constituting the alleged unfair labor practices included strikes, pickets and work stoppages occurring in 1957. The complaint was filed three and one half years after the gravamen of the offense. Defendant's motion to dismiss on the grounds that the action was barred by the California three-year statute of limitations[3] was denied. HELD: The state statute of limitations does not apply to bar plaintiffs' right created by a federal statute with no limitation period. The Taft-Hartley Act is a statute of national concern which implies a policy of uniform application to all persons subject to it. The court felt this compelled the conclusion that diverse state statutes may not be permitted to qualify or undermine the federally created right. Of the five possible solutions[4] to the problem of what time limitation federal courts should place on similar actions, this court

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[41] Supra note 1, at 2446-47.

[42] Ibid.

[43] Supra note 40.

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[1] 198 F. Supp. 911 (S.D. Cal. 1961).

[2] 61 Stat. 158 (1947), 29 U.S.C. § 187(b) (1958).

[3] Cal. Code of Civil Procedure § 338.1.

[4] Judge Clarke listed the five possibilities as: (1) utilization of state statutes of limitation; (2) utilization of an arbitrary, judicially enacted, period to be applied in all similar cases; (3) utilization of an analogous federal statute of limitations; (4) utilization of the equitable doctrine of laches; (5) utilization of no period of limitations at all.

would apply only the equitable doctrine of laches until Congress determined the limitation period.[6]

This is a question of first impression. There appears to be no decision directly in point either under section 303 or section 301, its closely related partner. Although defendant urged one case[6] as bearing on the issue, it was rightly dismissed since it involved a choice of which of two state statutes should apply. In the instant case there was only one logically relevant state statute of limitations, which could be used only if the court first concluded that *any* state limitation period was applicable.[7]

Ever since the landmark Supreme Court decision in *Textile Workers v. Lincoln Mills*,[8] there has been a definite trend toward establishing a national, uniform, body of federal common law applicable to rights arising under federal labor law. Mr. Justice Douglas' statement in *Lincoln Mills* that the substantive law under Section 301 of Taft-Hartley is a federal law "which the courts must fashion from the policy of our national labor laws"[9] is proving to be a phrase much more pervasive than would appear from the words themselves. The instant case illustrates another ramification of *Lincoln Mills*.[10]

If it were not for the federalism doctrine of *Lincoln Mills, Fischback & Moore* would be clearly contra to a long line of authority extending back to 1895, and earlier.[11] In fact, when no statute of limitations was created to accompany the federal statutory right, the Supreme Court,[12] federal

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[5] Two other motions of defendant were ruled on: (1) a motion to strike portions of the complaint was denied; (2) a motion for a more definite statement was granted.

Although the cause will undoubtedly come before the court again when plaintiff's statement is made more definite, this note is concerned solely with the ruling on the motion to dismiss based on the statute of limitations.

[6] United Mineworkers of America v. Meadow Creek Coal Co., 263 F.2d 52 (6th Cir. 1959), cert. denied, 359 U.S. 1013 (1959).

[7] Supra note 3. Another statute cited by defendant in an attempt to bring his case within the scope of *United Mineworkers*, supra note 6, was Cal. Code of Civil Procedure § 343. This, however, is a catch-all limitation period of four years for any action not covered by the California Code. The instant cause of action is explicitly covered by § 339.1.

[8] Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448 (1957).

[9] Id. at 456.

[10] There is a large body of literature discussing *Lincoln Mills*. For a few selected articles, see: Bickel & Wellington, Legislative Purpose and the Judicial Process: The Lincoln Mills Case, 71 Harv. L. Rev. 1 (1953); Meltzer, The Supreme Court, Congress, and State Jurisdiction Over Labor Relations, 59 Colum. L. Rev. 6, 269 (1959); Note, Lincoln Mills: Arbitration and Federal-State Relations, 57 Colum. L. Rev. 1123 (1957); Lincoln Mills Revisited, 12 N.Y.U. Conf. Lab. 191 (1959).

[11] See Campbell v. Haverhill, 155 U.S. 610 (1895), where the Supreme Court held the state statute of limitations applied to bar a federal cause of action for patent infringement.

Prior to this, there was no Supreme Court decision on this point but the Federal Rules of Decision providing for the same result had been law since 1875.

[12] Campbell v. Haverhill, supra note 11; Cope v. Anderson, 331 U.S. 461 (1946); Chattanooga Foundry & Pipeworks v. City of Atlanta, 203 U.S. 390 (1906).

courts,[13] and legal writers[14] were all in agreement that the courts would look to the state law to determine the limitation period. One side step on the road from this well-established principle to *Lincoln Mills* was taken in the other cornerstone decision in this area of the law when, in 1938, the Supreme Court decided *Erie v. Thompkins*.[15] According to *Erie*, when the federal courts administer state law because of diversity of citizenship, the governing substantive law is the state law but the applicable procedure is that of the forum. The converse of this is true when a state court administers federal law under a federal statute. Then the substantive law is to be federal, but the applicable procedural law is that of the state. The hybrid of these two situations exists where, as here, a federal court administers federal law because of a federal statute when the suit could also be brought in the state court. As a result of the decisional law the expected conclusion to be drawn in a fact situation as presented in the instant case would be the application of the state limitation period. There would be two possible exceptions to this rule: (1) the statute of limitations is substantive, not procedural; (2) Congress has preempted the field and by its silence intends no limitation period at all to apply.

Normally, statutes of limitation are considered procedural,[16] although this has been subject to frequent debate. However, in *Guaranty Trust Co. v. York*[17] the Supreme Court considerably blurred the distinction in decreeing its "outcome determinative" test. What is important, said the Court, is whether the outcome of the case depends on the classification. The result should be the same when the suit is brought in the federal court (because of diversity) as it would be if brought in the state court. In arriving at this solution the Court stated that it is "immaterial whether statutes of limitation are characterized either as 'substantive' or 'procedural'."[18] If, then, the limitation period is to be treated as substantive, as argued by plaintiffs, the result here is correct.

Another result of *Erie* was a growth of federal common law as the courts

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[13] United Mineworkers v. Meadow Creek Coal Co., supra note 6; Burnham Chemical Co. v. Borax Corp., 170 F.2d 569 (9th Cir. 1948), and cases collected therein. This court used the state three-year statute of limitations to bar an action under the Sherman Act which does not have a limitation period. And see Levy v. Paramount Pictures, 104 F. Supp. 787 (N.D. Cal. 1952).

[14] 2 Moore's Fed. Practice 741, 747 § 3.07[2] (2d ed. 1961). The author there states that where the action is one at law, as distinguished from an equitable action, the federal court will apply the state statute of limitations of the state in which the district court is located. But compare the reasoning in McAllister v. Magnolia Pet. Co., 357 U.S. 221 (1958).

[15] Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

[16] Rules of Decision Act, Rev. Stat. § 721 (1875), 28 U.S.C. § 725 (1946); Restatement, Conflict of Laws § 585, comment *a* (1934); Stumberg, Conflict of Law 141 (1937); and see, Federal Statutes Without Limitations Provisions, 53 Colum. L. Rev. 68 (1953).

[17] Guaranty Trust Co. v. York, 326 U.S. 99 (1945). For an excellent discussion and relation of this case to *Erie*, see Erie to York to Ragan—A Triple Play on the Federal Rules, 3 Vand. L. Rev. 711 (1950).

[18] Id. at 109.

filled in remedial and procedural details. In the labor field this is reenforced by Congressional preemption and the Supreme Court's inclination toward uniformity. The leading cases touching this subject strongly suggest that preemption in labor may be nearly complete. In *Garner v. Teamsters*,[19] followed by *Guss v. Utah*,[20] the Court denied that a state remedy could exist when the offense was one included within the purview of the NLRB. Then, in *Gonzales*,[21] the Court in attempting to indicate the state-federal conflict under Taft-Hartley, stated, "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."[22] Finally, in *Garmon*,[23] a post-*Lincoln* case, the Court reemphasized the NLRB's exclusive jurisdiction over labor activities arguably within the scope of Taft-Hartley. Although these cases concerned themselves directly with the jurisdiction of the Board, the underlying principle that state law shall not interfere with federal labor law seems deducible without undue strain. The field of labor-management relations, then, seems to be at least comprehensively, if not exclusively, preempted by the Congressional act.

The instant court applied the uniformity rule of *Lincoln Mills*, supported by *Garmon* and *Garner* to reach its conclusion. However, as a focal point for distinguishing the long line of decisions indicating that state statutes of limitation should apply, the court cited *Davis v. Rockton & Rockton R.R.*[24] Unfortunately it is very difficult to draw a strong analogy between this case and the present case. In *Davis*, the court declined to use a state one-year statute of limitations applicable only to federal rights. This, of course, clearly discriminated against a federal right and was therefore unconstitutional. There is no such discrimination here.

It is obvious that the task of translating the statutory implications "into concreteness" set forth in *Gonzales* is far from a simple matter for the courts. This court arrived at a desirable result with the aid of many general statements favoring uniformity in labor for its support. The deduction to be drawn from the decision could be that on the *Lincoln Mills* doctrine, in conjunction with a converse *Erie* principle, there should be a federal uniform common law equally applicable in all courts construing federally created labor rights. Therefore, any state created limitation must fall in the face of a federal right without a limitation. This leaves only laches to preclude prosecuting stale claims. Applying laches, however, presents difficult fact problems which are likely to result in very little uniformity throughout the country. Congress could cure the malady by declaring a limitation period as it has done before under a different statute.[25]

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[19] Garner v. Teamsters Union, 346 U.S. 485 (1953).
[20] Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957).
[21] International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958).
[22] Id. at 619.
[23] San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).
[24] Davis v. Rockton & Rion R.R., 65 F. Supp. 67 (W.D. S.C. 1946).
[25] 69 Stat. 283 (1955), 15 U.S.C. § 15b (1958), supplementing 38 Stat. 731 (1914), 15 U.S.C. § 15 (1958).

On the precise point in issue, the case is nearly barren of any decisional support, although it is not exactly unheard of for a court to disregard the usual method of applying the state statute of limitations in order to achieve uniformity within a federal statute.[20] This court reaches a desirable result by attempting to elucidate with general propositions and sheer logic one section of the very confused mosaic that represents this area of the federal labor law.

J. NORMAN BAKER

Labor Law—Secondary Boycotts—§ 8(b)(4)(i)(B) Inducements to "any individual"—Lower Level Supervisors.—*NLRB v. Local 294, Teamsters Union (Van Transport Lines, Inc.)*.[1]—A controversy arose between the union and Van Transport Lines, Inc., an interstate carrier, when the latter refused to comply with an arbitration award reinstating a truck-driver. A strike of the remaining drivers was called and customers of Van were approached and asked "to cooperate." Employees of these customers were also solicited "not to ship by Van," not to "use Van for the purpose of future routing" and, in one instance, not to accept freight of Van already unloaded. Those solicited included, in addition to rank-and-file employees, minor supervisors in charge of shipping and routing and a shipping foreman. The NLRB held[2] that these inducements and encouragements addressed to the employees and minor supervisors employed by customers of Van were in the nature of a secondary boycott in violation of section 8(b)(4)(i)(B) of the National Labor Relations Act.[3] On petition of the NLRB to enforce the order requiring the union to cease and desist from continuing the unfair labor practices, enforcement was granted. HELD: It is a violation of section 8(b)(4)(i)(B) to make inducements and encouragements addressed to

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[20] Clearfield Trust Co. v. United States, 318 U.S. 363 (1942), where in a suit by the U.S. Government concerning forced commercial paper of the United States, the Court denied that a state statute of limitations should apply because "the desirability of a uniform law is plain."

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[1] — F.2d —, 49 L.R.R.M. 2315 (2d Cir. 1961).

[2] Local 294, Teamsters Union (Van Transport Lines, Inc.), 131 N.L.R.B. No. 42, 48 L.R.R.M. 1026 (1961).

[3] 8(b). It shall be an unfair labor practice for a labor organization or its agents—
(4)(i) to engage in, or to induce or encourage *any individual employed by any person engaged in commerce or in an industry affecting commerce* to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; where . . . an object thereof is—(emphasis added)
(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.
NLRA, 61 Stat. 140 § 8(b)(4)(B) (1947), 29 U.S.C. § 158(b)(4)(B) (1958), as amended, 73 Stat. 542 § 704(4)(i)(B) (1959), 29 U.S.C. § 158(b)(4)(i)(B) (Supp. 1958).