Buffalo Law Review

Volume 5 | Number 3 Article 11

4-1-1956

Labor Law: Constitutionality of Section 301 (a) of Taft-Hartley Act

John G. Putnam Jr.

would incriminate the witness in another jurisdiction, either state or federal. *People v. Den Vyl,* 318 Mich. 645, 29 N. W. 2d 284 (1947); *State ex rel Doran v. Doran,* 215 La. 151, 39 So. 2d 894 (1949); *State ex rel Mitchell v. Kelly,* —— Fla. ——, 71 So. 2d 887, 896-97 (1954); 82 A. L. R. 1380, 1383 (1933).

These cases were cited by the majority in the instant case as authority for its decision. Particularly relied on was the *Den Vyl* case, in which a witness was allowed a privilege against self incrimination in a state proceeding on the grounds that his testimony would incriminate him in a federal prosecution then pending against him. But as was pointed out by the dissents in the instant case, the privilege allowed in the *Den Vyl* case was that provided by the Michigan Constitution. Similarly in the other cases relied on by the majority, the privilege allowed in each case was the constitutional privilege of the state which was conducting the proceedings. It was never the privilege of the other jurisdiction whose prosecution was feared. These courts have reached their desired results by construing the state's own exemption from compulsory self incrimination to be still in force and its application required because the imminent foreign prosecution made the state's immunity provisions insufficient as a replacement for the privilege. Such reasoning was impossible, however, in the instant case because, as admitted by the majority, the Louisiana privilege as conditionally granted by Article 1, section 11 of the constitution, was non-existent under Article 19, section 13 in cases of bribery investigations.

The majority opinion was perhaps motivated by a sense of fairness and justice which would seem to be lacking in a correct result under these unique facts, but which can not properly be avoided under present law. The only solution to this problem of dual sovereignty would seem to lie in an overruling of the *Twining* or *Feldman* decisions, or more probably in federal legislation granting comity to state immunity laws.

Edward H. Coughlin

Labor Law: Constitutionality of Section 301 (a) of Taft-Hartley Act

In an action by a union for construction of a collective bargaining agreement and enforcement of individual employees' alleged rights to unpaid wages under the agreement, *held:* the action was not within the federal court's jurisdiction as conferred by the L.M.R.A. provision that suits for violation of contracts between an employer and a union representing employees may be brought in federal courts without respect to amount in controversy or citizenship of parties, since the rights sought to be enforced were uniquely personal in nature. *Ass'n. of Westinghouse S. Emp. v. Westinghouse E. Corp.,* 348 U. S. 437 (1955).

Petitioner brought suit in a District Court for unpaid wages on behalf of their individual members. Jurisdiction was invoked under section 301(a) of the Taft-Hartley Act, 61 STAT. 156 (1947), 29 U. S. C. § 185 (1952), which provides that suits for violation of contracts between an employer and a union may be brought in a federal district court. Respondent moved to dismiss the complaint on, *inter alia,* two grounds: (1) that the court lacked jurisdiction over the subject matter; (2) that the complaint failed to state a claim for which relief could be granted. The court held that it had jurisdiction, but dismissed on the second ground. 107 F. Supp. 692 (W. D. Pa. 1952). The Court of Appeals, sitting en banc, vacated the order and directed dismissal for lack of jurisdiction, three justices dissenting. 210 F. 2d 623 (3d Cir. 1954). The majority held that section 301(a) granted jurisdiction only where there had been a breach of the collective bargaining agreement, whereas the claim here, if any, arose out of the individual contracts of hire.

In the Supreme Court the majority felt that the section was a procedural grant of jurisdiction, but narrowly construed the statute so as to avoid the Constitutional problems involved as to its validity. They held, therefore, that Congress did not intend to confer jurisdiction on the federal courts in this type of action, where the right was a uniquely personal one. These constitutional problems were: (1) If section 301(a) is a procedural grant of jurisdiction only, is there a federal question involved? (2) If state substantive law is to be applied does the action "arise under" a law of the United States, the limiting language of the Constitution upon the federal judiciary? U. S. CONST. art. III, § 2, cl. 1. Conversely, if federal law is to be applied, is it to be federal common law and has Congress created substantive rights in section 301(a)? The majority's reasoning was supplemented by the fact that a contrary result would greatly increase the number of cases in the crowded federal courts. Two concurring justices expressed the opinion that the legislative history and the language of the section were not sufficiently explicit to show a clear intent by Congress to allow this personal type of suit, and that this was not the time to raise constitutional questions. Mr. Justice Reed took the position that Section 301(a) was constitutional since the subject matter of the litigation was related to interstate commerce and would be constitutional even though a substantial amount of state law might have to be applied. He concurred in the result, however, because in this case the complaint failed to set forth a violation of the collective bargaining agreement, but merely violations of the individual employment contracts. Two justices dissented. They felt that the section was constitutional, that federal common law should be applied, and that the union had standing to sue.

This decision casts doubt upon the validity of many prior holdings in the

lower courts. The majority opinion indicates a feeling that section 301(a) is a procedural grant only, yet many lower courts had previously ascribed to this section the creation of substantive federal rights. *United Elec. Workers v. Oliver Corp.*, 205 F. 2d 376 (8th Cir. 1953); *Shirley-Herman Co. v. Local 210, Int'l Hod Carriers,* 182 F. 2d 806 (2d Cir. 1950). These courts had applied this substantive federal law only where in conflict with local state law. The right of the union to sue on the collective bargaining agreement has never been questioned when the benefit ran directly to the union. *Fay v. American Cystoscope Makers,* 98 F. Supp. 278 (S. D. N. Y. 1951). The instant decision not only makes it explicit that a union may not sue in behalf of its members to enforce their individual contracts of employment, but also casts doubt on the availability in federal courts of any remedy at all for the breach of a collective bargaining agreement in non-diversity cases. The holding of the majority seems to be that only suits which contain only federal substantive questions may be brought under section 301(a).

In New York, the union has a remedy in the instant case situation. The union is recognized as an entity and may sue or be sued as such. N. Y. GENERAL ASSOCIATION LAW, §§ 12, 13. Moreover, the union has been allowed to sue on behalf of the employees it represents. *Barth v. Addie Co.,* 271 N. Y. 31, 2 N. E. 2d 34 (1936), *rehearing den.* 271 N. Y. 615, 3 N. E. 2d 211 (1936).

As a procedural jurisdictional grant only, there is much to be said concerning the advisability of such a device as Section 301. In many states an unincorporated association may neither sue nor be sued. *Kingsley v. Amalgamated Meat Cutters,* 323 Ill. App. 353, 55 N. E. 2d 554 (1944). In the past, this has led to wild-cat strikes and stoppages which might otherwise have been prevented if such a remedy were available. *Ass'n of Westinghouse S. Emp. v. Westinghouse E. Corp.,* 348 U. S. 437, 457. Neither employer nor union had a means of enforcing its rights; it was to remedy this situation that Congress passed this Section. 93 *Cong. Rec.* 3839 (1947). Collective bargaining agreements became enforceable in a federal court without a prerequisite showing of diversity of citizenship. To go further, and to allow a union to sue in situations similar to the instant case would seem to be a sensible step forward, for it is much to be doubted that any one of the 4000 employees involved in the instant case would go to court for his mere $10-$20 each; yet in the aggregate, there was more than $45,000 involved. A useful tool in curbing labor strife has been rejected on the ground that Congress did not intend such a result.

Section 301(a) might be constitutionally sustained as a procedural grant, however, on the following line of reasoning: Congress has declared a labor policy, in industries affecting commerce, based on the principle of collective bargaining.

49 STAT. 449 (1935), as amended, 61 STAT. 136 (1947), 29 U. S. C. § 151 (1952). Failure to bargain collectively is an unfair labor practice, 29 U. S. C. § 158(a)(5) and is protected and enforced by the N.L.R.B. and the federal courts. 29 U. S. C. § 160 (a), (e). As such, the agreement resulting from such collective bargaining is a creation of the federal law; the breach of such agreement, even though governed and interpreted by state law, would be a breach of a federally- created right, and, therefore, enforceable in federal courts. The right to bargain collectively is a nullity without the remedy of enforcement.

If section 301(a) were sought to be held valid on a theory of Congress' having created new federal substantive rights in conjunction with the procedural jurisdictional grant, two pursuasive arguments would be presented in opposition. First, the language of the entire section and its legislative history disclose no intent to include any such rights; 93 CONG. REC. 3839 (1947); H. R. REP. No. 245, 80th Cong., 1st Sess. 6 (1947); and where the intent of Congress is so clearly contrary, the court should not ignore the will of the legislature. *Hopkins Federal Savings and Loan Ass'n. v. Cleary,* 296 U. S. 315 (1935). Second, the question of whether Congress had pre-empted the field and thus excluded state courts, already in doubt, would arise with greater force. Compare *Fay v. American Cystoscope Makers, supra,* with *Castle & Cooke Terminals v. Local 137,* 110 F. Supp. 247 (D. Hawaii 1953). In the former case, the court, in allowing removal, held that not only had Congress created federal substantive rights, but also had pre-empted the field. In the latter case, however, removal was refused because the words of the statute, "may be brought," indicated non-exclusive jurisdiction. If the ultimate decision were that Congress had not pre-empted the field, then the evil of forum-shopping would swiftly arise in those states which recognize unions as entities—an evil recognized and sought to be eliminated in diversity cases, in *Erie R.R. v. Tompkins,* 304 U. S. 64 (1938).

It appears to the writer that of the two solutions, sustaining section 301(a) as a procedural jurisdictional grant only is the more feasible and logical, consistent with both the legislative history and the language of the statute itself. There would be no forum-shopping, no growth of unneeded federal common law, and it would serve to fill a vacancy left in the procedural ranks of many states, providing enforcement where none was available previously. If the section is ultimately in those states where the union is not recognized as an entity, and perhaps more arbitration coverage in the collective bargaining agreement itself.

John G. Putnam, Jr.