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Labor Law - LMRA - Stock Purchase Plan as Subject of Compulsory Collective Bargaining

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LABOR LAW—LMRA—STOCK PURCHASE PLAN AS SUBJECT OF COMPULSORY COLLECTIVE BARGAINING—An employer unilaterally instituted a stock purchase plan, membership in which was voluntary and open to regular employees who had at least one year of service and were at least thirty years of age. Members, through authorized payroll deductions, were to contribute monthly not less than five dollars but not more than five percent of their earnings. The employer contributed monthly an amount equal to fifty percent of each member contribution and annually an amount dependent upon the ratio of profits to invested capital, up to a combined total of seventy-five percent of the members' contributions. Member contributions were kept in individual member accounts and employer

contributions in individual trustee accounts. A trustee was to use both accounts to purchase shares of stock of the employer privately or in the open market and to credit purchases to the respective accounts. Stock was to be distributed to a member at age fifty-five if a man or fifty if a woman, or in event of total disability or death, to the member or his beneficiary respectively. Nothing was to be distributed to anyone while a member of the plan, but if a member left the company's employ before reaching the required age he received all his member account and a specified percent of his trustee account, the amount depending upon the length of time he had participated. One week after the announcement of the plan, the certified union requested the employer to bargain concerning it, but the employer refused, contending that the plan was not subject to compulsory collective bargaining. *Held*, the plan concerns "wages" and "conditions of employment" within the meaning of section 8 (d)¹ of the amended National Labor Relations Act, and therefore the employer violated sections 8 (a) (5)² and 8 (a) (1)³ of the act in refusing to bargain. The Board expressly refrained from deciding whether the unilateral promulgation of the plan per se was a violation of the act.⁴ *Richfield Oil Co.*, (N.L.R.B. 1954) CCH Lab. Cas. ¶52,345.

Although cases involving extensive construction of the phrase "wages, hours and other terms and conditions of employment" have been relatively few, a recent increase in union pressure to expand the traditional area of collective bargaining has made the issue more acute.⁵ In the absence of more precise directions from Congress,⁶ the Board, with judicial approval, has held in several recent cases that the exercise of an allegedly exclusive management function di-

¹ ". . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to . . . confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . ." Labor-Management Relations Act, 1947, 61 Stat. L. 142, 29 U.S.C. (1952) §157.

² "It shall be an unfair labor practice for an employer to refuse to bargain collectively. . . ." 61 Stat. L. 141 (1947), 29 U.S.C. (1952) §158.

³ "It shall be an unfair labor practice for an employer to interfere with . . . employees in the exercise of the rights guaranteed in section 157," e.g., the right to bargain collectively. 61 Stat. L. 140 (1947), 29 U.S.C. (1952) §158.

⁴ The NLRB and the courts have generally held that §8(a)(5) precludes the employer from unilaterally increasing or decreasing wages, or making other changes in working conditions without first consulting the union. See Weyand, "Majority Rule in Collective Bargaining," 45 COL. L. REV. 556 at 579 (1945). Compare TELLER, MANAGEMENT FUNCTIONS UNDER COLLECTIVE BARGAINING 92-93 (1947), where the test of legality is said to be whether such action has an anti-union effect or purpose.

⁵ During World War II the War Labor Board was often confronted with this problem but failed to lay down any guiding, consistent principles. For a discussion of its handling of such cases, see TELLER, MANAGEMENT FUNCTIONS UNDER COLLECTIVE BARGAINING 29-34 (1947).

⁶ In amending the NLRA in 1947, Congress considered delimiting more precisely the area of compulsory collective bargaining, but failed to do so. See H.R. 3020, 80th Cong., 1st sess. (1947).

rectly involving or "materially affecting"⁷ wages, etc. is subject to compulsory collective bargaining.⁸ The term "wages" has been held to include any direct economic benefit accruing to employees as a result of their employment relationship,⁹ and the term "conditions of employment" is deemed to include even non-compulsory¹⁰ terms and conditions under which employment is afforded.¹¹ Looking to substance rather than form, the Board in the principal case felt that the plan involved was clearly encompassed within these prior definitions. In so holding, it rejected the employer's contention that the purpose of the plan was primarily to provide employees an incentive to invest in the company rather than to compensate them for services. More significantly perhaps, the Board also rejected the contention, skillfully supported by the United States Chamber of Commerce in an amicus curiae brief, that the act as a whole, and specifically its declaration of policy,¹² indicates that certain aspects of the employment relationship otherwise included in the broad terms "wages" and "conditions of employment" are nonetheless exempt from compulsory collective bargaining when their inclusion would seriously interfere with the "essential rights" of either party. It was urged that management's right to control the disposition of its property was such an "essential right." In rejecting this argument, the Board pointed out that the wording of the act admits of no exceptions. Furthermore, even assuming the policy argument to have merit, any effect upon management "rights" was incidental only,¹³ since the union had the right to represent the employees only as employees, not as stockholders, and since the company's financial policies were no more relevant to bargaining over this particular plan than over regular wages.

Perhaps the result reached in the principal case is not a significant extension of prior decisions, but it does suggest more difficult cases, e.g., one involving a plan under which the employer simply sells stock to his employees outright but at a discount.¹⁴ The generality of the definitions employed by the Board would

⁷ *NLRB v. Lehigh Portland Cement Co.*, (4th Cir. 1953) 205 F. (2d) 821. Note that in using the standard "materially affects" the court would seem to be recognizing some limitation upon the statutory terms.

⁸ E.g., *Inland Steel v. NLRB*, (7th Cir. 1948) 170 F. (2d) 247 (pension plan); *Weyerhaeuser Timber Co.*, 87 N.L.R.B. 672 (1949) (optional meals furnished by employer). It should be noted that where there is a granting of an "economic benefit," a stronger case for compulsory collective bargaining exists, as both "wages" and "conditions of employment" are concerned. However, the exercise of other management functions, e.g., selection of supervisors, may in some instances "materially affect" working conditions. See *Continental Can Co.*, 1 Lab. Arb. Rep. 65 (1945).

⁹ See *Inland Steel Co. v. NLRB*, note 8 supra.

¹⁰ *Weyerhaeuser Timber Co.*, note 8 supra.

¹¹ See *Inland Steel Co. v. NLRB*, note 8 supra.

¹² "It is the . . . policy of this Act . . . to prescribe the legitimate rights of both employees and employers . . . to provide . . . procedures for preventing the interference by either with the legitimate rights of the other. . . ." 61 Stat. L. 136 (1947), 29 U.S.C. (1952) §141.

¹³ Query, however, whether this conclusion would be reached if the union sought to compel bargaining over such a plan absent employer initiation of it.

¹⁴ In *United Shoe Machinery Co.*, 96 N.L.R.B. 1309 (1951), the employer was required to bargain concerning bonuses in the form of grants of stock.

include such a plan within the area of compulsory collective bargaining; yet the obvious differences in such a plan increase the relevance of the "essential rights" theory. Since the appeal of this theory rests fundamentally upon economic¹⁵ and not legal considerations, however, its ultimate acceptance or rejection would seem to require a basic policy determination by Congress.

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¹⁵ One non-legal objection is that complicated benefit plans require too much planning and stability to be adaptable to the collective bargaining process.