The Employee Free Choice Act and the South

*By R. Pepper Crutcher**

The Employee Free Choice Act (EFCA)[1] is among the top items on President Obama's legislative agenda; it was a clear campaign promise to a core constituency—organized labor. Most Southern business and political leaders strongly oppose EFCA's practical elimination of secret ballot union representation elections, as well as its imposition of labor contracts through government-controlled interest arbitration. They see EFCA as a rustbelt effort to impose a failed business model on sunbelt employers. Because EFCA is perceived to threaten decades of social and economic development progress, aggrieved state legislatures may well retaliate by passing laws that purport to regulate union organizing, strikes, and related activities already regulated by the National Labor Relations Act (NLRA). Opponents of such state laws may argue, based on decades of judicial decisions, that the NLRA pre-empts state regulation of labor relations. Southern business and political leaders are already preparing to fight this battle.

The ingenuity and determination of state legislators should not be underestimated. States may enact some measures that they cannot enforce, calculating some political advantage to be gained from doing so.[2] But they may also surround the zone of pre-emption with new union regulations, and employers—a group heretofore favoring federal pre-emption—may seek to shrink its reach through creative litigation of existing pre-emption doctrines.

I. EFCA's Expected Impact in the South

Those unfamiliar with union organizing law and tactics in the South may misunderstand the trepidation over EFCA. The South's recent industrial expansion has been largely non-union. In most industries and in most places, for many years union organizing has been a steep hill with a heavy load. If wage-earners there are to be enticed, the lure must be something else. Savvy union organizers, therefore, target employees already disposed to favor unions for other reasons—political affiliation, perceived community status related to union membership or stewardship, and, in some cases, pride in a craft or profession seen to be suffering from employer corner-cutting. Unions do best when these attributes are found within a group or community that tends to express political preferences as a block. A union wins by solidifying super-majority support early, without employer knowledge or opposition, and retaining that support through the election, usually because the employer fails to appreciate and address the nature of the union's true appeal.

Employees who do not share these attributes are kept out of the union solicitation loop as long as possible, for fear that, if approached, they will inform management of the fact and nature of the union's campaign. An early, correctly targeted, employer response almost always dooms an organizing campaign. If a union is to win, it must hold a card signature super-majority before the employer discovers what's up. For that reason, inability to solicit a card super-majority during the "silent" campaign phase usually leads a union to abandon the campaign.

Political fault lines that in other parts of the nation divide people into partisan, economic, or religious camps tend, in much of the South, to divide people by race. For the reasons just described, Southern union organizing success most often comes in campaigns that sell a non-economic message to African-Americans whose super-majority support alone is sufficient to constitute a majority of votes cast in a government-conducted, secret ballot election held a few weeks to a few months later. Others in the workforce are welcomed during the public phase of electioneering; their votes may be needed if the employer understands and addresses the union's appeal in such a way as to prompt some African-American voters to change their minds.

This pattern does not describe every successful union campaign. It remains possible to organize a Southern work force in a racially blind manner. Nevertheless, race-conscious organizing is the rule, not the exception. And in all representation campaigns, employer and dissenting employee expression often leads to a change of views by many who initially signed union cards impulsively, or due to peer pressure. Both sides understand that switching sides is possible only because of the secret ballot. Many employees will tell their supervisors that they are against the union, then vote "YES," while many employees will tell their co-workers that they are union supporters, then vote "NO."[3] One fact of life explains most union campaign failures: many African-Americans sign a union card, tell their co-workers that they favor the union, then vote "NO" in the election.

So understood, the point of substituting card signatures for secret ballot elections seems to be to prevent potential dissenters from hearing a credible employer response, and to deprive employees of a realistic chance to change their minds about the merits of union representation. People who see it this way expect unions to intensify their focus on workforces in which they can achieve an African-American card signature super-majority which is alone sufficient to constitute an absolute majority of the potential bargaining unit, then demand recognition by card check, effectively disenfranchising other employees.[4] Employers who have strong cases to make won't get a hearing. Southern employers privately fear that having a super-majority African-American workforce may come to be regarded as a competitive disadvantage. If their fears prove to be justified, the corrosive effect on workplace racial progress could be significant.

EFCA solves another union organizing problem in another worrisome way. If, after a card check representation win and ninety days of bargaining, a union has not won its

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desired contract, it may invoke arbitral resolution of contract terms on thirty days notice.[5] A common union campaign assurance is that employees won't have to live with a contract that they don't vote to accept, and that, if the union fails to perform as promised, employees can decertify it. This leads some employees to sign cards with a relatively low commitment to the union, in the belief that a card signature mistake can be remedied later. If they knew that a contract might be imposed by a government-appointed arbitrator, without employee consent, and that they would have no opportunity to decertify the union until the contract's expiration years later, many would not sign the card. Unions are unlikely to include those details in their card signature solicitations and, because card-based recognition may be achieved without employer knowledge, employees won't hear those facts from employers, either.

Southerners also worry that unions with rust belt bases—the UAW, for example—will use pro-union, government arbitration proceedings to impose the failed Detroit business model on them, depriving Southern businesses of their labor market advantages. This is considered a direct threat to the Southern auto component and assembly plants making BMW, Mercedes, Honda, Hyundai, Mitsubishi, Nissan, Toyota, and (soon) Volkswagen vehicles, and for the scores of thousands of jobs supported by those plants.

In short, EFCA reasonably is regarded as a harbinger of significant social and economic dislocation and regression in much of the South. State legislatures might not want this fight, but they won't take this lying down.

II. National Labor Relations Act Pre-Emption of State Labor Regulation

States regulated labor unions before Congress asserted its New Deal commerce powers in the National Labor Relations Act.[6] When it joined the game, Congress said almost nothing about the NLRA's pre-emptive effect. When Congress amended the NLRA in the 1947 Taft Hartley Act, it jotted just a few notes on the subject.[7] Not until the Labor Management Reporting and Disclosure Act of 1959[8] did Congress express a clear view of co-existing state authority to regulate unions, saying:

> Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal Law or before any court or other tribunal, or under the constitution or bylaws of any labor organization.[9]

This code section, headed, "Retention of existing rights of members," has not caused much erosion of NLRA pre-emption, despite the Fifth Circuit's opinion that rights protected by the LMRDA are immune to NLRA pre-emption[10] because LMRDA rights are narrow and procedural.[11]

Deprived of clear Congressional guidance, the U.S. Supreme Court has had to cut and sew federal labor law pre-emption doctrines to fit the particular cases coming before it. For decades, the Court explained its task as divining some unexpressed, or partially expressed, congressional intent.[12] More recently, the Court has justified decisions by forecasts of practical consequences and expressions of policy preferences, in effect acknowledging its role as lawgiver in this area.[13]

There are today three main federal labor law pre-emption doctrines. *Garmon* pre-emption[14] rejects state regulation of conduct that is arguably protected or prohibited by the NLRA, unless the conduct is only of "peripheral concern" to the NLRA scheme or the state regulatory interest is "deeply rooted in local feeling." *Machinists* pre-emption[15] invalidates state laws that regulate matters that the NLRA implicitly assigned to the free market. So-called "§ 301" pre-emption[16] mandates that all suits over union contracts, even in state courts, be resolved under a federal common law of labor relations.[17] The three doctrines' common purpose is to frustrate use of state legal rules or processes to stack the deck in favor of management or labor. *Garmon* and § 301 pre-emption focus upon overlapping processes, rules and remedies for labor relations rights and remedies while *Machinists* pre-emption targets other manipulation of state and local government by NLRA-regulated unions and employers. Because no doctrine rests on a clear congressional pronouncement about a statute's pre-emptive effect, and because each is adapted to suit the policy preferences of the current Court majority, all three pre-emption doctrines invite creative lawyering.

Nevertheless, the law is sufficiently well-settled that no state should attempt to trump federal union contract law, or to regulate arguably NLRA-protected or NLRA-prohibited union conduct, unless there is a credible case that the subject is only a peripheral NLRA concern or that the state regulatory interest is deeply rooted in local feeling.

A. Futile Efforts to Tie Union Contract Rights to State Law

Federal courts consistently reject ploys to make union contract rights dependent on state law.[18] Consequently, no state may mandate that its courts, for example, condition union contract enforcement on a finding of fair, secret ballot, representation election. Because federal common law exclusively governs the interpretation, application and enforcement of union contracts, that statute would be invalidated under the Supremacy Clause, even in a state court,[19] assuming that an union would thereafter file suit in that state's courts.

There is no § 301 pre-emption, however, when neither the state prohibition nor its remedy requires an interpretation or application of the union-employer agreement, and some cases stretch this principle to transparency.[20]

B. Some Support from "Peripheral Concern" Cases

The "peripheral concern" exception to *Garmon* pre-emption opens some doors for state regulation, but the exception is most often applied when the regulated conduct involves the union and the employee and does not directly affect the employer-employee relationship.[21] Nevertheless, the Court in *Belknap v. Hale*[22] permitted fired striker replacements to sue their former employer under Kentucky contract and tort law for deceptively promising them "permanent" employment. The Court ruled that the NLRA neither protects nor prohibits such deception, and NLRA enforcement doesn't much depend on whether such suits will make strikes harder to settle.

Citing LMRDA regulation of representative selection processes as proof that Congress did not intend related NLRA rights to be absolute, *Brown v. Hotel & Restaurant Employees*

Local 54[23] permitted New Jersey to bar felons from leadership roles in casino employee unions and trust funds. The Court has ruled that the NLRA does not redress complaints about internal union fines,[24] unless the fine is retaliation for conduct protected by NLRA § 7.[25] Since judges must determine arguable NLRA protection or prohibition in the first instance in order to decide the pre-emption, or not, of claims arising from union-employee disputes, similar NLRA precedent will argue in favor of state regulation, especially if the conduct appears to be subject to the LMRDA and its anti-pre-emption rule.[26]

C. A Wide Range of "Deeply Rooted Interest" Cases

Though the Supreme Court has left little room for states to regulate NLRA-protected conduct, it has permitted states to regulate, even to outlaw, and to punish severely, some conduct that the NLRA also prohibits, when the state's interest is deemed to be "deeply rooted in local feeling." As an extreme example, NLRA § 8(b) forbids a union to coerce employee support, and physical assault certainly is within the ambit of "coercion," but the NLRA prohibition does not deprive states of the right to prosecute the case of such an assault.[27]

Thus, *Construction Workers v. Laburnum Construction Corp*.[28] permitted a state to award tort damages for loss incurred by a non-union contractor that abandoned a project due to threatened union violence. In *Farmer v. Carpenters*[29] the Court permitted state emotional distress remedies for union harassment of a dissident even though the NLRA arguably applies. The more extreme the abuse, the stronger is the argument that the state and Congress are regulating different conduct. State defamation remedies, at least when available to a public figure, are available even if the defamation is arguably protected or prohibited by the NLRA because of its relation to a labor dispute.[30]

Fraud and misrepresentation claims usually escape pre-emption, when unrelated to rights asserted under a collective bargaining agreement and when they cannot be characterized as re-cast bad faith bargaining charges subject to NLRA § 8(a)(5).[31]

Reading scores of cases applying *Garmon*, *Machinists* and § 301 pre-emption doctrines reminds one that rules are made to be broken. Courts in this area allow "good" breaks and forbid "bad" breaks, and it takes years to obtain a reliable ruling about any sort of new break.

III. States will Forbid Fraudulent Solicitation and Presentation of Financial Obligation Cards (FOC's)

For the reasons explained above, states appear to lack authority, or any real opportunity, to deny or to modify enforcement of labor contracts imposed by arbitrators pursuant to the EFCA. Section 301 pre-emption is more than adequate to frustrate such efforts. Nor will states be able to deprive unions of bargaining rights won through EFCA card-check processes. Though EFCA neither creates nor references any process for discovery, proof or remedy of fraudulent practices used to obtain representation authorizations, the National Labor Relations Board has regulated such conduct, partially and occasionally, in its representation and unfair labor practice cases.[32] That skinny body of work likely will be held to preclude state regulation of union solicitation misconduct relating to representation determinations, simply because the alternative would be to permit collateral attack of NLRB certification decisions.

Consequently, many Southern employers and bamboozled employees will find themselves saddled with FMCS-imposed labor agreements to which they did not agree, at the behest of union representatives that the employees had only fleeting, if any, opportunity to select or reject. Many adverse consequences are foreseeable. One might well ask whether, at that point, any state regulation matters. The answer is that money always matters in business and in politics. No dangerous wrongdoer plots or pursues a predictably unprofitable wrong. For unions, representation rights and contracts are too often means to the critical end—revenue from represented employees. Fortunately, states may have just enough authority to deter and to remedy abusive card solicitations in ways that cause unions to prefer secret ballot elections.

The zone of least pre-emption seems to lie where the LMRDA Bill of Rights meets the NLRA's peripheral concern and the state's deeply rooted interest. Fraud, including forgery, in the solicitation of dues check-off or other financial obligation cards may, in some circumstances, be an NLRA § 8(b) violation,[33] but in few cases would it seem to be a central concern of the Act. And such misconduct is partially addressed in the LMRDA's Bill of Rights of Union Members, which expressly disclaims pre-emption of state regulation. For example, in *Rector v. Local Union No. 10*[34] the district court ruled that the NLRA did not pre-empt the LMRDA suit of a union member expelled for nonpayment of dues. The employee contended that the union told him that he would not have to pay dues while on workers compensation leave.

While § 301 solely governs the enforcement of labor contracts between unions and employers, a union seeking to enforce a member's financial obligations does so in state court, under state law, unless the employer has contracted to handle those matters by payroll deduction.[35] Therefore, states may expect affirmance of their authority to legislate on that subject. If EFCA's contract arbitration mandate survives delegation doctrine scrutiny and if the appointed arbitrators habitually impose dues check-off in their contract orders, unions will escape state scrutiny, and therefore all meaningful scrutiny, of their FOC practices.[36] But if not, state regulation may make the road to union Utopia a rough one.

The Supreme Court has not decided whether a state may refuse to enforce financial obligation cards obtained in violation of state law. At worst for state legislators, this is an open invitation. Nor has the Court decided whether a state may sanction—criminally and/or civilly—one who fraudulently solicits, obtains or presents a financial obligation card. As noted above, there is good reason to think that such laws would satisfy both the "peripheral concern" and "deeply rooted interests" tests.

Therefore, Southern states should be expected to enact laws like these:

- The solicitor of any financial obligation card or other

document that creates union financial obligations for an FLSA non-exempt, hourly paid employee must give certain written disclaimers;

• any direct, personal, solicitation must be preceded by a written communication of its purpose, identifying the solicitor;

• the solicitor must offer a minimum twenty-one day period to consider the solicitation before a signature is required;

• the solicitor may not accept an authorization before advising the employee in writing that the authorization is a legal contract and that the employee should consult an attorney before signing;

• the FOC must prominently display on its face that the employee may revoke it with seven days by properly sending actual notice to an addressee named thereon within that time;

• no false statement of material fact may be communicated during or in connection with the solicitation;

• the solicitor must verify the employee's identity by viewing a government-issued form of photo identification and must retain with the original authorization a copy of the ID viewed, for as long as the authorization is effective, and for at least five years after the authorization expires;

• compliance must be proven as an essential element of any action to enforce any financial obligation arising from the authorization;

• courts are authorized to hear and determine any dispute as to the interpretation, application and/or enforcement of such authorizations, whether filed by the union or the employee (or the employer, if there has been a request for payroll deduction);

• any false statement or fraudulent practice employed in the solicitation shall be a complete bar to enforcement and shall entitle the employee to recover losses, civil money penalties, costs and fees, and shall entitle any employer that honored the document to recover its related administrative costs, attorney fees and litigation costs;

• application of the employee's signature by another (not a legal guardian) shall be a misdemeanor, and a felony if more than $500 is obtained by means of the fraud, unless the employee testifies under oath that he authorized the signature;

• the Attorney General shall have authority to inspect retained authorization records, which must be maintained in the state, and to prosecute related crimes.

Fearing judicial hostility to dues collection suits, unions long have sought to persuade the NLRB to compel employers to agree to deduct and remit employee dues, fees, fines, etc., but the Board has ruled that, "no party can be required to agree to any particular substantive bargaining provision."[37] While the National Labor Relations Act forbids bad faith bargaining, an employer may in good faith refuse to deduct dues,[38] leaving the union with only state jurisdiction to enforce members' financial obligations.

Since forgery, fraud and false personation are crimes traditionally within state police powers, there seems to be no good argument that state interest in such conduct is less deeply rooted than state interests in civil tort remedies. Further, while NLRA § 8(b) may prohibit criminal conduct of that sort when it renders a dues deduction authorization involuntary, precedent suggests that the particular method of coercion is a peripheral NLRA concern, and so subject to state regulation. Such state efforts would support congressional efforts to embed in the LMRDA a broad proscription of such union tactics, so as to trigger the LMRDA's anti-pre-emption clause.

CONCLUSION

If EFCA becomes law in its current form, Southern legislatures can be assumed to retaliate. Some popular measures will be pre-empted. Indeed, their unenforceability may enhance their popularity. But some legislators will seek to surround the pre-empted zone with new regulation of the employee-union financial relationship, and this they may do. If neither FMCS arbitrators nor NLRB majorities compel employers to grant dues check-off, unions holding EFCA card check certifications may find them greatly overvalued. In that situation, unions might offer to submit to secret ballot elections if employers agree to include dues check-off in a contract following that more trustworthy selection. Thus, over time, in a round about way, state laws might deter the solicitation abuse that EFCA invites.

Endnotes

1 EFCA is expected to be introduced in the 111th Congress, after failure in the 110th Congress, due to inability to break a June 2007 Republican filibuster.

2 Former Congressman Ernest Istook (R – Okla.) and others announced on December 30, 2008, a national campaign, called "Save Our Secret Ballot," to amend state constitutions to require secret ballot union representation elections. *See* http://www.foxnews.com/politics/2008/12/30/business-group-pushes-secret-union-ballots/.

3 In a secret ballot election conducted by the National Labor Relations Board pursuant to 29 U.S.C. § 159, the pre-printed ballot asks the voter whether he or she wants to be represented for collective bargaining purposes by the petitioner labor organization. There is a "YES" box and a "NO" box. A valid ballot cast in such an election shows a clear, but anonymous mark, in one of two boxes. A union is certified as the employees' representative if it wins a majority of the valid ballots cast. *See* 29 CFR § 102.69; NLRB Casehandling Manual, Part Two: Representation Proceedings §§ 11306.6, 11340.7 and Form NLRB 707N2 (single petitioner election).

4 EFCA establishes no process or rule for distinguishing legitimate from fraudulent solicitations or signatures.

5 EFCA prescribes no process and no rules of decision for such proceedings; it merely directs the Federal Mediation and Conciliation Service to prescribe regulations for such disputes. This invites a delegation doctrine challenge – *i.e.*, the contention that Congress invalidly delegated its legislative role to an administrative agency. *See* Whitman v. American Trucking Associations, Inc., 531 U.S. 457, 472 (2001). The Court last invalidated a federal statute on this ground in 1935. *See* Schecter Poultry Corp v. United States, 295 U.S. 495 (1935) (that portion of the National Industrial Recovery Act that made certain trade groups self-regulating).

6 *See* Carter v. Carter Coal Co., 298 U.S. 238 (1936) (no commerce power to regulate labor relations through Bituminous Coal Conservation Act of 1935); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) (U.S. Constitution Art. I, § 8 authorizes Congress to regulate labor relations).

7 Congress then added section 14(b), the well known "right to work" law, leaving states free to outlaw contracts requiring union membership as a condition of employment. Congress also added little known § 14(c), permitting states to regulate union-employer relations which the National Labor Relations Board formally elected not to regulate, and § 14(a), disclaiming any authority for compelling an employer to bargain with its supervisors. *See* 29 U.S.C. § 164.

8 29 U.S.C. § 401 et seq.

9 29 U.S.C. § 413.

10 *See* Fulton Lodge No. 2, Machinists, v. Nix, 415 F.2d 212 (5th Cir. 1969).

11 If minority amendments are permitted during debate of EFCA, one might usefully add to the LMRDA a union member right to be free from coercion and fraud in connection with solicitation of representation and financial obligation card signatures, thus triggering the LMRDA's anti-pre-emption rule.

12 *See* Linn v. Plant Guard Workers Local 114, 383 U.S. 53 (1966).

13 *See* Building & Construction Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc., 507 U.S. 218, 227 (1993) (Boston Harbor union construction mandate not preempted); Chamber of Commerce v. Brown, 128 S.Ct. 2408 (2008) (California labor neutrality statute pre-empted).

14 San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

15 Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132, 140 (1976).

16 So-called because LMRA § 301, 29 U.S.C. § 185, created federal subject matter jurisdiction of labor contract actions.

17 Textile Workers Union of America v. Lincoln Mills of Ala., 353 U.S. 448, 456-57 (1957).

18 *See generally* cases compiled in The Developing Labor Law Ch. 28.IV. B.

19 Teamsters Local 174 v. Lucas Flour, 369 U.S. 95 (1962) (federal § 301 common law governs even in state courts exercising their concurrent jurisdiction over § 301 actions).

20 *See, e.g.*, Livadas v. Bradshaw, 512 U.S. 107 (1994) (California's pay on termination law not pre-empted as to union-represented employees even though enforcement depended on whether and what wages were due under the labor contract).

21 *Cf.* Machinists v. Gonzales, 356 U.S. 617 (1958) (permitting member's tort suit against union arising from member's expulsion under union constitution) *with* Street, Electrical, Ry. & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) (*Gonzales* distinguished and limited as not involving employment termination resting on construction of union security clause of union contract.)

22 463 U.S. 491 (1983).

23 468 U.S. 491 (1984).

24 NLRB v. Boeing Co., 412 U.S. 67 (1973).

25 Pattern Makers v. NLRB, 473 U.S. 95 (1985).

26 *See* Fulton Lodge No. 2, Machinists, v. Nix, 415 F.2d 212 (5th Cir. 1969) (LMRDA coverage trumps NLRA pre-emption).

27 Machinists Lodge 76 v. Wisconsin Employment Relations Commission, 427 U.S. 132 (1976) (because personal violence and property destruction is at the core of state regulatory interests, state regulation cannot be federally pre-empted absent an express, clear direction of Congress.)

28 347 U.S. 656 (1954).

29 430 U.S. 290 (1977).

30 Linn v. Plant Guard Workers Local 114, 383 U.S. 53 (1966).

31 *Cf.* Northwestern Ohio Administrators v. Walcher & Fox, Inc., 270 F.3d 1018 (6th Cir. 2001), *cert. denied*, 535 U.S. 1017 (2002) (union's fraudulent misrepresentations about labor agreements not NLRA regulated because the union was not representing employees at that juncture) *and* Galveston Linehandlers, Inc. v. ILA Local 20, 140 F. Supp. 2d 741 (S.D. Tex. 2001) (union fraud was perpetrated to enhance its concealed interest in a competitor) *with* Ackers v. Celestica Corp., 2007 WL 894470, 2007 U.S. Dist. LEXIS 24400 (S.D. Ohio 2007), *aff'd*, 274 F. App'x. 450 (6th Cir. 2008) (claim of fraudulent inducement of union concessions during contract bargaining).

32 The NLRA is silent and the Board has made no rule. Interested readers should consult the NLRB Casehandling Manual, Part Two: Representation Proceedings, §§ 11028 – 11029, to see what appears to be the Board's only narrative description of a policy for handling *representation* card fraud and forgery evidence. The Board treats such questions as internal administrative matters, not litigable by employers. The Board appears to have no published policy for handling evidence of financial obligation card fraud or forgery, except in the rare instance that such misconduct could violate 29 U.S.C. § 158(b), and thus be litigable in a Board unfair labor practice proceeding.

33 The NLRB has held both union and employers guilty of § 8 unfair labor practices when they cooperated in deducting union assessments from employee wages without a voluntary authorization, as required by 29 U.S.C. § 186 (LMRA § 302). *See* NLRB v. Food Fair Stores, 307 F.2d 3 (3rd Cir. 1962) (coercion of strike assessment deductions). It seems safe to assume that the Board would so rule if a union fraudulently obtained or presented financial authorization cards.

34 625 F.Supp. 174 (D. Md. 1985).

35 *See* Baltimore Mailers Union No. 888 v. Moore, 881 F.Supp. 217 (D.Md. 1995) (§ 301 jurisdiction not established by assertion that dues collection claim arose under union constitution).

36 *See, e.g.,* SeaPak v. National Maritime Union, 300 F. Supp. 1197, 1200 (S.D. Ga. 1969), *aff'd*, 423 F.2d 1229 (5th Cir. 1970) (per curiam, adopting District Court's opinion), *aff'd*, 400 U.S. 985 (1971) (mem.), disapproving a Georgia statute that made dues deduction authorizations revocable at will, on grounds of pre-emption by 29 U.S.C. sec. 186(c)(4), which requires that a written assignment for deduction of union dues shall not be irrevocable for more than one year, because the "area of checkoff of union dues has been federally occupied to such an extent under § 301 [*sic*] that no room remains for state regulation in the same field."

37 *J&C Towing Co*., 307 NLRB 198 (1992).

38 *See Overnite Transportation Co*., 307 NLRB 666 (1992).