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Labor Law - Collective Bargaining - Enforceability of Collective Agreements Under Section 301(a)

Douglas Peck S.Ed.
University of Michigan Law School

LABOR LAW — COLLECTIVE BARGAINING — ENFORCEABILITY OF COLLECTIVE AGREEMENTS UNDER SECTION 301 (a) — Plaintiff, an unincorporated labor organization, filed suit in federal district court to enforce a collective bargaining agreement with defendant. The complaint alleged that defendant was obligated by the agreement to pay employees represented by the plaintiff their full salary for the month of April 1951 regardless of the fact that they had been absent on certain working days. The suit was brought under section 301 (a) of the Labor-Management Relations Act of 1947.[1]

[1] 61 Stat. L. 156 (1947), 29 U.S.C. (1952) §185.

On appeal from a court of appeals decision directing dismissal for lack of jurisdiction, *held,* affirmed, two justices dissenting. An action by a labor organization to enforce terms of a collective bargaining agreement which are peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee is not within the jurisdiction of the federal courts as conferred by the Labor-Management Relations Act. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.,* 348 U.S. 437, 75 S. Ct. 488 (1955).

The principal case is significant both for the narrow construction it places upon section 301 (a) of the Taft-Hartley Act and because it represents the first Supreme Court discussion of the constitutionality of that provision. The constitutional problem stems from the fact that although section 301 (a) purports to allow suits in the federal district courts to enforce collective bargaining agreements by or against labor unions, the substantive rules to govern in such actions are not provided. According to the majority opinion, this raises some doubt as to whether actions under section 301 (a) can be sustained as cases "arising under" the Constitution or laws of the United States.[2] Considering only the language of article III of the Constitution, one would be reluctant to conclude that a case arises under federal law solely because Congress has provided that the district courts shall have jurisdiction.[3] However, federal question jurisdiction has been sustained on somewhat broader grounds than the constitutional language would appear to authorize[4] and it is still likely that the constitutionality of section 301 (a) may be upheld.[5] The power of Congress to regulate commerce undoubtedly embraces the power to provide substantive rules to govern the formation and interpretation of collective bargaining agreements in an industry affecting commerce. Moreover, Congress, in

[2] U.S. CONST., art. III, §2. In connection with this problem see 57 YALE L. J. 630 (1948); Forrester, "The Jurisdiction of Federal Courts in Labor Disputes," 13 LAW AND CONTEM. PROB. 114 (1948); 17 A.L.R. (2d) 614 (1951). On "federal question" jurisdiction in general see Mishkin, "The Federal Question in the District Courts," 53 COL. L. REV. 157 (1953); Wechsler, "Federal Jurisdiction and the Revision of the Judicial Code," 13 LAW AND CONTEM. PROB. 216 (1948).

[3] In Gully v. First National Bank, 299 U.S. 109, 57 S.Ct. 96 (1936), Justice Cardozo indicated that "a suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." Although this was said in construing a statutory grant of jurisdiction, the language used in that grant was the same as that appearing in article III and Cardozo indicated that his interpretation would also apply to the constitutional language.

[4] "Federal incorporation" was used as a basis for sustaining jurisdiction in Osborn v. Bank of the United States, 9 Wheat. (22 U.S.) 737 (1824), though the law to be applied was state law. And in Schumacher v. Beeler, 293 U.S. 367, 55 S.Ct. 230 (1934), suits by a trustee in bankruptcy were sustained as presenting a federal question, even where, again, state law was to be applied.

[5] See the articles cited in note 2 supra.

lieu of formulating those substantive rules itself, could constitutionally declare the existence of a federal substantive right to enforce these contracts and leave to the courts the task of formulating, from state or federal law, the specific rules to be applied.[6] Under these circumstances, it is likely that the court will "imply" a federal substantive right to enforce these collective agreements.[7]

Of more immediate importance, however, is the restrictive interpretation placed by the Court upon the scope of section 301 (a). Justice Frankfurter, speaking for the majority, purports to justify this interpretation on the grounds that (1) the serious constitutional problem will be avoided and (2) Congress did not intend to open the federal courts to the "flood of grievances" which would result if the present action were allowed.[8] When two possible constructions of a congressional enactment are available, one of which is clearly valid and the other of doubtful constitutionality, there may be some basis for adopting the former on the theory, however fictional, that Congress intended to do what it lawfully could do. But the effect of this method of construction in the principal case is not to sustain an act of Congress but merely to postpone consideration of its constitutionality. It is doubtful if the premise for the "flood of litigation" argument is a valid one, either, for the advantages of "speed, economy, justice and privacy" have increasingly led parties to favor settlement by arbitration over resort to the courts.[9] Even assuming the validity of the premise, however, the answer is that Congress was aware of this argument[10] and enacted section 301 (a) in spite of it. Nor does the conceptual approach of Justice Reed's concurring opinion[11] seem adequate to sustain the result reached. Although the employer's acts were a violation of the employees' individual hiring contracts, they were equally a breach of the collective agreement and nothing in the language of section 301 (a) suggests a differentiation. Thus, none of the arguments advanced in favor of the narrow construction effectively sustain such an interpretation. As the dissenting

[6] Justice Reed suggests that in such a case state law is "incorporated by reference." Principal case at 463. The majority opinion also recognizes that Congress could have authorized the federal courts to formulate the substantive rules to govern in §301 actions but concludes that they did not intend to do so. Principal case at 443.

[7] This has been the rationale used in the lower courts to sustain the constitutionality of §301. Wilson & Co. v. United Packinghouse Workers, (D.C. N.Y. 1949) 83 F. Supp. 162; Colonial Hardwood Flooring Co. v. United Furniture Workers of America, (D.C. Md. 1948) 76 F. Supp. 493. See 57 YALE L. J. 630 (1948).

[8] Principal case at 460.

[9] Kaye and Allen, "Union Responsibility and the Enforcement of Collective Bargaining Agreements," 30 BOST. UNIV. L. REV. 1 at 16, 26 (1950).

[10] See the minority report of Senator Thomas, S. Rep. 105, part II, 80th Cong., 1st sess., p. 13 (1947).

[11] Justice Reed's position is that there was no breach of the collective bargaining agreement so as to confer jurisdiction under §301, but rather a breach of the employees' individual hiring contracts. The results reached under this view, however, will probably not vary significantly from those which would be reached under the position taken in the majority opinion.

opinion points out, one of the policies underlying the National Labor Relations Act was the desire to promote industrial stability by encouraging the peaceful settlement of disputes. Accordingly, it was recognized that the collective bargaining relation between employee and union ought not to end with the negotiation of the collective agreement.[12] Section 301 (a) was enacted in furtherance of this policy[13] and ought to be interpreted in the same spirit. This being true, a sounder construction would be one which leads to greater enforceability of the collective bargaining agreement.[14] At least one would seem justified in expecting more convincing reasons to justify a departure from what the language of the provision clearly seems to contemplate.

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[12] Two examples of this treatment, both cited in Justice Douglas' dissenting opinion, may be noted: (1) under §8 (d) the employer and the representative of the employees have a duty to bargain "with respect to . . . terms and conditions of employment, or the negotiation of an agreement, *or any question arising thereunder.*" 61 Stat. L. 142 (1947), 29 U.S.C. (1952) §158 (d) (italics added) and (2) although the individual employee's right to present his own grievance is recognized the union must be given the opportunity to be present at the adjustment of that grievance. 61 Stat. L. 143 (1947), 29 U.S.C. (1952) §159 (a).

[13] The primary concern of the legislators appears to have been the elimination of the difficulty involved in bringing suits against labor unions. The provision was also intended to promote stability during the lifetime of these collective agreements by making them "equally binding and enforceable on both parties." S. Rep. 105, 80th Cong., 1st sess., p. 15. (1947).

[14] In this connection, Justice Frankfurter's contention that the rationale of the court of appeals decision in the instant case is repugnant to the policy of the National Labor Relations Act would seem to be equally applicable to his own position, since the argument involves an admission that, even as to grievances involving one employee or a few employees, the union has a legitimate interest in enforcing the collective agreement. Principal case at 456.