Buffalo Law Review

Volume 13 | Number 1 Article 37

10-1-1963

Labor Law—Collective Bargaining Agreement Resulting in Loss of Right to Litigate by Union-Member Beneficiaries

Courtland R. Lavallee

LABOR LAW

COLLECTIVE BARGAINING AGREEMENT RESULTING IN LOSS OF RIGHT TO LITIGATE BY UNION-MEMBER BENEFICIARIES

Employer and union entered into a collective bargaining agreement which covered the employment of route salesmen. Among its terms was a provision that employer could not make any agreement with any of its employees "inconsistent or in conflict with" the collective bargaining agreement. Subsequently, employer sold routes to four of its employees and declared them to be independent contractors. Union demanded arbitration of this issue. The arbitrator held that the sales of the routes were in violation of the collective bargaining agreement and ordered employer to restore the routes to the coverage of the agreement. The route salesmen affected were neither given formal notice of the proceedings nor were they represented at the arbitration. In a declaratory judgment action the salesmen were denied a temporary injunction but were declared not to be bound by the judgment on the arbitrator's award. They also were granted leave to replead for damages against employer.[1] In a separate action, the arbitrator's award was confirmed and judgment was entered thereon.[2] Appeals were taken to the Court of Appeals on constitutional grounds. *Held*, appeals dismissed, one justice dissenting, as not presenting a substantial constitutional question. The salesmen, as union-member beneficiaries at the time of the collective bargaining agreement, had surrendered their right to litigate in the courts any controversy between employer and union. *Chupka v. Lorenz-Schneider Co.*, 12 N.Y.2d 1, 186 N.E.2d 191, 233 N.Y.S.2d 929 (1962).

Generally, the award of an arbitrator is final. In certain limited circumstances an award may be vacated or modified upon application of a party.[3] Assuming that a particular controversy is covered under a valid arbitration agreement, however, there is some question as to the availability of the courts to one who is not a "party" (*i.e.*, participant in the arbitration, one who was served with notice of intention to arbitrate, or one who participated in the selection of the arbitration[4]) and whose interests have been adversely affected by an award.

In New York the courts have consistently applied contract theory in deciding cases where individual employees have sought to assert claims under a collective bargaining agreement. Thus, the courts have held that an employee may sue as an individual on a provision which inures to his direct benefit.[5] Likewise, employee-union members under an agreement have been found to have

1. Chupka v. Lorenz-Schneider Co., 34 Misc. 2d 123, 226 N.Y.S.2d 662 (Sup. Ct. 1962).
2. Chupka v. Lorenz-Schneider Co., 16 A.D.2d 938, 230 N.Y.S.2d 672 (2d Dep't 1962).
3. See N.Y. CPLR § 7511.
4. Second Preliminary Report of the Advisory Committee on Practice and Procedure, N.Y. Leg. Doc. No. 13, at 136 (1958).
5. Barth v. Addie Co., 271 N.Y. 31, 2 N.E.2d 34 (1936).

standing in the courts as third party beneficiaries.[6] In an action by a discharged employee to compel his union to go to arbitration, however, the Court held that the employee was bound by the conduct of the union and intimated that his only relief would be against the union for breach of fiduciary duty.[7] Later, an employee attempted to intervene in an arbitration proceeding affecting his interests by objecting to union's counsel and requesting that his own attorney be allowed to participate. The Court once again held that he was bound by the union's conduct and that his remedy would lie against the union.[8] The possible difficulties in obtaining this remedy are indicated in a decision which held that the union, as an unincorporated association, could not be held liable unless the misconduct was provable against all its members.[9] It is to be noted that in all the cases where the court denied standing to the employee, it held out the hope of an alternative remedy.

In the instant case, the Court approached the issues from the view that the arbitration award and the judgment thereon were conclusive as to the right of the salesmen to have the award vacated. It accepted as an established rule that an arbitration award under a collective bargaining agreement may be vacated only on the motion of one of the parties and not by individual employees. Since the arbitrator found that the sales were subject to the agreement and since the salesmen were employee-union members at the time of the making of such agreement, under the terms of the labor contract they had given up to the union all rights to sue on the agreement. The designation of the salesmen as independent contractors was considered to be an attempt by the employer to come out from under the terms of the agreement and was held to have no effect, as this transaction was prohibited by the terms of the agreement itself. Therefore, the constitutional argument that the salesmen were deprived of property rights without due process of the law was without merit. The dissenting justice, however, raised several points in objection to the majority opinion. It was his contention that there was a valid constitutional question on two grounds: first, the salesmen were being divested of their property without being afforded an opportunity to be heard in arbitration or in the courts, and second, because there was no jurisdiction of the person in the arbitration proceeding, the judgment was without due process. Furthermore, they were "indispensable parties"[10] to the action and without their presence an effective determination could not be made. In addition, the arbitrator stated that it made no difference to his decision whether the salesmen were union members or third parties. If they were third parties, how could it be said that the union had a right to represent them in the arbitration?

6. Hudak v. Hornell Indus., Inc., 304 N.Y. 207, 106 N.E.2d 609 (1952).
7. Parker v. Borock, 5 N.Y.2d 156, 156 N.E.2d 297, 182 N.Y.S.2d 577 (1959).
8. In the Matter of Soto, 7 N.Y.2d 397, 165 N.E.2d 855, 198 N.Y.S.2d 282 (1960).
9. Saint v. Pope, 12 A.D.2d 168, 211 N.Y.S.2d 9 (4th Dep't 1961). *But see* Madden v. Atkins, 4 N.Y.2d 283, 151 N.E.2d 73, 174 N.Y.S.2d 633 (1958).
10. See N.Y. CPLR § 1001.

It is agreed that the arbitration process serves desirable public policy. It has been variously characterized as speedy, private, relatively inexpensive and final. In labor disputes its ultimate objective is to foster industrial peace. Accordingly, the finality of the arbitrator's award assumes primary importance. The line of reasoning followed by New York courts is that arbitration will lose some of its effectiveness if aggrieved individuals, dissatisfied with the award of the arbitrator, were allowed to retry, in effect, their grievances in a court of law. This policy consideration apparently overrides the possibility of union abuses of power, with resulting injuries to individual employees. Also, as in the instant case, there may be the paradoxical situation where the union, nominally representing the individual's interests, is in fact actively opposing his position. The decision of the court, as well as that of the arbitrator, does not provide a final solution to the controversy.[11] Since the route salesmen were not parties, they could not be required to give up the account books which are an essential part of the routes. This leaves the employer in an untenable position. Indeed, he has already been convicted once for contempt in failing to comply with the judgment on the award. The New York position on individual rights in labor arbitration has been criticized. Generally, two approaches have been offered. One suggests that the rights of individuals be expressly set forth in statutory form.[12] The other view is that these rights are already to be found in existing federal legislation and that they may be asserted in federal courts.[13] In some state jurisdictions, notably Wisconsin,[14] the court rule favors the individual's rights in the arbitration process. Until recently, federal courts exercising diversity jurisdiction have applied state substantive law in deciding this type of case. At first, doubts were expressed as to whether section 301 of the Labor Management Relations Act (LMRA)[15] created any federal substantive rights.[16] Mr. Justice Frankfurter after concluding that Congress did not intend to give individual employees a cause of action under federal law, said, "The employees have always been able to enforce their individual rights in the state courts."[17] These doubts were subsequently resolved when the Supreme Court held that section 301 did indeed confer power on the federal courts to make law in this area.[18] The precedence of the federal law over the state law was declared in a still later case.[19] There still remained, however, the difficulty of

11. See N.Y. CPLR § 7511(b)(iii).
12. See Lenhoff, *The Effect of Labor Arbitration Clauses Upon the Individual*, 9 Arb. J. (n.s.) 3 (1954).
13. See Summer, *Individual Rights in Collective Agreements and Arbitration*, 37 N.Y.U.L. Rev. 362 (1962).
14. Pattenge v. Wagner Iron Works, 275 Wis. 495, 82 N.W.2d 172 (1957); Clark v. Hein-Werner Corp., 8 Wis. 2d 264, 99 N.W.2d 132 (1959); Fray v. Amalgamated Meat Cutters, 9 Wis. 2d 631, 101 N.W.2d 782 (1960).
15. 61 Stat. 152 (1947), 29 U.S.C. § 171(a) (1958).
16. Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955).
17. *Id.* at 460.
18. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
19. Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962).

overcoming the federal courts' reluctance to entertain suits of this character. The breakthrough came when the Supreme Court upheld the standing of an individual employee to sue under section 301, LMRA, on a breach of collective bargaining agreement.[20] Although the holding in this case was restricted to the no-discrimination clause in the agreement,[21] it may set the stage for an ultimate establishment of federal substantive law which the states would be uniformly bound to apply.

Courtland R. LaVallee

PERSONAL AND REAL PROPERTY

ADVANCE REJECTION OF CURABLE DEFECTS IN TITLE TAKEN AS DEFAULT

Plaintiff had contracted for the purchase of defendant's one-family house and made a $4,000 deposite at the time of contract. Plaintiff obtained a month's adjournment of the closing date.[1] During this month, and two weeks before the new date, plaintiff informed defendant by letter to his attorney that "the present structure of the premises is not legal and thus title is unmarketable" and demanded immediate return of the deposit. No indication of the specific illegalities, however, was given defendant before the date set for closing. On the closing date, another demand was made and refused, and neither party was then able to perform and neither made any tender. Plaintiff commenced an action for return of the deposit plus costs of searching title, and defendant counterclaimed for damages for breach of contract. A judgment for plaintiff in Trial Term was reversed on the law and the facts by the Appellate Division,[1a] which directed judgment for defendant on the counterclaim. On plaintiff's appeal, *held*, affirmed. Since the title defects were curable within a reasonable time after notice "plaintiff's advance rejection of title and demand for immediate return of the deposit was unjustified and an anticipatory breach of contract." *Cohen v. Kranz*, 12 N.Y.2d 242, 189 N.E.2d 473, 238 N.Y.S.2d 928 (1963).

The rules of law applicable to land sales contracts are well established to a large extent. One of these rules is the warranty of good and marketable title in every contract for the sale of real estate.[2] Since the ancient doctrine of caveat emptor survives in the law of real property more than in any other area of law,

20. Smith v. Evening News Ass'n, 371 U.S. 195 (1962).
21. *Id.* at 201.

1. The instant case uses the term "law day" to designate the day set for performance of the land sale contract. However, since the term is used generally in relation to a date set for payment on a mortgage before foreclosure, the term "closing date" will be used throughout this note to avoid possible confusion. See Kortright v. Cady, 21 N.Y. 343, 345 (1860); *cf.* Tymon v. Willis, 36 N.Y.S.2d 206, 207 (New York City Ct. 1942).

1a. 15 A.D.2d 938, 226 N.Y.S.2d 509 (2d Dep't 1962); Cohen v. Kranz, 12 N.Y.2d 242.

2. See generally Wallach v. Riverside Bank, 206 N.Y. 434, 100 N.E. 50 (1912); 3 American Law of Property § 11.47 (4th ed. Casner 1958); 3 Warren's Weed, New York Real Property 366-68 (4th ed. 1958).