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LABOR LAW - EFFECT OF A SUBSEQUENT MODIFICATION OF THE COLLECTIVE BARGAINING AGREEMENT ON INDIVIDUAL SENIORITY RIGHTS

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LABOR LAW — EFFECT OF A SUBSEQUENT MODIFICATION OF THE COLLECTIVE BARGAINING AGREEMENT ON INDIVIDUAL SENIORITY RIGHTS — In July the union of which plaintiffs were members and the defendant railroad company entered a collective bargaining agreement fixing seniority rights. In September representatives of the union and the railroad adopted a seniority roster purporting to be in accordance with the terms of the July agreement. Plaintiffs, contending that the roster violated their rights under the July agreement, sought an injunction to compel revision of the roster or to prevent it from going into effect. *Held*, injunction denied. The union has the power to modify the rights of the individuals under the collective bargaining agreement if it does not act arbitrarily or fraudulently. *Coley v. Atlantic Coast Line R. R.*, 221 N. C. 66, 19 S. E. (2d) 124 (1942).

Although there is recent authority to the contrary,[1] it seems well established that, in a proper case, legally enforceable rights accrue to an individual employee by virtue of a collective bargaining agreement.[2] The courts have employed three theories in reaching this result. These will be considered here only in regard to the effect of a change in the collective agreement on the rights of the individual employee under the original agreement. Under the usage theory, the agreement between the union and the employer is of no legal significance in itself, so far as the individual is concerned, but it establishes a usage which becomes a part of the individual contracts of employment.[3] By this theory it would seem that the rights of the employee vested at the time of his individual contract, and in accordance with the collective agreement in force at that time.[4] It follows that the rights of the individual could not logically be changed, by a subsequent modification of the agreement between the union and the employer without the consent of the employee. Under the second theory the union is considered the agent of the individual member in making the collective bargaining agreement.[5] Under this theory the question of changing the individual's rights by a later modification of the collective agreement would logically seem to depend on the scope of the agency and whether the authority was revocable or

[1] Rotnofsky v. Capitol Distributors Corp., 262 App. Div. 521, 30 N. Y. S. (2d) 563 (1941); Swart v. Huston, 154 Kan. 182, 117 P. (2d) 576 (1941), noted 40 MICH. L. REV. 916 (1942).

[2] Gregg v. Starks, 188 Ky. 834, 224 S. W. 459 (1920); McCoy v. St. Joseph Belt Ry., 229 Mo. App. 506, 77 S. W. (2d) 175 (1934). For a discussion of the restrictions on such rights and the forms of relief available to enforce them, see Hamilton, "Individual Rights Arising from Collective Labor Contracts," 3 Mo. L. REV. 252 (1938).

[3] Hudson v. Cincinnati, N. O. & T. P. Ry., 152 Ky. 711, 154 S. W. 47 (1913). For a general discussion of this and the other theories, see Rice, "Collective Labor Agreements in American Law," 44 HARV. L. REV. 572 (1931); Christenson, "Legally Enforceable Interests in American Labor Union Working Agreements," 9 IND. L. J. 69 (1933); Anderson, "Collective Bargaining Agreements," 15 ORE. L. REV. 229 (1936).

[4] This may be the basis of the decision in Piercy v. Louisville & N. Ry., 198 Ky. 477, 248 S. W. 1042 (1923).

[5] Maisel v. Sigman, 123 Misc. 714, 205 N. Y. S. 807 (1924); Mueller v. Chicago & N. W. Ry., 194 Minn. 83, 259 N. W. 798 (1935). For a general criticism of this theory, see articles cited in note 3, supra.

irrevocable.[6] However, since the agency theory is a fiction, there can be no satisfactory way of determining the scope of the agency. The only case in which the question was considered held that the union had no authority to bind its members to subsequent modifications of the agreement.[7] The last theory is that the individual member is a third-party beneficiary of the union's agreement with the company.[8] Ordinarily the rights of a contract beneficiary may not be altered or destroyed by a recission or modification of the contract after the beneficiary has notice of it, if he is a donee, or after he has changed his position in reliance on it, if he is a creditor.[9] Under each theory, then, it may be plausibly argued that once it has been decided that the individual employee gained rights against the employer by virtue of the collective agreement, these rights, in most cases, cannot be divested by a later modification of the agreement. However, in dealing with these cases, the courts generally abandon the theories,[10] the majority holding that the seniority rights of the employee are subject to later modifications of the collective agreement, providing only that the action is not arbitrary or fraudulent.[11] The real basis for this result is judicial recognition of the fact that effective collective bargaining requires subordination of the rights of the individual union member to the will of the majority acting to promote the welfare of the union as a whole.[12] This, by itself, would seem sufficient reason for the decision in the principal case. Little is to be gained by requiring a formal

[6] Saulsberry v. Coopers' International Union, 147 Ky. 170, 143 S. W. 1018 (1912), held that the power of a union to make collective agreements cannot be revoked by the individual member. This is also implicit in a number of other cases including the principal one, but is spoken of in terms of majority control rather than agency.

[7] McCoy v. St. Joseph Belt Ry., 229 Mo. App. 506, 77 S. W. (2d) 175 (1934). To the same effect is a dictum in Donovan v. Travers, 285 Mass. 167, 188 N. E. 705 (1934).

[8] Gulla v. Barton, 164 App. Div. 293, 149 N. Y. S. 952 (1914); Yazoo & M. V. R. R. v. Sideboard, 161 Miss. 4, 133 So. 669 (1931). See articles cited in note 3, supra.

[9] 2 WILLISTON, CONTRACTS, 2d ed., §§ 396-397 (1936). But see Donovan v. Travers, 285 Mass. 167, 188 N. E. 705 (1934), which dealt with a collective bargaining agreement and, proceeding on the beneficiary theory, held that the employee's right was subject to a later change in the collective agreement.

[10] In the principal case the court speaks in terms of both the agency and the beneficiary theory. Such a combination is logically impossible.

[11] Hartley v. Brotherhood of R. & S. S. Clerks, 283 Mich. 201, 277 N. W. 885 (1938); Brotherhood of Railroad Trainmen v. Price, (Tex. Civ. App. 1937) 108 S. W. (2d) 239; Yazoo & M. V. R. R. v. Mitchell, 173 Miss. 594, 161 So. 860 (1935); 47 YALE L. J. 73 (1937). Another group of cases also indicate that the rights of the individual are subordinate to the will of the union. These hold that the court will not disturb the decision of a union tribunal on the members' seniority rights unless it can be shown that the decision is fraudulent or arbitrary. Franklin v. Pennsylvania-Reading Seashore Lines, 122 N. J. Eq. 205, 193 A. 712 (1937); George T. Ross Lodge v. Brotherhood of Railroad Trainmen, 191 Minn. 373, 254 N. W. 590 (1934); Long v. Baltimore & O. R. R., 155 Md. 265, 141 A. 504 (1928).

[12] See cases cited in note 11, supra, especially Hartley v. Brotherhood of R. & S. S. Clerks.

application of any one of the theories, since ordinary contract principles are not suited to the unique nature of collective bargaining agreements. If it is thought desirable to fit the decision into the framework of ordinary contract law, this can be done by implication of a condition by virtue of which the collective contract is subject to modification by agreement of the principal parties, the employer and the labor organization.

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