

Michigan Law Review

Volume 60 | Issue 6

1962

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Recommended Citation

John M. Price, *Labor Law-Collective Bargaining Agreements-Sham Exception to the Parol Evidence Rule in Welfare Trust Fund Agreement*, 60 MICH. L. REV. 810 (1962).

Available at: <https://repository.law.umich.edu/mlr/vol60/iss6/9>

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LABOR LAW—COLLECTIVE BARGAINING AGREEMENTS—SHAM EXCEPTION TO THE PAROL EVIDENCE RULE IN WELFARE TRUST FUND AGREEMENTS—Defendant, shortly after commencing a small-scale strip-mining operation, signed a standard United Mine Workers collective bargaining agreement. He claimed that before signing he informed the union representative that he could not pay the union wage scale, or the specified royalty payments to the plaintiffs, trustees of the union welfare and retirement fund, and that he signed only after being assured that the agreement was a mere formality. Defendant did not pay union wages, and sent monthly checks to the plaintiffs only in amounts he felt he could afford. Plaintiffs brought suit on the written agreement for payment of the royalties on coal mined by the defendant and were awarded a summary judgment. On appeal, *held*, reversed and remanded, one judge dissenting.¹ The facts were not sufficiently established to determine whether or not the parol evidence rule should be invoked; but if the defendant can show that the signed contract was not the real agreement between himself and the union, he

¹ The dissenting judge gave three reasons why the defendant failed to state an adequate defense: (1) trust fund agreements are required to be in writing; (2) there should be no sham exception to the parol evidence rule in suits brought on collective bargaining agreements; and (3) even if the defendant could rely on an oral agreement in a suit by the union, he cannot assert it as a defense against trustees. Principal case at 200.

should not be held liable on the written terms. *Lewis v. Lowry*, 295 F.2d 197 (4th Cir. 1961).

Ever since the Supreme Court decision in *Textile Workers Union v. Lincoln Mills*,² there has existed a question regarding the extent to which the federal courts would develop rules specially adapted to the collective bargaining contract rather than applying ordinary commercial contract law in suits brought under section 301 of the Labor-Management Relations Act.³ Recent decisions by the Supreme Court have focused on the unique requirements of the federal labor policy and indicate a trend away from the use of traditional contract doctrines. The Court's decisions in the three *Steelworkers* cases,⁴ which greatly broadened the jurisdiction of the labor arbitrator, emphasized the fact that a collective bargaining agreement is "more than a contract."⁵ The labor agreement was characterized as a "generalized code"⁶ entered into by the parties in an "effort to erect a system of industrial self-government."⁷ Another example is *Lewis v. Benedict Coal Co.*,⁸ where the Court affirmed a Sixth Circuit decision which held that the commercial contract rule concerning set-off in a third party beneficiary situation was inapplicable in a suit brought by trustees of a welfare fund.⁹ The affirming members of the Court found that the LMRA,¹⁰ by requiring the employer and the union to share the responsibility for the management of the welfare fund, had created an atypical community of interest between the promisor and the third party beneficiary. Looking upon royalty payments as merely another form of compensation to the employees, the affirming members of the Court hinted that an employer's obligation to pay "might be thought to be incorporated into the individual employee contracts."¹¹ The dissenting members agreed that in construing a collective bargaining agreement the national labor policy must be taken into account. But they felt that the affirming justices had unnecessarily narrowed the scope and applicability of conventional contract principles.¹² The criticism voiced by the dissent in the *Benedict* case has been reiterated by some of the leading writers in the field, who feel that some standard contract rules are quite pertinent in a

² 353 U.S. 448 (1957).

³ 61 Stat. 156 (1947), 29 U.S.C. § 185 (1958).

⁴ *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

⁵ *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, *supra* note 4, at 578.

⁶ *Ibid.*

⁷ *Id.* at 580.

⁸ 361 U.S. 458 (1960), *affirming* 259 F.2d 346 (6th Cir. 1958).

⁹ This was the same fund as the one involved in the principal case.

¹⁰ LMRA § 302(c)(5)(B), 61 Stat. 157 (1947), 29 U.S.C. § 186(c)(5)(B) (1958).

¹¹ *Lewis v. Benedict Coal Co.*, 361 U.S. 459, 469 (1960).

¹² *Id.* at 475 (Mr. Justice Frankfurter dissenting).

labor environment and that it would be foolish to condemn conventional doctrines, time-tested and sound, merely because they traditionally have been used in a somewhat different context.¹³

The lower federal courts have recently decided a number of cases brought by trustees seeking enforcement of trust fund payments. In most of the cases—including the principal case—where small-scale operators have attempted to escape payment by claiming to have entered into oral agreements prior to signing the trust fund agreement, the courts have reached their decisions by using common-law rules.¹⁴ But they generally have been unwilling to characterize the writing as sham, void from its inception, and have often followed the lead of the district court in *Lewis v. Mearns*¹⁵ in dismissing the mine owners' defenses.¹⁶ In the *Mearns* case the court held that even if a fraud had been perpetrated on the employer in procuring a written agreement, the agreement was voidable rather than void under West Virginia law, and the employer's acts¹⁷ represented ratification and acceptance of the contract. However, the decision in *Mearns* recognizes but one of two opposing common-law views. A majority of state courts recognize the sham exception to the parol evidence rule and would allow a party to a commercial contract to show a prior oral agreement rendering the written contract void.¹⁸ The court in the principal case approved the use of this latter rule in a labor context. Assuming that a commercial contract rule is applicable in the situation presented by these trust fund cases, the objective of national uniformity in the disposition of cases brought under section 301 is hardly advanced by determining each case on the basis of the rule of the particular jurisdiction.

¹³ See, e.g., Cox, *The Legal Nature of Collective Bargaining Agreements*, 57 MICH. L. REV. 1 (1958); Meltzer, *The Supreme Court, Arbitrability and Collective Bargaining*, 28 U. CHI. L. REV. 464, 480 (1961).

¹⁴ At common law, all oral agreements prior to or contemporaneous with a valid contract are inadmissible in evidence. RESTATEMENT, CONTRACTS § 237 (1932). But a party to the contract is allowed to prove facts rendering the agreement void or voidable. *Id.* § 238(b). In most instances the agreement will be declared void if the parties, at the time of signing, avow that they are not signing a binding contract. 3 CORBIN, CONTRACTS § 577, at 385 (2d ed. 1960). A third party beneficiary to a contract takes an interest which is subject to the same limitations. RESTATEMENT, CONTRACTS § 140 (1932). But a sham contract which is relied upon in good faith by the beneficiary to his detriment may become enforceable against the promisor by estoppel. 6 CORBIN, CONTRACTS § 1473, at 872 (2d ed. 1960).

¹⁵ 168 F. Supp. 134 (N.D.W. Va. 1958), *aff'd per curiam*, 268 F.2d 427 (4th Cir. 1959).

¹⁶ E.g., *Lewis v. Gilchrist*, 198 F. Supp. 239 (N.D. Ala. 1961); *Lewis v. Young & Perkins Coal Co.*, 190 F. Supp. 838 (W.D. Ky. 1960). *But see Lewis v. Mearns*, 189 F. Supp. 503 (W.D. Pa. 1960), *aff'd per curiam*, 297 F.2d 101 (3d Cir. 1961).

¹⁷ The court in the *Mearns* case held that defendant's failure to deny liability under the trust fund clause, the fact that he filled out UMW grievance forms for two employees he had discharged as provided in the written contract, and the fact that he checked off union dues for his employees were all acts which indicated that he thought he was operating under a written contract.

¹⁸ See note 14 *supra*.

Although the tendency has been to treat allegedly sham trust fund agreements as equivalent to commercial contracts, any rule to be applied in construing a labor agreement must be analyzed in light of the national labor policy. The dissenting opinion in the principal case presents a summation of arguments for according special treatment to a trust fund agreement made in a collective bargaining context. First, reference is made to the statement in the *Benedict* case that royalty payments are an indirect form of compensation, and the argument is made that employees have a right to know exactly what they are receiving and how well the union has represented them. This argument evidently assumes not only that a signed contract is the one way employees have of determining the outcome of negotiations,¹⁹ but, more importantly, that there is some sort of detrimental reliance by the employees on the terms of a signed agreement. As a generality the tacit assumptions in this argument are probably true. But in the employment situations found in a majority of those cases brought under the UMW trust fund clause, it is at least questionable whether there was any employee reliance on the terms of the agreement.²⁰ In the principal case, for instance, the mine owner did not even pay his employees the wages required by the national agreement. Secondly, the *Benedict* case is cited for the proposition that the trustees' rights under the agreement are not dependent upon the rights of the union; that is, although the employer might have an adequate defense against claims made by the union, his obligation to pay royalties to the trustees cannot be diminished by an oral agreement made with the union's agent. It is submitted that this interpretation of *Benedict* is much too broad. That case decided only where to attach liability for injuries caused by the union, and the decision was based on federal policy which is arguably inapplicable in determining whether there is a contract at all on which trustees can rest an action.²¹ Finally, reference is made to the *Steelworkers* cases and the characterization in those decisions of the collective bargaining agreement as

¹⁹ The LMRA itself evidences the importance Congress has attached to the signed agreement. Section 302 of the act, in attempting to safeguard the interests of trust fund beneficiaries from possible mismanagement by union officials, requires a written agreement, signed by the employer, setting out the terms of the trust fund payments. Further, the written agreement has long been recognized as a significant step in the good faith bargaining process, and the LMRA, in defining the duty to bargain collectively, emphasizes the importance of such an agreement in attaining the act's objective of industrial peace. NLRA § 8(d), added by 61 Stat. 142 (1947), 29 U.S.C. § 158(d) (1958). See generally Feinsinger, *The National Labor Relations Act and Collective Bargaining*, 57 MICH. L. REV. 807, 812 (1959).

²⁰ These cases also suggest an inquiry into a union's fiduciary duty to its members in the collective bargaining context.

²¹ The Court cited as controlling § 301(b) of the LMRA, 61 Stat. 156 (1947), 29 U.S.C. § 185(b) (1958), which states that "any money judgment against a labor organization in a district court of the United States shall be enforceable only against its assets, and shall not be enforceable against any individual member or his assets." (Emphasis added.)

an industrial constitution. But the governmental nature of the agreement comes from its broad coverage of the relationships of a large number of people.²² In the principal case, and in a majority of the other cases decided in this area, the defendant mine owner employed only a very small number of men, and questions affecting working conditions were capable of being settled on the scene. The analogy to a constitution seems to break down when contracts cover such small-scale operations and the practicalities of the situation require something much less than the administrative tools provided in the standard bargaining agreements.

The federal judiciary has not yet given adequate consideration to the unique problem presented by cases, such as the principal case, involving mine operators who employ small numbers of people. It is submitted that in such cases the common-law exception to the parol evidence rule should be made available to defendant employers. This is not to say that an oral agreement between an employer and a union agent will in every instance be a defense to a claim brought under the written agreement. The national labor policy requires the special protection of employees covered by a collective bargaining agreement, and employees who actually rely on the benefits due them under a trust fund clause should be allowed to recover those benefits. Indeed, in most instances employees will work in reliance on the terms of the written agreement, and there should be a presumption of such reliance in all cases. But in those cases where the employer can show that there has been no employee reliance on the terms of the trust fund clause, he should be allowed also to show that the writing was not the actual agreement between himself and the union. Certainly the LMRA must be construed to contemplate the written agreement representing the end product of the good faith collective bargaining process to be the actual agreement of the bargaining parties.²³ But to place a stamp of approval on all written agreements, without allowing an inquiry into the reasons for their formation or the reliance made on them by the interested parties, seems not only to work an injustice on employers but to misinterpret the national labor policy.

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²² See Cox, *supra* note 13, at 22.

²³ The problems discussed herein might fruitfully be considered in the light of the implications of the "good faith" bargaining obligation.