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Michael J. Baker

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VIII

LABOR LAW

A. Employer Interference Precludes Strike Injunction

Englund v. Chavez.1 The federal Labor-Management Relations Act (LMRA)2 preempts state court jurisdiction of most labor disputes. The United States Supreme Court has held that the National Labor Relations Board has exclusive jurisdiction over any labor-management matter arguably protected or prohibited by the LMRA.3 State courts, however, retain jurisdiction to apply state law to wholly intrastate labor problems,4 to matters of peculiarly local concern,5 and to workers specifically excepted from LMRA coverage, most notably public employees and agricultural workers.6 California has addressed the labor problems of public employees by statute,7 but labor-management relations in California's considerable agriculture industry and in businesses engaged

1. 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521 (1972) (unsigned opinion) (6-1 decision).
6. LMRA § 2(3), 29 U.S.C. § 152(3) (1970). State courts also may assert jurisdiction over labor disputes involving employees of interstate businesses when the National Labor Relations Board declines jurisdiction because the effect of the dispute on interstate commerce is not sufficiently substantial. LMRA § 14(c)(1)-(2), 29 U.S.C. § 164 (c)(1)-(2) (1970). Section 14(c)(2) fails to specify whether state or federal law governs such cases, and state courts generally have applied their own law. C. Morris, THE DEVELOPING LABOR LAW 765-66 (1971). State courts may also assert jurisdiction over, but must apply federal law to, suits to enforce a union's duty of fair representation [Vaca v. Sipes, 386 U.S. 171 (1967)] and to those matters over which Congress has given federal and state courts concurrent jurisdiction [e.g., LMRA §§ 301, 303(b), 29 U.S.C. §§ 185, 187(b) (1970); see Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 102 (1962); Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 513 (1962)].
7. See CAL. EDUC. CODE §§ 13080-90 (West Supp. 1972) (public school employees); CAL. GOV'T CODE §§ 3500-36 (West Supp. 1972) (all other public employees). California public employees have the right to form and join employee organizations and the right to meet with an appropriate state agency or school board to confer on wages, hours, and conditions of employment. But the state may make unilateral decisions in these matters since not required to bargain collectively with its employees. California courts have long held, moreover, that absent legislative authorization, public employees have no right to strike. See Newmarker v. Regents of the Univ. of Calif., 160 Cal. App. 2d 640, 646, 325 P.2d 558, 562 (1st Dist. 1958). See also Comment, Collective Bargaining and the California Public Teacher, 21 STAN. L. REV. 340, 350-52 (1969).
solely in intrastate commerce remain largely unregulated. Englund represents the supreme court's latest effort to preserve the legislature's laissez-faire approach in these areas.

Englund was a consolidation of nine separate actions instituted by more than 35 growers and shippers of agricultural products against the United Farm Workers Organizing Committee (UFWOC) and several of its officers, including Cesar Chavez. The growers had requested an injunction under California's Jurisdictional Strike Act9 prohibiting UFWOC from picketing and striking their fields since the growers had already recognized the Teamsters Union as the exclusive bargaining agent for their field employees. The court held, however, that the Jurisdictional Strike Act was unavailable to the growers because they had recognized the Teamsters without a reasonable, good faith belief that the union was the choice of a majority of their employees.

Eight of the consolidated actions10 arose out of union organizational activities in the Salinas Valley and involved virtually identical facts. The ninth case, Furukawa Farms, Inc. v. Chavez,11 arose out of activities in the Santa Maria Valley in a somewhat different factual setting, but presented the same issue of law as the Salinas Valley proceedings.

The 27 growers involved in the Salinas Valley actions were all members of the Grower-Shipper Vegetable Association of Central Cali-

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8. See discussion by the Englund court, 8 Cal. 3d at 584-86, 504 P.2d at 465-66, 105 Cal. Rptr. at 529-30. Section 923 of the California Labor Code makes a general statement of state policy with respect to labor organizing and labor-management collective bargaining, but there are no statutory provisions to implement this policy. Section 923 declares:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

CAL. LABOR CODE § 923 (West 1971). The California Supreme Court has held that, absent implementing provisions, the judiciary should leave the resolution of labor disputes to the voluntary interaction of labor and management. Petri Cleaners, Inc. v. Automotive Employees Local 88, 53 Cal. 2d 455, 472-74, 349 P.2d 76, 87-88, 2 Cal. Rptr. 470, 481-82 (1960).


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California, an NLRB certified multi-employer bargaining unit. In the summer of 1970 the Teamsters were negotiating the renewal of a truck drivers' contract with the growers association. During the course of the bargaining, the Teamsters expressed an interest in negotiating industry-wide collective bargaining agreements for the field workers employed by the growers. Affidavits submitted to the court indicated that the Teamsters did not make this matter a condition to settlement. Nonetheless, talks stalemated on July 15. After a one-week strike, an agreement was reached on a contract for the truck drivers. The growers association ratified the contract on July 23, and appointed a committee to approach the Teamsters about working out an agreement concerning the field workers. The very next day the committee reported a favorable response from the Teamsters, and each of the 27 growers immediately signed a recognition agreement designating the Teamsters as the exclusive bargaining agent for his field workers. The association and the Teamsters quickly began negotiations. In less than a week they reached agreement on a five-year union shop contract covering hours, wages, and working conditions for all field workers employed by the growers. The field workers were never asked their feelings toward the Teamsters, however, nor were they given an opportunity to examine the contract before it was signed. Indeed, the field workers were never officially approached by either the Teamsters or UFWOC until after the Teamster-grower contract was signed.

When the workers were finally informed of the collective bargaining agreement, they did not react favorably. Most refused either to join the Teamsters Union or to sign or ratify the agreement. The court noted that "at least a substantial number, and probably a majority" preferred UFWOC. After requests by UFWOC for recognition as the exclusive bargaining agent of the field workers were turned down, the workers began striking the growers for recognition of UFWOC. The growers successfully sought an injunction in superior court against the concerted activities of UFWOC. The court of appeals affirmed, and the union appealed to the supreme court.

As in the Salinas Valley, the Teamsters represented many of the employees of the ten Santa Maria Valley growers that filed the Furukawa

12. 8 Cal. 3d at 577, 504 P.2d at 460, 105 Cal. Rptr. at 524.
13. Id. at 579, 504 P.2d at 461, 105 Cal. Rptr. at 525.
14. Id. at 579, 504 P.2d at 462, 105 Cal. Rptr. at 526.
15. Id.
16. See note 63 infra.
17. Six days after commencement of the strike one grower, Inter-Harvest, Inc., relented and entered into a collective bargaining agreement with UFWOC after a card count of his employees revealed a majority preference for UFWOC. 8 Cal. 3d at 580, 504 P.2d at 462, 105 Cal. Rptr. at 526.
action, though none of their field workers. On July 15, 1970, the Teamsters demanded recognition as the exclusive bargaining agent of the driver-loaders, stitchers, and gluers of all but one of the growers.\(^\text{19}\) When these demands were not met, the union called a strike of not only these workers, but also other Teamster members employed by the growers.\(^\text{20}\) Four days later the growers agreed to negotiate. The union immediately broadened its demand for bargaining recognition to include all the growers' field workers, and the growers acceded without resistance. Within three days a collective bargaining agreement, including a union shop provision, was signed by the Teamsters and each of the growers. The Santa Maria Valley field workers, like the Salinas workers, were never asked their feelings toward the Teamsters or their preferences as to hours, wages, and working conditions.\(^\text{21}\)

The same day the Teamster contract was signed, UFWOC demanded recognition as the exclusive bargaining representative of the Santa Maria Valley field workers. When this demand was rejected, UFWOC struck the growers' fields, effectively impeding their harvesting operations. The growers unsuccessfully sought an injunction under the Jurisdictional Strike Act against UFWOC's activities. The court of appeals reversed\(^\text{22}\) and an appeal by the union to the supreme court followed.

_Englund_ turned on the supreme court's interpretation of California's Jurisdictional Strike Act. That Act is designed to protect an innocent employer from having his operations disrupted by unions competing for the allegiance of his employees.\(^\text{23}\) An aggrieved employer may get an injunction and recover damages.\(^\text{24}\)

The Act defines a jurisdictional strike as:

\[\text{[A] concerted refusal to perform work for an employer or any other concerted interference with an employer's operation or business, arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to bargain collectively with an employer on behalf of his employees . . . .} \]

As long as both the Teamsters and UFWOC were "labor organizations"

\(^{19}\) These employees worked in the field, but during the 1970 lettuce harvest they comprised only one percent of the more than 3000 field workers in the Santa Maria Valley, most of whom were row workers, pickers, and packers. 8 Cal. 3d at 581, 504 P.2d at 463, 105 Cal. Rptr. at 527.

\(^{20}\) _Id._ at 581-82, 504 P.2d at 463, 105 Cal. Rptr. at 527.

\(^{21}\) _Id._ at 582, 504 P.2d at 464, 105 Cal. Rptr. at 528.


\(^{24}\) _CAL. LABOR CODE_ § 1116 (West 1971).

\(^{25}\) _CAL. LABOR CODE_ § 1118 (West 1971).
within the meaning of the Act, injunctive relief was appropriate. Section 1117 of the Act declares, however, that a union is not a "labor organization" if it has been "financed in whole or in part, interfered with, dominated or controlled by the employer or any employer association within one year of the commencement" of court proceedings under the Act.26 The supreme court approved the findings of the Englund and Furtukawa trial courts that the growers had carried their burden27 of showing that they had not "financed, . . . dominated or controlled" the Teamsters.28 Indeed, UFWOC did not dispute these findings.29 Disagreement centered on interpretation of the words "interfered with." UFWOC contended that each grower had interfered with the Teamsters by granting exclusive bargaining representative status knowing that the union did not represent a majority of his employees. The Teamsters were therefore not a "labor organization," UFWOC argued, and injunctive relief under the Act was inappropriate. The supreme court agreed.

In construing the phrase "interfered with," the court looked principally to the interpretation given by federal courts to similar language in the LMRA.30 Section 8(a)(2) of the LMRA declares:

It shall be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . . .31

The United States Supreme Court has held that this language extends to recognition of a nonrepresentative union by an employer,32 and the lower federal courts have consistently applied this interpretation to cases substantially similar to Englund.33

27. The plaintiff employer bears the burden of showing that the rival unions are "labor organizations" within the meaning of section 1117. CAL. LABOR CODE § 1117 (West 1971).
28. 8 Cal. 3d at 588, 504 P.2d at 468, 105 Cal. Rptr. at 532.
29. Id.
30. The court noted that federal decisions construing section 8(a)(2) of the LMRA have long been recognized as "persuasive in interpreting section 1117" in view of the similar language and purposes of the federal and state provisions. 8 Cal. 3d at 589-90, 504 P.2d at 469, 105 Cal. Rptr. at 533. The court also noted that the Jurisdictional Strike Act was passed in 1947, 12 years after section 8(a)(2) was enacted as part of the Wagner Act. 8 Cal. 3d at 588-89 nn. 8 & 9, 504 P.2d at 468-69 nn. 8 & 9, 105 Cal. Rptr. at 532-33 nn. 8 & 9.
32. Garment Workers' Union v. NLRB, 366 U.S. 731, 738 (1961): "The law has long been settled that a grant of exclusive recognition to a minority union constitutes unlawful support [of a labor organization] in violation of . . . section [8(a)(2)]."
33. Tennessee Prod. & Chem. Corp. v. NLRB, 423 F.2d 169, 179-80 (6th Cir.), cert. denied, 400 U.S. 822 (1970); Lane Drug Co. v. NLRB, 391 F.2d 812, 820 (6th Cir.), cert. denied, 393 U.S. 837 (1968); Iowa Beef Packers, Inc. v. NLRB, 331
The growers conceded that their recognition of the Teamsters would be an unfair labor practice under federal law, but argued nonetheless that the words "interfere with" should be construed differently in section 1117 of the state Act than in section 8(a)(2). The court rejected each argument the growers made to support this contention. To the argument that the growers' recognition of the Teamsters stemmed not from favoritism but from fear of the union's considerable economic power, the court replied that under section 1117, as under section 8(a)(2), subjective motives were immaterial when an employer grants exclusive bargaining status to a nonrepresentative union. To the growers' argument that UFWOC did not appear "on the scene" until after the Teamster contract was signed and there can only be "interference" under section 1117 if two unions are "on the scene" and competing for recognition at the time of signing, the court had a two-fold response. It pointed out that no federal case had construed "interference" so narrowly and, in any event, the popularity of UFWOC among the field workers coupled with the speed with which the grower-Teamster agreement was reached indicated that UFWOC was certainly "in the labor picture," if not "on the scene" at the time the growers signed the Teamster contract.

To the growers' contention that the lack of any state procedure for certifying the union that commands majority support among employees makes federal precedent inapposite to California law, the court conceded that there was not perfect parallelism. Although federal law sets forth detailed election procedures that are implemented by the National Labor Relations Board, California has no comparable administrative machinery. The court recognized this limitation and therefore did not apply fullblown the federal precedent. Under federal law, even a good faith belief that a union has majority status is insufficient to preclude a finding of interference if the union in fact has only minority support. But since California has no certification procedure, the court held that a reasonable, good faith belief that a union has majority status, whether or not the union actually enjoys such status, would be all that could be practically required of employers.

34. 8 Cal. 3d at 593, 504 P.2d at 472, 105 Cal. Rptr. at 536.
35. Id. at 591, 504 P.2d at 470, 105 Cal. Rptr. at 534.
36. Id. at 592 n.11, 504 P.2d at 471 n.11, 105 Cal. Rptr. at 535 n.11.
37. LMRA § 9(b) & (e), 29 U.S.C. § 159 (b) & (e) (1970).
38. Garment Workers' Union v. NLRB, 366 U.S. 731, 738-39 (1961). The Supreme Court noted that this requirement placed no particular hardship on the employer since it required merely that he withhold recognition until the NLRB conducted an election to verify the union's claimed majority status.
It was obvious, of course, that the growers never had reasonable grounds for believing that the Teamsters Union was the choice of their field workers, and that they, therefore, fell far short of the prescribed standard.

Finally, the growers pointed to California case law that declares that union shop contracts and concerted activity to obtain such agreements are lawful whether or not a majority of the employees directly involved want such an agreement. The growers argued that if their contracts with the Teamsters were lawful, then it followed that the signing of such contracts would not be "interference" under section 1117. The court rejected this argument, noting that the validity of a collective bargaining agreement and the right to enjoin a strike protesting that agreement are two entirely distinct questions under California law. As to the first, the unregulated character of labor relations in California means that labor and management should be free to exercise their economic power without government interference. Thus, the supreme court has chosen to leave labor and management to their own devices, including the recognition of nonrepresentative unions, except in those few selected areas the legislature has chosen to regulate. The Jurisdictional Strike Act attempts to govern one of those selected areas. But the court will only invoke the Act if its prerequisites are met, including employer noninterference. Otherwise, the court will follow its ordinary rule of nonintervention in labor-management affairs.

Therefore, an employer may lawfully recognize a union as the exclusive bargaining agent of his employees even if the union does not represent a majority of those employees; and the employer may lawfully enter into a collective bargaining agreement with this nonrepresentative union. But such an employer may not enjoin a strike and picketing by a rival union protesting that agreement. If this result seems illogical, it is not because the supreme court misconstrued the law. It is simply because the state legislature has chosen not to provide statutory solutions to the myriad problems that arise when labor and management clash.

The anomaly of a union shop agreement that a majority of employees do not want would become even more apparent if the growers began discharging field workers who refused to join the Teamsters.41


40. This argument was relied upon, inter alia, by the courts of appeals in Englund and Furukawa Farms to support findings in favor of the growers. Englund v. Chavez, 101 Cal. Rptr. 54, 61-62 (1st Dist. 1972), vacated, 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521 (1972); Furukawa Farms, Inc. v. Chavez, 102 Cal. Rptr. 271, 276 (2d Dist. 1972), vacated, 8 Cal. 3d 572, 504 P.2d 457, 105 Cal. Rptr. 521 (1972).

41. A suit has been filed alleging that growers are unlawfully discharging farm-
Discharge of employees in a union shop for failure to join the union has been upheld in California. The supreme court has never decided, however, whether an employer may discharge employees for refusing to join a nonrepresentative union. Nevertheless, California law would seem to permit discharge in this situation, though it is difficult to ignore the apparent unfairness of not only forcing employees to accept an unwanted bargaining agent, but also firing them if they refuse to join that union.

The supreme court has been aware of this and other difficulties inherent in a laissez-faire approach to labor relations, and for a short time in 1959 it sought to seize the skeletal statutory law that does exist and shape it into a more ordered regulatory scheme. In a series of three cases the court held that a union shop agreement was unlawful if the union commanded only minority support among an employer’s workers. Likewise, the court ruled that picketing to secure such an agreement was unlawful. The trial court was somehow supposed to designate which union was the majority choice and then enjoin concerted workers who refuse to join the Teamsters. Bradley v. Bruce Church, Inc., No. 69862 (Superior Court of Monterey County, Calif., filed March 21, 1973).

The supreme court has held that union shop agreements are valid in California whether or not desired by a majority of employees. Petri Cleaners, Inc. v. Automotive Employees Local 88, 53 Cal. 2d 455, 474-75, 349 P.2d 76, 88, 2 Cal. Rptr. 470, 482 (1960). Therefore, provisions of such an agreement that require discharge of an employee who fails to join the recognized union would seem to be enforceable under section 1126 of the Labor Code which declares:

Any collective bargaining agreement between an employer and a labor organization shall be enforceable at law or in equity, and a breach of such collective bargaining agreement by any party thereto shall be subject to the same remedies, including injunctive relief, as are available on other contracts in the courts of this State.

CAL. LABOR CODE § 1126 (West 1971).

See note 8 supra.

The issue of whether California courts are statutorily authorized to scrutinize labor relations as closely as the court showed signs of doing in 1959 and, if so, whether the courts are administratively equipped to handle the complexities of such a task was debated in dissenting opinions by Justices Shauer and Traynor. See Petri Cleaners, Inc. v. Automotive Employees Local 88, 53 Cal. 2d 455, 475-85, 492-97, 349 P.2d 76, 88-95, 100-03, 2 Cal. Rptr. 470, 482-89, 494-97 (1960) (Shauer, J., dissenting); Retail Clerks’ Local 1364 v. Superior Court, 52 Cal. 2d 222, 228-38, 339 P.2d 801, 842-48 (1959) (Traynor, J., dissenting). See also Comment, Recent Developments in California Labor Law, 47 CALIF. L. REV. 905, 914-15 (1959).


Retail Clerks’ Local 1364 v. Superior Court, 52 Cal. 2d 222, 227, 339 P.2d 839, 842 (1959).
activities of the rival union.\textsuperscript{48} The supreme court reversed itself only nine months later in \textit{Petri Cleaners, Inc. v. Automotive Employees Local 88}, however, and returned to its previous position of noninterference by holding that union shop contracts are valid whether or not desired by a majority of employees.\textsuperscript{50}

Although not asked to reconsider \textit{Petri}, the \textit{Englund} court by dictum reaffirmed the validity of union shop contracts unwanted by a majority of employees.\textsuperscript{50} Nevertheless, the reasoning of \textit{Englund} may signal a future reevaluation of the \textit{Petri} doctrine. In \textit{Petri} the supreme court rejected the theory that a union shop contract a majority of employees do not want is invalid under section 923 of the Labor Code, which declares:

\begin{quote}
[I]t is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment . . . .\textsuperscript{61}
\end{quote}

The court acknowledged the potential applicability of section 923, but

\textsuperscript{48} The \textit{Garmon-Chavez-Retail Clerks'} court never specified what procedures trial courts were to follow to determine if a majority of employees desired union representation. The court supported its "majority choice" standard by overlaying the Jurisdictional Strike Act with section 923 of the Labor Code, which declares that the individual workman must have "full freedom of association, self-organization, and designation of representatives of his own choosing . . . ." The court reasoned that if a majority of a particular group of employees did not want to be represented by a certain union, then that majority itself comprised a competing "labor organization," even though not formally organized. Injunctive relief was therefore available to the employer under the Jurisdictional Strike Act since he was caught between two rival "labor organizations." If a majority of the employees wished to be represented by the union, on the other hand, the remaining minority did not comprise a "labor organization" within the meaning of section 1117 of the Jurisdictional Strike Act. Thus, there were no competing unions and injunctive relief was unavailable. See \textit{Retail Clerks' Local 1364 v. Superior Court}, 52 Cal. 2d 222, 228-29, 339 P.2d 839, 843 (1959) (Traynor, J., dissenting).

\textsuperscript{49} Petri Cleaners, Inc. v. Automotive Employees Local 88, 53 Cal. 2d 455, 474-75, 349 P.2d 76, 88, 2 Cal. Rptr. 470, 482 (1960). Despite the court's insistence in \textit{Petri} on judicial noninterference, the supreme court oftentimes appears to rely on the detailed guidelines that mark much of federal labor law to give some order to California's less comprehensive statutory approach. The result in \textit{Englund}, for example, closely approximates the result that would be reached in a similar situation under federal law. Under section 10(l) of the LMRA [29 U.S.C. § 160(l) (1970)], the NLRB, at an employer's urging, may get a court injunction against picketing by an outside union \textit{unless} the employer has interfered with the formation or administration of the inside union. \textit{LMRA} §§ 8(a)(2) & (b)(7), 29 U.S.C. §§ 158(a)(2) & (b)(7) (1970).

In another recent case, the supreme court considered what forms of picketing by one of two competing unions could be enjoined under the Jurisdictional Strike Act. The state Act offered little guidance so the court settled on three distinctions that closely parallel federal law. \textit{UFWOC v. Superior Court}, 4 Cal. 3d 556, 571-72, 483 P.2d 1215, 1226-27, 94 Cal. Rptr. 263, 274-75 (1971). \textit{See Note, Secondary Boycott and Picketing}, 60 \textit{CALIF. L. REV.} 912, 917-18 (1972).

\textsuperscript{50} 8 Cal. 3d at 596, 504 P.2d at 474, 105 Cal. Rptr. at 538.

\textsuperscript{51} \textit{CAL. LABOR CODE} § 923 (West 1971).
reasoned that it would be simply too difficult to implement the statute because there is no state administrative machinery for determining which union enjoys majority status. 52 Englund, however, suggests a scheme for avoiding the administrative problems feared by the Petri court. Englund places upon an employer desiring to invoke the Jurisdictional Strike Act the burden of determining which union commands a majority. Likewise, the court might now use section 923 to void union shop contracts not desired by a majority of employees if, as in Englund, the employer is unable to show that he has a reasonable, good faith belief in the contracting union's majority status. 53 The employee's right under section 923 to choose his own bargaining representative may thereby be preserved without burdening the courts with the difficult administrative task of determining which, if any, union has majority support.

In the aftermath of Englund three questions persist. What courses of conduct are now open to an employer faced with requests for recognition from competing unions? What must an employer do to show good faith belief in the majority status of a union before recognizing that union over another? And more specifically, what weapons are now available to the growers, Teamsters, and UFWOC as they play out their three-cornered dispute?

An employer faced with requests for recognition from competing unions may now respond in one of three ways. He can recognize the nonrepresentative union and then simply try to endure a strike and picketing by a rival union. Or he can refuse to recognize either union, maintain strict neutrality, and then rely on Englund and the Jurisdictional Strike Act for an injunction against both unions. 54 If his business has suffered he might also get damages. 55 Finally, the employer can try to determine which union is the majority choice of his employees. If his efforts yield information sufficient to permit him to make a reasonable, good faith judgment that one of the unions commands majority support, then the employer may recognize that union as the exclusive bargaining representative.

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53. Even though the legislature has enacted no provisions to implement the state labor policy expressed in section 923, appellate courts have held that section 923 supports civil actions for damages and injunctive relief:

Violation of a statute embodying a public policy is generally actionable even though no specific remedy is provided in the statute; any injured member of the public for whose benefit the statute was enacted may bring an action.
Wethererton v. Growers Farm Labor Ass'n, 275 Cal. App. 2d 168, 174, 79 Cal. Rptr. 543, 546-47 (1st Dist. 1969) (section 923 supports civil action for damages when field worker is fired for joining UFWOC). See also Montalvo v. Zamora, 7 Cal. App. 3d 69, 75, 86 Cal. Rptr. 401, 404 (5th Dist. 1970) (section 923 supports injunctive relief when employees are discharged for hiring an attorney to represent them in negotiating terms and conditions of employment).

54. 8 Cal. 3d at 597, 504 P.2d at 475, 105 Cal. Rptr. at 539.
55. CAL. LABOR CODE § 1116 (West 1971).
agent of his employees and get injunctive relief against the concerted activities of the other union. In order to show reasonableness and good faith, an employer choosing this last option will have to make some inquiry of his employees to determine their union preferences; it would be unreasonable for him to rely solely on the unsubstantiated claims of the unions.

Such an inquiry could take several forms. The employer might request the unions to prove the majority status they claim by producing pledge cards signed by a majority of employees. Or the employer might ask a neutral body to conduct a representative election. An employer might simply conduct an informal poll of his employees to determine which, if any, union they prefer. This course would be risky, however, since the employer would have to prove that he conducted the poll fairly and without coercion. If the employer speaks to each of his employees individually, there is the inherent suspicion that an employee's expression of preference for no union or for an employer-favored union arose not out of conviction, but out of fear for his job. And an employer who himself conducts an anonymous poll of his employees is vulnerable to the allegation that he tampered with the results or somehow prejudiced the proceedings.

It is possible, of course, that an employer could recognize a non-representative union with a reasonable and good faith, though mistaken, belief that the union had majority support and thereby escape a claim of interference under section 1117 of the Jurisdictional Strike Act. This might happen, for example, if an employer receives pledge cards signed by a majority of his employees, some of whom were coerced into signing by union strong-arm tactics or threats. If the employer had no knowledge of or reason to suspect such tactics, his recognition of the minority union would appear to be reasonable and in good faith.

Other situations can be hypothesized in which the issue of employer good faith would be a close question. Suppose, for example, that

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57. A representative election was held in 1966 to determine the bargaining representative of field workers in the Delano grape fields. The American Arbitration Association conducted the election at the urging of Governor Brown and with the cooperation of the interested parties—the DiGiorgio Corporation, the Teamsters, the Agriculture Workers Organizing Committee (AWOC), and the National Farm Workers Association (NFWA). The AWOC and the NFWA were merged into UFWOC by the time of the election, which was won by UFWOC. Morris, Agricultural Labor and National Labor Legislation, 54 CALIF. L. REV. 1939, 1987-88 & n.179 (1966).

The State Conciliation Service is also available to conduct a representative election at the joint request of the parties involved. Petri Cleaners, Inc. v. Automotive Employees Local 88, 53 Cal. 2d 455, 495 & n.13, 349 P.2d 76, 102 & n.13, 2 Cal. Rptr. 470, 496 & n.13 (1960).
an election discloses that union X enjoys majority support in a particular work unit. The employer chooses not to extend recognition to union X, however, as he is privileged to do under California law. Meanwhile, union Y begins to make inroads into the employer's workforce. Although the employer would prefer not to have his operations unionized, he favors union X over union Y. Out of fear for the accumulating strength of union Y, he immediately extends bargaining recognition to union X. Assuming some time has elapsed since the election that union X won, it is possible that the majority of the employees no longer favor union X. The question would be whether the employer's reliance on the results of that election, in view of the changed circumstances of which he is aware, is reasonable and in good faith.

Another troublesome issue might arise from active or subtle campaigning by the employer for the union he favors. If that union wins a properly supervised election, it is difficult to argue that the employer's subsequent recognition of that union as the exclusive bargaining representative of his employees is unreasonable or in bad faith. The supreme court has made it clear, however, that such tampering is also "interference" under section 1117 and, like bad faith recognition of a minority union, will bar injunctive relief.

Of final interest is what effect Englund will have on the continuing controversy between the Teamsters and UFWOC over representation of California field workers. When Englund was decided, almost 2½ years after the incidents giving rise to the case occurred, each of the 37 growers involved in the Englund and Furukawa actions still had union shop contracts with the Teamsters. The supreme court did nothing to impair the validity of those agreements. Englund, however, permits UFWOC to resume its strike and picketing activities against the growers. Unless the sentiments of the Salinas and Santa Maria Valley field workers have changed drastically since the summer of 1970, it is likely that a majority of them continue to favor UFWOC over the Teamsters. Thus, it does not seem possible that the growers could claim in good faith that they now believe the Teamsters represent a majority of their employees. Injunctive relief against UFWOC under the Jurisdictional Strike Act will be unavailable, therefore, and the growers can expect striking and picketing to resume at their fields.

After UFWOC's strike was enjoined by the lower courts, the union attempted to organize a boycott of lettuce produced by growers not

59. Id. at 469, 349 P.2d at 84-85, 2 Cal. Rptr. at 478-79.
60. In fact, the Teamsters signed renegotiated contracts with the growers on January 8, 1973. Telephone conversation with Andrew Church, attorney for the Grower-Shipper Vegetable Association of Central California, February 26, 1973.