Volume 67
Issue 4 *Dickinson Law Review - Volume 67, 1962-1963*

6-1-1963

Jurisdiction in Labor Controversies: National Labor Relations Board v. The Courts

JURISDICTION IN LABOR CONTROVERSIES: NATIONAL LABOR RELATIONS BOARD v. THE COURTS

The question of who has jurisdiction over litigation in labor relations has been before the United States Supreme Court many times during the past several years. Judges, law school professors, and labor lawyers are hesitant when asked about jurisdiction because tomorrow's advance sheets may prove them wrong. This Comment examines the current pronouncements of the United States Supreme Court on the question of jurisdiction in section 301[1] suits and related matters. Recent decisions will be synthesized in an attempt to formulate general rules.

The starting point and principal reference point for this analysis will be the recent case of *Smith v. Evening News Ass'n.*[2] This was a suit by a union member in his own right and on behalf of forty-nine other employees similarly aggrieved. The action was brought in a Michigan state court on the theory of breach of contract on the part of the employer. The plaintiff alleged that the employer had committed the breach by refusing to permit plaintiff to work and allowing nonunion employees to come to work and receive full wages even though no work was available. The Michigan court refused to take jurisdiction. It was of the view that since an unfair labor practice[3] was involved, the National Labor Relations Board's jurisdiction pre-empted that of the court.[4] On appeal to the Supreme Court Mr. Justice White, speaking for the majority, refused to apply the pre-emption principle here although "the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board."[5] The Court held that the NLRB was not the exclusive forum to decide controversies which involved a breach of a collective bargaining agreement.[6]

1. "Suits for 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." Labor Management Relations Act § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

2. 83 Sup. Ct. 267 (1962).

3. "It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization . . . ." Labor Management Relations Act § 8(a)(3), 73 Stat. 525 (1959), 29 U.S.C. § 158(a)(3) (Supp. 1962).

4. In a footnote Mr. Justice White mentions that although an unfair labor practice charge could have been filed by the petitioner, that remedy was not commenced within the six-month limitation period. *Supra* note 2, at 269 n.5.

5. *Id.* at 268-69.

6. "The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by § 301, but is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." *Id.* at 269.

The theory of pre-emption may have been built on the foundation laid by the case of *Hill v. Florida.*[7] Although the facts and holding of the case do not directly concern themselves with the theory, the decision made it clear that no interference with the legislative policy behind the Labor Management Relations Act[8] would be tolerated.

San Diego Bldg. Trades Council v. Garmon,[9] some years later, formulated the current pre-emption doctrine. In the *Garmon* case the employer filed for an injunction against union picketing; he also asked for damages from the union. The state courts granted relief to the employer. The United States Supreme Court reversed. The Court wanted to reserve the task of deciding labor relations matters for the NLRB in order to avoid areas of "potential conflict of rules of law, of remedy, and of administration"[10] between state and federal authorities. Mr. Justice Frankfurter proceeded to lay down a rule: "When an activity is *arguably* subject to [the unfair labor practice provisions] of the Act, the States as well as the federal courts must defer to the *exclusive competence* of the National Labor Relations Board if the danger of state interference with national policy is to be averted."[11]

The *Smith* case raises a number of questions. Where a collective-bargaining agreement embodies prohibitions against unfair labor practices, can the state courts take jurisdiction on a breach of contract theory? Is section 301 of the Taft-Hartley Act intended to limit or to extend the forums available to hear labor controversies? If the state courts assume jurisdiction, what law should be applied—state or federal? Does an individual have standing to bring a suit against his union for breach of the collective bargaining agreement?

These delicate and difficult problems were anticipated in earlier federal cases. In *Textile Workers Union v. Arista Mills Co.,*[12] the court anticipated and frowned upon a situation where board jurisdiction would be avoided by inserting a prohibition against unfair labor practices in the contract.[13] The

7. 325 U.S. 538 (1945).
8. 61 Stat. 156 (1947), 29 U.S.C. § 185 (1958).
9. 359 U.S. 236 (1959).
10. *Id.* at 242.
11. *Id.* at 245. (Emphasis added.)
12. 193 F.2d 529 (4th Cir. 1951).
13. *Id.* at 533.
We think it clear that parties may not by including a provision against unfair labor practices in a bargaining agreement vest in the courts jurisdiction to deal with matters which Congress has placed within the exclusive jurisdiction of the National Labor Relations Board. Where, however, substantive rights with respect to such matters as positions or pay are created by bargaining agreements, there is no reason why the courts may not enforce them even though the breach of contract with regard thereto may constitute also an unfair labor practice within the meaning of the act.

breach of contract in the *Smith* case did amount to an unfair labor practice.[14] In *Textile Workers Union v. American Thread Co.*,[15] Judge Wyzanski wrote a scholarly opinion discussing most of the problems that have crystallized in recent cases. The greater portion of the opinion considers the various problems which could arise in determining which law should apply—state or federal.[16] This question has since been answered in *Textile Workers Union v. Lincoln Mills.*[17] *Lincoln Mills* is authority for the proposition that federal law and not state law is to be applied in section 301 suits. Mr. Justice Douglas suggested that the federal courts fashion a body of federal law to govern these controversies.[18] The argument that if state courts are given jurisdiction over these cases confusing and conflicting views will result can be answered. Suppose only federal courts hear section 301 cases; there is a possibility that each circuit will develop a different rule. Anyway, is it not better to have persons trained in the law—federal or state court judges—decide these matters than some arbitrators, who are not law trained?[19]

It has even been argued that the granting of jurisdiction to the federal district courts has rendered section 301 unconstitutional.[20] However, the present quarrel is over whether or not state courts have jurisdiction to hear these cases.

In *Garner v. Teamsters Union*[21] an action was brought by trucking-business operators against the union to enjoin certain picketing on the theory that the picketing was intended to coerce the employers into violating a statute by discriminating in hire, tenure, or conditions of employment. The Court of Common Pleas of Dauphin County enjoined the picketing. The Pennsylvania Supreme Court dismissed the bill for want of jurisdiction. The United States Supreme Court held that the controversy in question fell within the exclusive jurisdiction of the NLRB:

14. The conduct violated the Labor Management Relations Act § 8(a)(3), 73 Stat. 525 (1959), 29 U.S.C. § 158(a)(3) (Supp. 1962).

15. 113 F. Supp. 137 (D. Mass. 1953).

16. *Id.* at 139-40.

17. 353 U.S. 448 (1957).

18. *Id.* at 450-51. "Other courts—the overwhelming number of them—hold that § 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements . . . . That is our construction of § 301(a). . . ."

19. See Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 HARV. L. REV. 532 (1963).

20. See International Bhd. of Teamsters v. W. L. Mead, Inc., 230 F.2d 576, 579 (1956). "As we understand appellant's argument, it is that Congress has not prescribed any federal cause of action to be enforced in a suit under § 301; that the substantive law to be applied in such a case has its origin in state law; and that, absent diversity of citizenship, Congress cannot confer upon the federal courts jurisdiction to entertain such a cause of action calling for the application of state law."

21. 346 U.S. 485 (1953).

> We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right . . . . Of course, Congress, in enacting such legislation as we have here, can save alternative or supplemental state remedies by express terms or by some clear implication, if it sees fit.[22]

It is interesting to note that in *Garner* the argument was urged upon the Court that a distinction must be made between cases involving private rights and those involving public rights, that the issue in the *Garner* case involved private rights and therefore should be heard in the state court. The Court did not accept this distinction, concluding that supplemental remedies would terminate in conflicts.

In *Weber v. Anheuser-Busch, Inc.*[23] an employer sought to enjoin a union from picketing his plant; he contended the picketing was in restraint of trade. The circuit court for the city of St. Louis granted the injunction, and the Supreme Court of Missouri affirmed. The United States Supreme Court considered the fact that the action was dismissed by the NLRB, which had been of the view that no unfair labor practice had been committed. The Court concluded that the state court had no jurisdiction to hear the same controversy, although some additional allegations were pleaded. It was for the NLRB to decide whether an unfair labor practice had been committed.[24] The Court stated as the governing rule that a state court is not permitted to restrain conduct under its local labor statute which had been defined as an unfair labor practice by the federal statute.[25] This case seems to support the exclusive competence of the NLRB.

A very interesting issue was raised in *Guss v. Utah Labor Relations Bd.*[26] The question was whether the state courts could decide matters in areas where the NLRB might in its discretion decline jurisdiction. The Court held that state courts could not act in such situations, even if a no-man's land of labor controversies would be created thereby.[27] The

---

22. *Id.* at 500, 501.

23. 348 U.S. 468 (1955).

24. It should be noted that the complaint was filed in the state court after a charge was filed with the Board but before the Board had disposed of the matter.

25. *Supra* note 23, at 475. "Such was the holding of the Garner case . . . ." The Court pointed out that exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board."

26. 353 U.S. 1 (1957). The same question was presented in Amalgamated Meat Cutters v. Fairlawn Meats, Inc., 353 U.S. 20 (1957) and in San Diego Bldg. Trades Council v. Garmon, 353 U.S. 26 (1957).

27. The Board in this case had not ceded its jurisdiction to the state as it could have done under the Labor Management Relations Act § 10(a), 61 Stat. 146, 29 U.S.C.

problem was faced in the Landrum-Griffin Act where an amendment was adopted to enable state courts to assume jurisdiction in a limited area where the Board refuses to take jurisdiction.[28] It has been suggested that the statute should set forth specifically the situations in which the Board would not be permitted to decline jurisdiction.[29]

The pre-emption rule which was severely limited in the *Smith* case had not been followed in another set of cases which could be classified as the local interest cases. Where the state's interest in a case is of paramount, immediate importance the state courts will be permitted to assume jurisdiction. *United Constr. Workers v. Laburnum Constr. Corp.*[30] was a tort action by a contractor against a labor union for damages allegedly incurred when the union's agents threatened and intimidated the contractor's employees thereby preventing the contractor from continuing with the project. The state court rendered a judgment for the plaintiff. Even though the conduct in question amounted to an unfair labor practice, the NLRB did not have exclusive jurisdiction of the common-law tort. The Court distinguished *Laburnum* from *Garner*[31] on the basis that there would be no conflict between state and federal remedies; Congress had not provided a means for relief from such conduct. "To the extent . . . that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated."[32] Mr. Justice Douglas dissented in the *Laburnum* case because he believed that since the action in question amounted to an unfair labor practice proscribed by the federal act, the parties should be confined to the remedy provided for in the act. The dissent reasoned that the administrative agency's remedy was designed to resolve disputes quickly in order to lessen the friction caused by protracted court contests. However, it seems that the dissenting opinion unjustifiably assumes that Congress intended to prevent state courts

§ 160(a) (1947). "[T]he Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases . . . even where such cases may involve labor disputes affecting commerce . . . ."

28. The Board in its discretion, may . . . decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Labor Management Reporting and Disclosure Act of 1959 § 701, 73 Stat. 541, 29 U.S.C. § 164 (Supp. III, 1962).

29. For a good treatment of this point see Hays, *The Supreme Court and Labor Law October Term, 1959*, 60 COLUM. L. REV. 901, 902-03 (1960).

30. 347 U.S. 656 (1954).

31. *Supra* note 21.

32. *Supra* note 30, at 665.

from applying their traditional remedies. In *International Union v. Russell*[33] suit was brought by a non-union employee against the union and its agents. Russell contended that the union and its agents maliciously interfered with him and prevented him by threatening bodily harm and property damage from entering a struck plant. The Alabama court rendered a judgment for Russell. In the Supreme Court petitioners tried to escape the *Laburnum* ruling by pointing out that the Board was empowered to award Russell back pay. When Congress afforded a remedy the state court should not assume jurisdiction. The Court answered this argument, "It is our view that Congress has not made such a distinction and that it has not, in either case, deprived a victim of the kind of conduct here involved of common-law rights of action for all damages suffered."[34] *Laburnum* and *Russell* are distinguishable from the pre-emption cases on the basis that the wrongful conduct alleged in both cases warranted a sufficient local interest in maintaining public order to vest jurisdiction in the state courts. At the same time, however, both decisions evidence that the United States Supreme Court did not subscribe to the view that federal labor legislation eliminated traditional rights which were always cognizable in state courts.

In establishing the principle in the *Smith*[35] case that the NLRB did not have exclusive jurisdiction to decide labor controversies over breaches of collective-bargaining agreements, the United States Supreme Court spelled out what it had been leading up to in a line of prior cases. Four decisions handed down in 1962 made the decision in *Smith* inevitable. *Charles Dowd Box Co. v. Courtney*[36] was a suit to enforce a collective bargaining agreement. The Massachusetts court assumed jurisdiction and entered a money judgment which complied with the wage provisions of the agreement. One of the employer's defenses was that state courts had been completely pre-empted from hearing such cases. The theory of the plaintiff was that section 301 of the Taft-Hartley Act[37] did not take away from the state courts their traditional jurisdictional reach. In affirming the state court's assertion of jurisdiction, Mr. Justice Stewart, speaking for the majority, said,

> The clear implication of the entire record of the congressional debates in both 1946 and 1947 is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various States over contracts made by labor organizations.[38]

33. 356 U.S. 634 (1958).
34. *Id.* at 641, 642.
35. *Supra* note 2.
36. 368 U.S. 502 (1962).
37. 61 Stat. 146 (1947), 29 U.S.C. § 185(a) (1958).
38. *Supra* note 36, at 525.

The Court distinguished the *Garner*[39] case. Although unfair labor practices were within the exclusive jurisdiction of the Board, the same was not true concerning breaches of contract. The Court found a legislative intent to exclude breaches of collective-bargaining agreements from the list of unfair labor practices.[40] The decision admits that conflicting law may result, but answers this objection by saying that, "To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Court."[41] In *Local 174, Teamsters Union v. Lucas Flour Co.*,[42] the Court again broke away from the pre-emption rule. An employer sued for the damages which resulted from a strike conducted by a union in breach of the collective-bargaining contract. The Supreme Court affirmed a state court judgment for the employer, distinguishing the pre-emption cases.[43] Perhaps the conduct in *Lucas Flour* did not constitute an unfair labor practice. In *Atkinson v. Sinclair Refining Co.*,[44] the employer brought an action against a union and its officials for breach of a no-strike agreement. The Supreme Court, speaking through Mr. Justice White, held that the union but not union officials could be held liable. The narrow holding of the case is that the action was a section 301 suit, properly subject to court jurisdiction.[45] The fourth case which laid the background for the *Smith* decision was *Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc.*,[46] an action by two unions against an employer for violation of a strike-settlement agreement. The Court had to decide two important questions in determining whether or not the federal district court had properly refused to assume jurisdiction. Did the scope of

---

39. *Supra* note 21.

40. *Supra* note 36, at 513.

By contrast, Congress expressly rejected that policy [of granting primary jurisdiction to the NLRB] with respect to violations of collective bargaining agreements by rejecting the proposal that such violations be made unfair labor practices. Instead, Congress deliberately chose to leave the enforcement of collective agreements *"to the usual processes of the law."* (Emphasis added.)

41. *Id.* at 514.

42. 369 U.S. 95 (1962).

43. Since this was a suit for violation of a collective bargaining contract within the purview of § 301(a) of the Labor Management Relations Act of 1947, the pre-emptive doctrine of cases such as San Diego Building Trades Council, etc. v. Garmon . . . based upon the exclusive jurisdiction of the National Labor Relations Board, is not relevant.

Id. at 101, n.9.

44. 370 U.S. 238 (1962).

45. Proof of the allegations of Count II in its present form would inevitably prove a violation of the no-strike clause by the union itself. Count II [allegations against individual union officials], like Count I, is thus a suit based on the union's breach of its collective bargaining contract with the employer, and therefore comes within § 301(a). When a union breach of contract is alleged, that the plaintiff seeks to hold the agents liable instead of the principal does not bring the action outside the scope of § 301.

Id. at 247.

46. 369 U.S. 17 (1962).

"contracts" in section 301 encompass the agreement in question, which could not be termed a collective-bargaining agreement? Secondly, would the jurisdiction of the federal courts under section 301 be affected by the fact that the labor organizations were not certified as the exclusive collective-bargaining representatives of the employees? The Court construed the terms of the statute broadly and answered the first question presented yes and the second no.

These cases represent the background of the *Smith* decision. The Supreme Court held in that case that section 301 was not a limiting provision. The Court accepted the reasoning of prior cases that the purpose of section 301 was only to provide another forum in case the state procedure for enforcing labor contracts was too cumbersome.[47] It was argued that the *Garmon* pre-emption rule should apply to eliminate state-court jurisdiction because this was an action by an employee, not a labor organization, to recover back wages in the form of damages. Therefore, section 301 should not apply. The respondent-employer relied for this position on *Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*[48] This case has been cited for the proposition that section 301 did not empower the courts to assume jurisdiction over rights which are "uniquely personal" arising "from separate hiring contracts between the employer and the employee."[49] The majority in *Westinghouse* held that section 301 did not authorize a union to recover back wages for its members in a federal court.[50] The petitioner in the *Smith* case worked out an argument showing that the right pursued by Smith was not uniquely personal; and the Court considered its prior decisions had buried the holding in *Westinghouse*.[51] Three of the Justices in the *Westinghouse* majority reached their conclusion because of a belief that section 301 was merely procedural in nature. The same Justices would have decided otherwise if section 301 had been viewed as substantive.[52] *Lincoln Mills*[53] subsequently decided that section 301 had substantive content.

Two cases again raised the pre-emption issue last June, *Local 100, Ass'n of Journeymen v. Borden*[54] and *Local 207, Int'l Ass'n of Iron Workers Union*

47. *Supra* note 6.
48. 348 U.S. 437 (1955).
49. *Id.* at 460-61.
50. "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one." *Id.* at 461.
51. "[S]ubsequent decisions here have removed the underpinnings of Westinghouse and its holding is no longer authoritative as a precedent." *Supra* note 2, at 269.
52. *Supra* note 48, at 442.
53. *Supra* note 17.
54. 83 Sup. Ct. 1423 (1963).

v. Perko.[55] These were actions brought by individual union members against their unions. Since Justices Douglas and Clark dissented in both cases because they believed that a prior decision had not been fairly distinguished, an examination of that decision, *Int'l Ass'n of Machinists v. Gonzales*,[56] is in order. *Gonzales* was brought in the state courts of California. Alleging wrongful expulsion from the union, plaintiff sought reinstatement and damages on a breach of contract theory. Mr. Justice Frankfurter stated that the lower court had jurisdiction to award damages in the form of back wages and also for mental and physical suffering although the NLRB could have afforded partial relief. The action was not under section 301 because the employer was not a party to the proceedings. Although wrongful expulsion in some situations would amount to an unfair labor practice,[57] the Court concluded that the remedy of reinstatement should be preserved as an aspect of traditional state-court jurisdiction.[58] This case gave the court trouble in *Borden* and *Perko*. In the *Borden*[59] case an employee brought suit in the state courts of Texas because of his union's wrongful refusal to refer him to an employer who requested the employee. The state court granted relief to the union member. The Supreme Court reversed on the basis that there was no compelling state interest involved, necessary to avoid the application of the *Garmon* pre-emption rule. The *Gonzales* case was distinguished, because purely internal union matters were involved in that case, principally, reinstatement in the union, a remedy which the Board could not administer.[60] Since the conduct involved in *Borden* was arguably subject to Board jurisdiction, that jurisdiction was exclusive, said the court. In the

---

55. 83 Sup. Ct. 1429 (1963).

56. 356 U.S. 617 (1957).

57. (b) It shall be an unfair labor practice for a labor organization or its agents—

. . . .

(2) . . . to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Labor Management Relations Act § 8(b)(2), 61 Stat. 141, 29 U.S.C. § 158(b)(2) (1947).

58. "[T]o preclude a state court from exerting its traditional jurisdiction to determine and enforce the rights of union membership would in many cases leave an unjustly ousted member without remedy for the restoration of his important union rights." *Supra* note 56, at 620.

It should also be pointed out that the Supreme Court believed that once a state court assumed jurisdiction of a case it could grant full relief, notwithstanding that the NLRB could have granted partial relief.

59. *Supra* note 54.

60. "The suit involved here was focused principally . . . on the union's actions with respect to Borden's efforts to obtain employment. No specific equitable relief was sought directed to Borden's status in the union. . . ." *Id.* at 1427.

Perko[61] case an individual union member brought an action in an Ohio court against the union and certain union officials on the theory that defendants had unlawfully conspired to prevent him from enjoying his rights as a foreman. The trial court dismissed the action. The Supreme Court of Ohio reversed and remanded the case for trial. The jury returned a verdict for Perko in the sum of $25,000. The Ohio Court of Appeals affirmed. The Supreme Court, speaking through Mr. Justice Harlan as in *Borden*, reversed on the same reasoning applied in that case.[62] The conduct involved in both cases was at least "arguably" subject to Board jurisdiction as an unfair labor practice.[63] What would the result have been if in both cases the union members had sued on the theory that they had been deprived of rights as union members, seeking relief in the nature of a declaration of their rights and restoration of their positions in the union? Perhaps skillful pleading will vest jurisdiction in the state courts in many of these cases. Although the grounds for distinguishing these last two cases from *Gonzales* may be questioned, the distinction is clear, and the cases may be reconciled. It seems that if the union member requests a remedy which the Board is powerless to administer, the state courts may exercise their traditional powers and will decide all of the issues presented, including some in which the Board is generally the exclusive forum. This is merely an application of the general rule that once equity assumes jurisdiction of a case, it will decide all questions presented.

Under the *Smith*[64] case state courts have jurisdiction to hear and decide section 301 breach of contract cases. The *Garmon*[65] pre-emption rule will still vest exclusive jurisdiction in the NLRB in cases which involve unfair labor practices if the Board is capable of administering a full and complete remedy. Under the *Gonzales*[66] holding a state court has jurisdiction when an individual union member brings an action against his union on questions dealing with purely internal union matters or, apparently, when his claim calls for a remedy that the Board is unable to order. The trend seems to be to permit state-court jurisdiction wherever courts can give a more adequate remedy than the Board.

ANTHONY P. MOSES

61. *Supra* note 55.
62. "As in Borden, the crux of the action here concerned alleged interference with the Plaintiff's existing or prospective employment relations and was not directed to internal union matters." *Id.* at 1431.
63. See Labor Management Relations Act § 8(b)(2), 61 Stat. 141, 29 U.S.C. § 158(b)(2) (1947).
64. *Supra* note 2.
65. *Supra* note 9.
66. *Supra* note 56.