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Labor Law—Power of Court to Enforce Arbitrator's Injunction

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Supreme Court would cover the present facts. All of the justices agreed that the picketing would not have been *protected* under Taft-Hartley, designed as it was to compel the employer to repudiate NLRB certification.[13]

Whatever confusion may still obtain as to the exact limits of pre-emption, there would seem to be little doubt that the majority has misconstrued its application to the facts of the instant case. It has appeared to some observers that the effect of the Supreme Court decisions of recent years is that the determination whether activity is protected, proscribed, or neither must be made in the first instance by the NLRB and not by the states.[14] Whether or not future federal decisions bear this out, there was sufficient indication of an unfair labor practice to have required dismissal of this case from the New York courts. A year ago, the NLRB held that picketing by a union not representing a majority of the employees for the purpose of compelling employer recognition constitutes a violation of §8(b)(1)(A) of Taft-Hartley,[15] a section not even considered by the Court as being applicable. This holding should be all the more clear where, as here, there is a majority union which has received NLRB certification. It should be obvious that the state was pre-empted, under current doctrine, from acting.

Power of Court to Enforce Arbitrator's Injunction

A collective bargaining agreement provided that there should be no slowdown of employees and also established a "speedy arbitration" procedure whereby disputes could be submitted to arbitration within twenty-four hours and a decision rendered within forty-eight hours after conclusion of the arbitration hearing. The employers, charging a slowdown by the employees, utilized the "speedy arbitration procedure," and after hearing the cause, the arbitrator issued an order enjoining the unions bound by the agreement from continuing the slowdown and directing them to take steps to have it stopped by the employees. *Held,* by the Court of Appeals, the award of an injunction was within the power of the arbitrator under the contract and could be enforced by the County Court notwithstanding the statutory prohibition against the issuance of injunctions by courts in labor disputes.[16]

13. *Ibid.*

14. See Isaacson, *Federal Pre-Emption Under the Taft-Hartley Act, supra* note 2.

15. Curtis Bros., Inc., 119 N.L.R.B. 33 (1957). Section 8(b)(1)(A) [61 STAT. 140 (1947), 29 U.S.C.§158 (b)(1)(A) (1952)] provides:

> It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this title. . . . Section 7 [61 STAT. 140 (1947), 29 U.S.C. §157 (1952)] provides: Employees shall have the right to self-organization, . . to bargain collectively through representatives of their own choosing. . . .

16. In re Ruppert, 3 N.Y.2d 576, 170 N.Y.S.2d 785 (1958).

Two conflicting state policies were pitted against each other in this case. Following the lead of the federal government, New York enacted legislation in 1935 (Civil Practice Act §876-a) taking away from the courts the power of injunction where labor disputes were involved except where very limiting prerequisites were met. Previously, the state had adopted a statute[17] providing for the enforcement of executory arbitration agreements and of arbitrators' decisions themselves.[18] This statute was amended five years after passage of the anti-injunction legislation so as to specifically validate arbitration agreements in labor situations.[19]

The Court had on previous occasions sustained the enforcement of mandatory injunctions issued by arbitrators,[20] but this is the first case to have involved restraining injunctions against a labor union. The defendant unions argued that the enforcement of an arbitrator's injunction by the lower court was equivalent to the issuance of an injunction by the court and invalid under §876-a. But the Court considered that the purpose of that section was to free unions from judicially imposed injunctions and did not reach to an arbitration relationship voluntarily entered into by the union, particularly in view of the statutory arbitration provisions. As long as the arbitrator's award is within his authority as defined in the contract, his determination could be enforced even though a different result would obtain had the controversy been initially submitted to the courts.[21]

Union Member's Remedies for Wrongful Expulsion

In a landmark decision, the Court this term determined that one wrongfully expelled from a union may sue the union for damages from its general funds even though he cannot sustain an action against all of the members.[22] The general rule, obtaining under the common law, was that voluntary associations, being

17. N. Y. ARBITRATION LAW OF 1920 (now N. Y. CIV. PRAC. ACT, Art. 84).

18. The common law rule in New York discouraged arbitration agreements by refusing to specifically enforce agreements to arbitrate differences. It was to permit such specific enforcement and thereby to encourage reliance upon executory arbitration agreements that impelled adoption of the arbitration statute. See *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109 (1924), which deals with the New York statute.

19. N. Y. CIV. PRAC. ACT §1448.

20. In re Devery, 292 N.Y. 596, 55 N.E.2d 370 (1944); In re United Culinary Bar Grill Employees, 299 N.Y. 577, 86 N.E.2d 104 (1949).

21. The problem of pre-emption was not adverted to in the decision, although the employees were presumably engaged in interstate commerce. In *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), the Supreme Court decided that under §301 of the Taft-Hartley Act, federal common law applied in breach of contract cases brought before federal courts. Although not yet decided, it would seem that this would mean that pre-emption would apply and remove cases such as *In re Ruppert* from state jurisdiction. In connection with pre-emption, see next preceding case note.

22. Madden v. Atkins, 4 N.Y.2d 283, 174 N.Y.S.2d 633 (1958).