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provided that supplementary insurance contracts do not have to conform with the statutes governing testamentary dispositions. In some jurisdictions the independent contract is deemed to be a valid third party donee beneficiary contract and not a testamentary disposition. *Mutual Ben. Life Ins. Co. v. Ellis, supra; Kansas City L. Ins. Co. v. Rainey,* 353 Mo. 477, 182 S. W. 2d 624 (1944); for a discussion of this aspect of the case see 1 BFLO. L. REV. 338 (1951).

When the court found that the variances between the option and the settlement contract did not impair the validity of the agreement as a supplementary contract, it was following legislative policy. It has long been recognized that life insurance policies including the use of optional modes of settlement are of great benefit to society and as a result they have been given the protection of statutory enactment. The court here arrived at the desired result, but the degree of variation before such contract will be held independent now presents an area that will probably be subjected to much litigation before its scope is defined.

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LABOR LAW—SPECIFIC PERFORMANCE OF ARBITRATION AGREEMENT GRANTED UNDER § 301 (a) TAFT-HARTLEY ACT

Union brought suit in federal district court under § 301 (a) of the Labor Management Relations Act, 61 STAT. 156 (1947), 29 U. S. C. § 185 (Supp. 1952) for an order compelling arbitration. *Held:* Specific performance of labor arbitration agreements may be granted under § 301 (a). *Textile Workers Union of America (CIO) v. American Thread Co.,* 113 F. Supp. 137 (D. Mass. 1953).

The common law rule was that specific performance of executory arbitration clauses in contracts would not be granted. *Kulakundis Shipping Co. v. Amtorg Trading Corp.,* 126 F. 2d 978 (2d Cir. 1942). The principal reasons given for this holding were that the courts would thereby divest themselves of their ordinary jurisdiction, *Insurance Co. v. Morse,* 20 Wall. 445 (U. S. 1874); that lay arbitration tribunals could not guarantee legal safeguards, *Tobey v. County of Bristol,* 23 Fed. Cas. 1313, No. 14,065 (C. C. D. Mass. 1845); and that the agreement to arbitrate might always be revoked by either party prior to an award, *People* ex rel. *The Union Life Insurance Co. v. Nash,* 111 N. Y. 310, 18 N. E. 630 (1888). Although specifically unenforceable, arbitration clauses were not invalid and damages were recoverable for their breach. *Red Cross Line v. Atlantic Fruit Co.,* 264 U. S. 109 (1924). The

common law doctrine barring specific performance of arbitration clauses has been much criticized in the federal courts, but it has been consistently enforced. *U. S. Asphalt Refining Co. v. Trinidad Lake Petroleum Co.*, 222 Fed. 1006 (S. D. N. Y. 1915).

The enactment of arbitration statutes in various jurisdictions has reversed the common law doctrine. See N. Y. C.P.A. §§ 1448-1469. The Federal Arbitration Act, 9 U. S. C. § 1 (1946) specifically excludes ". . . contracts of employment of . . . any . . . class of workers engaged in foreign or interstate commerce." There is disagreement in the federal courts as to the status of collective bargaining agreements under this section. It is now held in two circuits that such agreements are contracts of employment within the contemplation of the statute. *International Union of United Furniture Workers v. Colonial Hardwood Flooring Co.*, 168 F. 2d 33 (4th Cir. 1948); *Gatliff Coal Co. v. Cox*, 142 F. 2d 876 (6th Cir. 1944). *Contra: Lewittes & Sons v. United Furniture Workers*, 95 F. Supp. 851 (S.D.N.Y. 1951); see *Tenney Engineering, Inc. v. United Electrical Workers*, U. S. Ct. of Appeals, 3d Cir. Oct. 16, 1953.

The court in the instant case refused to consider the applicability of the arbitration statute, holding that § 301 (a) alone was determinative of the issue. The section provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties . . ." The question of whether federal or state law shall apply to determine the rights of the parties in suits brought under § 301 (a) has been the subject of some discussion. Note, 57 YALE L. J. 630 (1948). The view that federal law should apply has been favored by the courts. *International Union of Operating Engineers v. Dahlem Construction Co.*, 193 F. 2d 470 (6th Cir. 1951). *Contra: Mercury Oil Refining Co. v. Oil Workers International Union*, 187 F. 2d 980 (10th Cir. 1951). The question of granting specific performance, being a matter of remedy rather than rights, would probably be governed by the law of the forum no matter which substantive law applied. *Boston & Maine Transp. Co. v. Amalgamated Ass'n of Street Electric Railway & Motor Coach Employees*, 106 F. Supp. 334 (D. Mass. 1952).

In considering the application of federal remedies in the principal case, the court brushes aside the traditional reasons for not specifically enforcing arbitration contracts as "weak historical arguments" and asserts that the doctrine which they support should be abandoned where the intent of legislation in the field favors the enforcement of such contracts. The general rule is that,

where the meaning of a statute is not clear, courts should be guided by legislative intent. *Jamison v. Encarnacion*, 281 U. S. 635 (1930). But the court should have a substantial basis for determining such intent and speculative reasoning is to be avoided. *Foltz v. Davis*, 68 F. 2d 495 (7th Cir. 1934). The legislative documents concerning 301 (a) do not mention specific performance of arbitration agreements as a contemplated remedy. See SEN. REP. No. 105, 80th Cong., 1st Sess. 15-17 (1947).

The injunction prohibition of the Norris-LaGuardia Act, 47 STAT. 70 (1932), 29 U. S. C. § 101 (1946), presents an obstacle to the granting of specific performance, but the court in the instant case followed a recent decision holding that the act does not apply to mandatory injunctions enforcing contract obligations. *Milk & Ice Cream Drivers & Dairy Employees Union v. Gillespie Milk Products Corp.*, 203 F. 2d 650 (6th Cir. 1953). Before this decision it was generally thought that the Norris-LaGuardia Act was a bar to injunctive relief for contract violations in labor disputes. *Alcoa S. S. Co. v. McMahon*, 173 F. 2d 567 (2d Cir. 1949), *cert. denied*, 338 U. S. 821 (1949). See Rice, *A Paradox of Our National Labor Law*, 34 MARQ. L. REV. 233 (1951). *But see Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 562 (1937).

It should be noted that recent cases granting specific enforcement of arbitration awards, as distinguished from agreements to arbitrate, in suits brought under § 301 (a) do not alter the common law doctrine. See *Textile Workers Union of America v. Aleo Mfg. Co.*, 94 F. Supp. 626 (D.N.C. 1950); *Milk & Ice Cream Drivers & Dairy Employees Union v. Gillespie Milk Products Corp., supra.* Some misunderstanding has resulted from the failure to make this distinction. See Katz and Jaffe, *Enforcing Labor Arbitration Clauses by Section 301, Taft-Hartley Act*, 8 ARB. J. 80 (1953). Arbitration awards were specifically enforceable at common law. *United Fuel Co. v. Columbian Fuel Corp.*, 165 F. 2d 746 (4th Cir. 1948).

The absence in the statute of an express provision for specific performance, and in the legislative history of any direct indication that specific performance was contemplated as a remedy under § 301 (a) does not support the holding in this case. The court's contention that ". . . Congress, had it considered the matter, would have expected federal courts to accord specific performance of arbitration clauses . . ." (p. 141) is, on its face, speculative reasoning. That the rule of non-enforcement of arbitration agreements is antiquated and should be abandoned cannot be denied, but it would seem that such a change is more properly a subject of legislative than judicial action.

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