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Labor Law—Arbitration

Irwin N. Davis

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its enforcement. Furthermore, inasmuch as the section has been invoked but two times in over ten years, the court finds no abuse of the method for affecting a resignation under it. Bad faith or malice on the part of the executive board is also found to be lacking in this instance. Hence, the plaintiff is bound by the constitution which defines the terms upon which the office of business agent is held.⁸

Perhaps, where a provision of the constitution or by-laws can actually be viewed as violative of public policy,⁹ or where the action of the union or its officers is arbitrary or unreasonable (i. e. with "malice" or in "bad faith"),¹⁰ a judicial tribunal would be justified in interfering with the internal policies of a labor organization. Since the courts are not particularly well suited for such interference however, it is best to allow a union to control its own affairs in the ordinary instance.

Arbitration

In *Bohlinger v. National Cash Register Co.*,¹¹ the Court of Appeals, in an action by an employer to stay arbitration, was asked to determine whether an arbitrable issue was raised when two employees of defendant were discharged for working for a company in competition with the employer during their off hours. The very broad arbitration clause in the collective contract read, "Seventeenth: In the event of any dispute between the parties hereto with reference to any matter not provided for in this Contract, or in reference to the terms, interpretations or application of this Contract, such disputes shall be referred to a Board of Arbitration . . ." While the collective contract defines a "discharge,"¹² it otherwise fails to elaborate on the employer's right to discharge without notice and without cause.

The majority of the court, finding no ambiguity in the language of the arbitration clause, holds that the parties contemplated the submission to arbitration not only of the terms, appli-

8. Even though a business agent is elected by his local union, the duties and responsibilities of his position render him a part of the parent union and intermediate bodies. (*Maltese v. Dubinsky*, *supra* note 1 at 456, 108 N. E. 2d at 606) Thus plaintiff is bound by the "contract" with the International.

9. See *Spayd v. Ringling Rock Lodge*, 270 Pa. 67, 113 Atl. 70 (1921), where the court refused to enforce a by-law depriving members of their state constitutional right to petition the legislature. Note, 35 HARV. L. REV. 332 (1922).

10. See *Fleming v. Motion Picture Machine Operators*, 16 N. J. Misc. 502, 1 Atl. 2d 850 (1938), where a member of defendant union was ordered reinstated because the real reason for his expulsion was due to his participation in a suit against the union and not because such member was a year behind in his dues payments.

11. 305 N. Y. 539, 114 N. E. 2d 31 (1953).

12. "[I]n the case of a discharge it is the intent permanently to terminate the employee's employment."

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cation, and interpretation of the collective agreement itself, but also any dispute which might arise in respect of matters not provided for in the agreement.¹³ In other words, the parties intended to include "any dispute . . . with reference to any matter not provided for in this contract."¹⁴ Thus, arbitration was ordered.

Judge Desmond, dissenting, seems to argue from the theory that a labor union only has those rights which are specifically granted by the collective contract and that those not granted are retained by management.¹⁵ Since the agreement in question places no restriction on the employer's common-law right to discharge its employees with or without cause,¹⁶ "there is nothing here to arbitrate."¹⁷

The parties to a collective agreement are familiar with the many problems and complexities inherent in the relations which they are attempting to control through the labor contract. They therefore realize that it would be impossible to provide in a written instrument for every contingency which might arise and that arbitration of disputes is the logical solution to this inability to put everything down on paper. The majority in the instant case, therefore, has followed the intent of the parties to settle their disputes through the arbitration process.

X. MUNICIPAL CORPORATIONS

Civil Service

The New York Civil Service Law spells out the mandate of the New York Constitution requiring that the civil service of the state and all its civil divisions shall be on the basis of merit and fitness determined as far as practicable by competitive examina-

13. Where the courts are asked to intervene prior to arbitration, they have held that their function is limited to a determination of two questions: 1.) was an agreement to arbitrate made, and 2.) has there been a refusal to arbitrate. *Mencher v. B. S. Abeles and Kahn*, 274 App. Div. 585, 590, 84 N. Y. S. 2d 718, 723 (1st Dep't 1948). C. P. A. § 1450 provides that the court's function is merely to determine whether "a written contract providing for arbitration was made . . . and there was a failure to comply therewith."

For an excellent and complete survey of the court's role in regard to labor arbitration, see Summers, *Judicial Review of Labor Arbitration*, 2 BFLQ. L. REV. 1 (1952).

14. *Lipman v. Hauser Shellac Co.*, 289 N. Y. 76, 80, 43 N. E. 2d 817, 819 (1942). However, the *Lipman* case concerns a contract for the sale of merchandise and is not a collective bargaining agreement. The failure of the New York courts to distinguish between ordinary and collective contracts has been severely criticized. See Summers, *supra* note 13 at 14.

15. *General Electric Co. v. U. E. R. & M. W. A.—C. I. O.*, 196 Misc. 143, 91 N. Y. S. 2d 724 (Sup. Ct. 1949).

16. *Watson v. Gugino*, 204 N. Y. 535, 541, 98 N. E. 18, 20 (1912); *Martin v. New York Life Insurance Company*, 148 N. Y. 117, 121, 42 N. E. 416, 417 (1895).

17. This is also the position taken by the Appellate Division. *Bohlinger v. National Cash Register Co.*, 280 App. Div. 751, 113 N. Y. S. 2d 46 (1st Dep't 1952).