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Labor Law - Arbitration - Power of Arbitrator to Enjoin Union from Continuing Slowdown

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LABOR LAW—ARBITRATION—POWER OF ARBITRATOR TO ENJOIN UNION FROM CONTINUING SLOWDOWN—An arbitrator, acting under a collective bargaining agreement which called for a “speedy arbitration” procedure,¹ issued an award enjoining the unions from continuing a slowdown in violation of that clause of the agreement forbidding strikes, lockouts, and slowdowns. A Supreme Court order granted the employers’ motion to confirm the award and overruled the unions’ cross motion to vacate.² The unions claimed that the arbitrator, in issuing the injunction, had exceeded the powers granted him under the agreement and had acted contrary to section 876a of the Civil Practice Act (the New York Anti-Injunction Act).³ The Appellate Division affirmed the order with minor modifications of form.⁴ On appeal, *held*, affirmed. The award of an injunction was proper since nothing short of this would have accomplished the intent of the parties that there be expeditious and immediately effective relief. Nor does section 876a bar an injunction as part of an arbitration award if the bargaining agreement contemplated its inclusion. *Matter of Ruppert*, 3 N.Y. (2d) 576, 148 N.E. (2d) 129 (1958).

Today, with arbitration provisions contained in almost all collective bargaining agreements,⁵ the question how far an arbitrator’s power extends has been productive of much speculation.⁶ Arbitrators have employed

¹ Under this clause either party could waive other adjustment procedures embodied in the contract and submit the dispute directly to arbitration. The arbitrator was required to schedule a hearing within 24 hours and to issue a decision not later than 48 hours after the conclusion of the hearing.

² *Matter of Ruppert*, 2 Misc. (2d) 744 (1956).

³ New York Civil Practice Act (Cahill-Parsons 1955) §876a provides that, except under certain very restricted conditions, “no court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction involving or growing out of a labor dispute. . . .”

⁴ *Matter of Ruppert*, 2 App. Div. (2d) 670 (1956).

⁵ Over 90% of the estimated 100,000 collective agreements currently in effect provide for arbitration as the terminal step in grievance procedure. See Davey, “The Proper Uses of Arbitration,” 9 LAB. L.J. 119 at 121 (1958).

⁶ See in this connection Shulman, “Reason, Contract, and Law in Labor Relations,” 68 HARV. L. REV. 999 at 1009 (1955).

a wide range of remedies in their awards, including damages,⁷ liquidated damages,⁸ penalties,⁹ mandatory injunctions,¹⁰ and in at least one other case a restraining injunction similar to that of the principal case.¹¹ New York, beginning with its pioneering statute of 1920, has been a leader in the encouragement of arbitration¹² and allows the arbitrator a great amount of freedom. New York courts will vacate an award only upon certain limited grounds, principal among these being lack of jurisdiction.¹³ Nevertheless, in the instant case the court conceded it could find no previous decision wherein it had confirmed an award containing a restraining injunction. However, it reaffirmed the doctrine that an arbitrator's jurisdiction is defined by the arbitration contract and that such agreements are to be construed, like other contracts, to give effect to the intent of the parties.¹⁴ From this it was reasoned that inclusion of the "speedy arbitration" provision indicated an evident intent that there be rapid and immediately effective relief, concluding that nothing short of an injunction would have accomplished that intent. The court cited no precedent for this conclusion. Nor did it analyze likely alternative interpretations, such as the possibilities that the parties meant to authorize only an interpretation of the contract or the immediate issuance of an award indicating whether or not a contract violation existed. Such possible interpretations appear relatively persuasive when the intent of the parties is viewed against the background of labor's longstanding and vociferous antipathy toward injunctions.¹⁵ In light of this history it would seem

⁷ *International Harvester (Illinois)*, 9 LAB. ARB. REP. 894 (1947); *In re Phillips Chemical Co. (Texas)*, 17 LAB. ARB. REP. 721 (1951).

⁸ *Matter of Mencher*, 276 App. Div. 556 (1950).

⁹ *Matter of East India Trading Co.*, 305 N.Y. 866, 114 N.E. (2d) 213 (1953).

¹⁰ *Matter of Devery*, 292 N.Y. 596, 55 N.E. (2d) 370 (1944); *Matter of United Bar & Grill Employees*, 299 N.Y. 577, 86 N.E. (2d) 104 (1949).

¹¹ *Wholesale Laundry Board of Trade v. Tarrullo*, 103 N.Y.S. (2d) 23 (1951).

¹² Other states which have adopted a similar attitude include New Jersey, Massachusetts, Oregon, California, Louisiana, Pennsylvania, Arizona, Connecticut, New Hampshire, Rhode Island, Wisconsin, Ohio, Michigan and Washington. These "reform states" followed generally the 1920 New York arbitration law under which agreements to submit to arbitration future disputes arising out of the contracts containing such agreements were made legally valid, enforceable and irrevocable except as any other contract is revocable. The statute also closed the courts to parties to arbitration agreements until they had complied with their contracts and authorized the courts to help the parties expedite arbitration in various ways. See generally KELLOR, *ARBITRATION AND THE LEGAL PROFESSION* 38-39 (1952).

¹³ "The award of an arbitrator cannot be set aside for mere errors of judgment, either as to law or as to facts. If he keeps within his jurisdiction, and is not guilty of fraud, corruption, or other misconduct affecting his award, it is unassailable." *Matter of Wilkins*, 169 N.Y. 494 at 496, 62 N.E. 575 (1902); *Matter of Pine St. Realty Co. v. Coutroulos*, 233 App. Div. 404 (1931).

¹⁴ *Dodds v. Hakes*, 114 N.Y. 260 at 265, 21 N.E. 398 (1889); *Matter of Marchand v. Mead Morrisson Mfg. Co.*, 252 N.Y. 284, 169 N.E. 386 (1929).

¹⁵ See generally FRANKFURTER AND GREENE, *THE LABOR INJUNCTION* (1930).

that an express provision for injunction would be required to establish an intent, insofar as the union is concerned, to authorize injunctive relief.

Having held that the parties intended the awarding of an injunction, the court was confronted by section 876a of the Civil Practice Act which was claimed by the union to deprive the arbitrator of jurisdiction despite any contrary intent of the parties.¹⁶ By interpreting this provision as inapplicable to an injunction which, while judicially enforced, is issued initially by an arbitrator, the court avoided a clash between the statute and the public policy of encouraging arbitration contracts. It reasoned that since the questioned legislation was the result of union resentment against the use of injunctions in labor disputes and since the union voluntarily subjects itself to arbitration, the parties should have power to authorize an award of injunctive relief by the arbitrator. The willingness in this case to let the parties' agreement control, necessitating as it did a narrow interpretation of section 876a, seems a definite extension of the New York policy to encourage arbitration. Although the decision is significant in its enhancement of the effectiveness of the arbitrator, the danger is that it may cause labor to reassess its present acceptance of arbitration as a substitute for economic coercion. The real impact of the principal case will, however, probably be limited for two reasons. First, the decision reached was apparently dependent upon the contract provision calling for "speedy" arbitration, a phrase not likely to be found in many agreements. Second, the result of this case can be effectively avoided by the insertion in a contract of a simple phrase expressly negating any intention to give the arbitrator power to award injunctive relief.

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¹⁶ See note 3 *supra*.