**Buffalo Law Review**

Volume 8 | Number 2 Article 5

1-1-1959

# Enforceability of Arbitration Clause Where Activity Constitutes Unfair Labor Practice

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# RECENT DECISIONS

*Enforceability of Arbitration Clause Where Activity Constitutes Unfair Labor Practice*

Fifteen employees were discharged at the termination of a strike on the grounds of "strike misconduct." Such action by an employer can be the basis of an unfair labor practice proceeding before the National Labor Relations Board.[1] The union, however, requested the employer to arbitrate the matter pursuant to the arbitration clause of its contract with the Company. When the employer refused to arbitrate, the union commenced the present suit, in a Federal District Court, under Section 301 of the Taft-Hartley Act,[2] for specific performance of the arbitration agreement. As a defense the employer, in addition to claiming that the arbitration provisions were not broad enough to embrace discharges for strike misconduct, argued that the NLRB has *exclusive* jurisdiction, since there may be an unfair labor practice involved, and thus the courts are preempted from enforcing the arbitration agreement. *Held*: Federal courts may enforce an agreement to arbitrate in suits under Section 301 even though the matter sought to be arbitrated might constitute an unfair labor practice.[3]

In support of its contention the employer relied on the *Garner*[4] line of cases which held that state courts and state agencies could not duplicate remedies available under the Taft-Hartley Act. The employer argued that the parties could not by contract give private arbitrators more jurisdiction than that enjoyed by state courts and state adminitrative agencies.

In answer the Court pointed out ". . . the [employer] overlooks the obvious distinction between *contract provisions* and *matters committed exclusively to the Board* [NLRB]." This reference was to a theory of split jurisdiction evolved in a number of lower federal court cases.[5] In brief the theory is that when an incident or an act constitutes both a contract violation and an unfair labor practice the NLRB has plenary jurisdiction over the unfair labor practice element and the courts[6] may grant relief for the breach of contract.

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1. See, Section 8 (a) (1) and 8 (a) (3) of the Taft-Hartley Act.
2. Labor Management Relations Act §301, 61 Stat. 156 (1947), 29 U.S.C. §185 (1952).
3. International Association of Machinists v. Cameron Iron Works, 257 F.2d 467 (3rd Cir. 1958), *cert. denied* 27 U.S.L. Week 3148, (U.S. Nov. 10, 1958).
4. Garner v. Teamsters Union, 346 U.S. 485 (1953); Weber v. Annheuser-Busch, 348 U.S. 468 (1955); Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957). See, Isaacson, *Federal vs. State Jurisdiction*, 42 A.B.A.J. 415 (1956).
5. Independent Petroleum Workers etc. v. Esso Standrad Oil Co., 235 F.2d 364 (3d Cir. 1956); Textile Workers v. Arista Mills Co., 193 F.2d 529, (4th Cir. 1951); Reed v. Faurich Airflex Co., 86 F. Supp. 822 (N.D. Ohio 1949).
6. An action may be brought in either state or federal court but the federal substantive law of collective bargaining contracts must be applied. McCarrol v. Los Angeles Council of Carpenters, ——Cal. App. 2d——, 315 P.2d 322 (1957). *Cert. denied* 26 U.S.L. Week 3220 (U.S. Jan. 27, 1958) (No. 724).

The division of jurisdiction rests on two sections of the Taft-Hartley Act: Section 10 (a), securing the NLRB's plenary jurisdiction over unfair labor practices, states, "this power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise;" section 301 grants jurisdiction to federal district courts over suits for breach of collective bargaining contracts regardless of the citizenship of the parties or the amount of money involved. Although the two sections complement each other it is significant that a breach of contract is not, as such, an unfair labor practice under Section 8 of the Tart-Hartley Act.[7] Congress felt that the enforcement of the collective bargaining contract should be left to the usual processes of law and not to the NLRB.[8] Thus each section serves a separate and distinct function in the field of labor management relations.

An insight into the historical development of federal labor legislation is helpful in understanding the relationship between the various sections of the amended Taft-Hartley Act. The policy of the Wagner Act was to facilitate the *organization* of unions and the *establishment* of collective bargaining relationships.[9] Once the bargaining agent was designated and negotiations were begun in good faith the government withdrew from the scene. By 1947 unions had become an integral part of American social and economic life and Congress felt the changed circumstances called for additional legislation. The resulting Taft-Hartley Act not only defined unfair labor practices on the part of unions, but also sought to *stabilize* the collective bargaining relationship by providing, in Section 301, for suits for violation of collective bargaining contracts.

Of historical importance, also, is the development of the institution of labor arbitration. Characterized by some as the most important jurisprudential development of the twentieth century,[10] it was virtually unknown at the turn of the century. During World War II growth was stimulated by the National War Labor Board's policy to require industries within its control to provide for arbitration in all collective bargaining agreements. Today nearly all[11] contracts provide for a grievance procedure culminating in arbitration. Nevertheless arbitration is not mentioned in the Taft-Hartley Act. However, the Supreme Court has brought this vast quasi-judicial machinery within the control of the courts.

7. See, Association of Westinghouse Salaried Employees v. Westinghouse Electric Co., 348 U.S. 437, footnote 2 (1945).

8. See, H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 442. "Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board."

9. See, Cox and Dunlop, *Regulation of Collective Bargaining by the NLRB*, 65 HARV. L. REV. 385, 389 (1950).

10. See, ELKOURI, HOW ARTITRATION WORKS (1952).

11. A survey of representative contracts made by the Bureau of National Affairs, Inc. in 1956 revealed that nearly 91 per cent of the contracts contained such provisions.

The *Lincoln Mills* case[12] ruled that agreements to arbitrate are enforceable in suits under Section 301. Moreover, the court called for a "federal"[13] common law of collective bargaining contracts to be fashioned by the process of "judicial inventiveness"[14] from the "policy of our national labor laws."[15] The Supreme Court has been cautious in confirming the several lower Federal and state court decisions[16] purporting to develop the content of the "federal common law of the collective bargaining contracts." The court in the instant case relies heavily on *Lincoln Mills* and feels its ruling is within the spirit of that decision.

The theory of preemption developed by the *Garner* lines of cases[17] is not applicable to the instant case. The *Garner* theory of preemption rests on the principle that a state government may not add to, or subtract from the legal obligations imposed on labor and management by Congress.[18] In the instant case the question is whether the Federal courts are preempted by the Federal Labor Board. The fallacy of the employer's argument is not uncommonly encountered and springs from the broad "conflicts of remedies" language[19] of the *Garner* case. Later decisions have clarified the limitations of the *Garner* preemption doctrine. The *Laburnum* case[20] established that the states can award damages based on past tortious conduct even though some form of relief is available under the Taft-Hartley Act. Some interpreted the decision as resting on the police power of the states to prevent breaches of the peace.[21] Others suggested that violence was not a necessary prerequisite to state action.[22] The recent *Russell*[23] and *Gonzales*[24] decisions proved the analysis of the latter to be correct and ruled that state courts are not preempted from granting relief based on a common law tort or contract theory.[25] These cases, in addition to the legislative history,[26] indicate that the Taft-Hartley Act was not intended to disturb traditional state court remedies except to

12. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
13. *Id.* at 456.
14. *Id.* at 457.
15. *Id.* at 456.
16. See, Kramer, *In the Wake of Lincoln Mills,* 9 LAB. L.J. 835 (Nov. 1958).
17. Note 4, *supra.*
18. See, Cox, *Law and the Future: Labor Management Relations,* 51 NW. U.L. REV. 240, 253 (1957).
19. 346 U.S. at 498. "The conflict lies in remedies, not rights." ". . . when two separate remedies are brought to bear on the same activity, a conflict is imminent."
20. United Construction Works v. Laburnam Corp., 347 U.S. 656 (1954).
21. See, *Note,* 54 COLUM. L. REV. 11447 (1954). Cf., United Automobile Workers v. Wisconsin Employment Relations Board, 351 U.S. 266 (1956); Youngdahl v. Rainfair, 355 U.S. 131 (1957).
22. See, Isaacson, *Federal* vs. *State Jurisdiction,* 42 A.B.A.J. 415 (1956).
23. United Automobile Workers v. Russell, 356 U.S. 634 (1958).
24. Association of Machinists v. Gonzales, 356 U.S. 617 (1958).
25. See, Note, *Common Law Remedies,* 27 N.Y.U.L. REV. 468 (1952).
26. See, Conference Report on H.R. 3020,H.R. Rep. No. 510, 80th Cong., 1st Sess. 52. ". . . by retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies."

the extent that such remedies interfered with rights protected by the Act[27] or regulated conduct Congress intended to be free.[28] Thus in some situations an aggrieved employee, employer, or union might proceed in state court on a common law theory and also file an unfair labor practice charge with the NLRB.

The effect of the present *Cameron Iron Works* case is to open a third avenue of relief through the grievance procedure. However, the right to such relief is established by agreement of the parties, and the scope of such rights is limited by the language of the collective bargaining contract which establishes the grievance procedure.[29] Unlike commercial arbitration which is a substitute for litigation, arbitration of a labor dispute may be a substitute for a strike. The arbitration clause is considered to be the *quid pro quo* for a no-strike clause.[30] For this reason, among others, the courts have found difficulty in applying traditional contract theories to the collective bargaining agreement. This difficulty explains, in part, the need for the federal common law of collective bargaining contracts and the difference between a suit under Section 301 and an ordinary contract action.

The prime objective of federal labor legislation is to promote industrial peace,[31] and it contemplates the private settlement of disputes by the parties. In furtherance of these ends the NLRB will not attempt to administer or interpret a collective bargaining contract.[32] The Board has recognized the value of arbitration and will adopt an arbitrator's award in an unfair labor practice case if certain minimal requirements are met, even if an original adjudication would have reached a different result.[33] In a recent case[34] of limited application the

27. See, Hill v. Florida, 325 U.S. 538 (1945); Bus Employees v. Wisconsin Board 340 U.S. 383 (1957); Automobile Workers v. O'Brien, 339 U.S. 454 (1950).

28. See, Isaacson, *Federal Pre-emption Under Taft-Hartley Act*, 11 IND. & LAB. REL. REV. 391 (1958).

29. In the instant case the language of the contract was broad and embraced "any" dispute between the parties. If the arbitrability of a grievance is disputed the question is for the court unless the contract clearly authorizes the arbitrator to resolve the issue.

30. Textile Workers v. Lincoln Mills, *supra* note 12 at 455. See, Syme, *Arbitrability of Labor Disputes*, 5 RUTGERS L. REV. 455, 472 (1951).

31. Labor Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §151 (1952), states:

> It is hereby declared to be the policy of the United States to eliminate the cause of certain substantial obstructions of the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining . . .

32. NLRB v. Consolidated Aircraft Corp., 47 NLRB 694 (1943); NLRB v. McDonnell Aircraft Corp., 109 NLRB 930 (1954); NLRB v. United Telephone Company of the West, 112 NLRB 779 (1955).

33. The minimal requirements are: (1) The arbitration proceedings had been "fair and regular"; (2) all parts had agreed to be bound; and (3) the arbitration decision was not "clearly repugnant to the purposes of the Act." Spielberg Manufacturing Co., 112 NLRB 1080 (1955).

34. Mid-West Metallic Products Inc., 121 NLRB No. 164 (1958).

Board ruled that it would not entertain an unfair labor practice charge unless the parties had exhausted remedies available under the contract.

The present case answers another of the many questions raised by §301 and represents a further recognition of the valuable function of arbitration in labor-management relations.

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*Delayed Disposition of Remainder Interests to Testator's Heirs Where Life Tenant is sole Heir*

Testatrix in her will provided a life estate for her husband with a power to invade principal in the case of necessity. The remainder of her estate she devised as follows: "Upon the death of my husband, I give, devise, and bequeath such of my property as shall then remain to my distributees under the laws of the State of New York." The Surrogate in construing the will determined the beneficiaries of the remainder to be the testatrix's distributees at the time of her death. At that time her husband was her sole distributee under New York law,[1] and because of the merger of his life estate and his remainder, he would have received the whole of her property in fee. In *In re Carlin's Will* the Appellate Division reversed the Surrogate and held that the will on its face evidenced an intention that the husband should receive no more than a life interest in the property.[2] To give effect to that intention the Court held that the beneficiaries of the remainder should be determined at the husband's death.

The basic canon of will construction is that the intention of the testator evidenced by the will will be given effect. Where the intention is shown by clear, unambiguous language in the will there is little difficulty in giving effect to the intention. However, where the language is less clear, some standards or rules must be applied in construing the will. Over a long period of time certain more or less arbitrary canons and rules of construction have developed. These rules, which are applied only when the will is ambiguous and clear intent is lacking, reflect both an attempt to give effect to the probable intention of the average testator and the general policies concerning property with which the courts have been concerned. One of these rules, which has developed largely out of the preference for the early vesting of future interests, is that in the absence of clear and direct intention to the contrary, heirs and distributees under a will will be determined at the death of the testator.[3]

1. N.Y. DECEDENT ESTATE LAW §§47-c, 83-d.
2. 6 A.D.2d 281, 176 N.Y.S.2d 112 (4th Dep't 1958).
3. 5 AMERICAN LAW OF PROPERTY §22.60, note 23 at 442 (Casner ed. 1952).