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# Labor Law—Applicability of Contract Arbitration Clause to Another Contract

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agreement contained an express provision that it should be enforcable by individual employees.[4]

In view of the prevailing opinion that the discharge provision inured to the direct benefit of employees, and in view of the fact that New York courts have held that provisions so inuring may be the subject of a cause of action by employees assertable against their employers, the conclusion in the present case appears, at first, to represent a departure from prior holdings.[5] The resolution of this apparent inconsistency, somewhat glossed over in the prevailing opinion, and unacceptable to Judge Van Voorhis, lies in the majority holding that the particular bargaining agreement in question, when read as a whole, indicates that plaintiff had entrusted even his personal right under the contract to his union, and that he was bound thereby. The result in the instant case may thus be confined to its facts and attributed to the peculiar wording of the agreement involved.

APPLICABILITY OF CONTRACT ARBITRATION CLAUSE TO ANOTHER CONTRACT

An employer's right to contract out work is an inherent right of management. It is not subject to arbitration through collective bargaining unless the contract with labor specifically provides otherwise.[6]

The Court of Appeals dealt with a problem in this area in *Otis Elevator Company v. Carney*.[7] The company-union contract contained a general arbitration clause. All disputes not settled by the grievance procedure were to go to arbitration. The company entered into a contract with an allegedly independent contractor for the cleaning of the company's offices. The union felt that the company did not enter a *bona fide* independent contract. It contended that the employees were really working for the company itself and that the contract was merely a subterfuge to get employees away from the coverage of the collective bargaining agreement.

After the trial court denied the company's motion to stay arbitration on this issue, the Appellate Division reversed, granting the stay of arbitration.[8] In reversing the Appellate Division, the Court of Appeals held that the question of whether the contract was bona fide was an arbitrable dispute.

In *In re Teschner* where a company dissolved and reformed without violating any express term of the labor contract, the union showed facts which raised doubt as to whether it was a *bona fide* dissolution or merely a scheme to avoid obligations under the contract with labor. The Court of Appeals

4. Levine v. Meizel, — Misc. —, 34 N.Y. Supp. 561 (City Ct. 1942). Kadish v. New York Evening Journal Inc., — Misc. —, 67 N.Y.S.2d 435 (Sup. Ct. 1946), *aff'd without opinion* 272 App. Div. 872, 72 N.Y.S.2d 402 (1st Dep't 1947).

5. Barth v. Addie Co., 271 N.Y. 31, 2 N.E.2d 34 (1936); Gulla v. Barton, 164 App. Div. 293, 149 N.Y. Supp. 952 (3d Dep't 1914).

6. United Steelworkers of America, A.F.L.-C.I.O. v. Warrior & Gulf Nav. Co., 168 F. Supp. 702 (D.C. Ala. 1958).

7. N.Y.2d 358, 189 N.Y.S.2d 874 (1959).

8. 8 A.D.2d 636, 185 N.Y.S.2d 828 (2d Dep't 1959).

held the company bound to the terms of the contract because the dissolution was not *bona fide*.[9]

In the instant case the Court was not called upon to decide whether the union's contention was true, but simply to determine whether an arbitrable dispute existed. Since the company in the *Teschner* case[10] could not avoid the labor contract by a scheme of dissolving and reforming, the Court felt that in the instant case the company could not get employees away from coverage under the labor contract by entering an outside contract which was merely a subterfuge. If the contentions of the union were true, the employees cleaning the offices would be covered by the labor agreement. The Court held, therefore, that it was for arbitrators to determine whether this was a *bona fide* independent contract.

Under a similar labor agreement, where a dairy contracted out the delivery of milk, a New Jersey court held that whether a contract was *bona fide* or only a device was an arbitrable issue.[11]

The decision in the instant case appears to be in conformity with the existing authority in this area of labor law.

## MUNICIPAL CORPORATIONS

STREET CLOSING: JUDICIAL REVIEW OF PUBLIC NECESSITY

Subject to Constitutional limitations regarding taking or damaging private property for public use without compensation, a state legislature has power to vacate streets.[1] This power is generally, however, delegated to some local body within a county or city government.[2] By the terms of Section E15-3.0 of the administrative Code of the City of New York, the power to vacate streets within the City of New York is vested in the Board of Estimate, *viz:*

> The City may authorize the closing . . . of such streets therein . . . as it may deem necessary in order to more effectively secure and preserve the regularity and uniformity of the streets therein, or where other public necessity requires the closing . . . of such streets. . . .

When such a street is vacated, the abutting owner may acquire the fee.

The Court of Appeals had occasion recently in the case of *Stahl Soap Co. v. City of New York* to consider the extent to which a court may inquire

9. 309 N.Y. 972, 132 N.E.2d 901 (1956).
10. *Ibid.*
11. Newark Milk & Cream Co. v. Local 680 of International Brotherhood, T.C.W.H., 12 N.J. Super. 36, 78 A.2d 839 (1951).

1. 11 MCQUILLIN, MUNICIPAL CORPORATIONS § 30.185 citing In re Joiner Street, 177 App. Div. 361, 164 N.Y. Supp. 272 (4th Dep't 1917).
2. McCutcheon v. Buffalo Terminal Comm., 217 N.Y. 127, 111 N.E. 661 (1916).