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Labor Law - Labor-Management Relations Act - Right of Union to Sue on Collective Agreement Under Section 301

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LABOR LAW—LABOR-MANAGEMENT RELATIONS ACT—RIGHT OF UNION TO SUE ON COLLECTIVE AGREEMENT UNDER SECTION 301—Plaintiff union brought suit in a federal district court under section 301 of the LMRA[1] alleging that defendant employer had breached the collective agreement between them by failing to pay some four thousand employees covered by the agreement for a day on which they did not work. Section 301(a) permits suits for violation of contracts between an employer and a union without respect to the amount in controversy or the citizenship of the parties. Plaintiff sought a declaratory judgment as to the rights of the parties under the agreement, an accounting to determine the amounts of the wages withheld, and a judgment running to the individual employees entitled to relief. On appeal from an order of the district court dismissing the complaint for failure to state a cause of action, *held,* order vacated. The complaint should have been dismissed for want of federal jurisdiction, since this suit was upon the "individual contracts of hire" and was not a suit for violation of a contract between an employer and a labor organization within the meaning of section 301(a).[2] *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.,* (3d Cir. 1954) 210 F. (2d) 623.

The agreement resulting from negotiations between a union and an employer has been described variously as a set of employment usages which are incorporated into the contract of each employee as he is hired,[3] as a contract made by the union as agent for the employees,[4] and as a contract which the

[1] Labor-Management Relations Act, 1947, 61 Stat. L. 156, §301 (1947), 29 U.S.C. (1952) §185.

[2] For application of §301 generally, see 17 A.L.R. (2d) 614 (1951).

[3] Yazoo & M.V.R. Co. v. Webb, (5th Cir. 1933) 64 F. (2d) 902; Cross Mountain Coal Co. v. Ault, 157 Tenn. 461, 9 S.W. (2d) 692 (1928).

[4] Mueller v. Chicago & N.W. R. Co., 194 Minn. 83, 259 N.W. 798 (1935); Maisel v. Sigman, 123 Misc. 714, 205 N.Y.S. 807 (1924).

employees may enforce as third party beneficiaries.[5] The theory of the agreement worked out by the court in the principal case is that it is entirely a contract between the union and the employer, but that the employer is bound by operation of law to include in his contract with each employee all the terms of the collective agreement which are relevant to the individual employment relation. Having done so, the employer has discharged his obligation to the union as to these terms so that any subsequent breach of them is not a breach of the collective agreement but a breach of the "individual contracts of hire."[6] While this analysis may be supportable theoretically, it does not lead to satisfactory results in this kind of case, since section 301(a) would appear to authorize only suits on the collective agreement and since the argument that a union may bring an action for wages due its members under section 301(b)[7] has already been effectively refuted.[8] The result in the present case is that the claims of four thousand employees must be settled in a state court,[9] possibly without any right of intervention by the union, even though their claims are based solely on a disputed interpretation of a collective agreement which section 301(a) was supposed to make enforceable in the federal courts.[10] The federal courts which have been confronted with this kind of suit so far have generally assumed that they had jurisdiction under section 301(a)[11] even when the asserted violation by the employer concerned

[5] MacKay v. Loew's, Inc., (9th Cir. 1950) 182 F. (2d) 170; Yazoo & M.V.R. Co. v. Sideboard, 161 Miss. 4, 133 S. 669 (1931). On theories of the collective agreement generally, see 18 A.L.R. (2d) 352 (1951).

[6] The court relies mainly on J. I. Case Co. v. NLRB, 321 U.S. 332, 64 S.Ct. 576 (1943), although this decision would seem as good an argument for the third party beneficiary theory as for the theory adopted by the court.

[7] Sec. 301(b) provides: ". . . Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States." The waiver of diversity of citizenship and amount in controversy requirements found in §301(a) does not reappear in §301(b). 61 Stat. L. 156, §301 (1947), 29 U.S.C. (1952) §185(b).

[8] The courts have pointed out that if §301(b) were a general grant of jurisdiction to the federal courts to hear actions by and against labor unions, there would have been no need for §§301(a) and 303(b). Evidently the latter sections create federal substantive rights which may be enforced without regard to diversity jurisdiction whereas §301(b) merely makes plain the right of unions to be made a party to suits in federal courts. Amazon Cotton Mill Co. v. Textile Workers Union of America, (4th Cir. 1948) 167 F. (2d) 183; Murphy v. Hotel & Restaurant Employees Union, (D.C. Mich. 1951) 102 F. Supp. 488.

[9] It already seems well settled that individuals have no right of action under §301. United Protective Workers Local 2 v. Ford Motor Co., (7th Cir. 1952) 194 F. (2d) 997; Schatte v. International Alliance of Theatrical Stage Employees, (9th Cir. 1950) 182 F. (2d) 158; Ketcher v. Sheet Metal Workers International Assn., (D.C. Ark. 1953) 115 F. Supp. 802.

[10] The extent to which §301 would make the agreement enforceable by unions was not considered by Congress; the sole concern was to make the agreement enforceable against the union and to make sure that union funds could be reached. NLRB, LEGISLATIVE HISTORY OF LMRA 336-337, 421-424, 475-477 (1948).

[11] Local 793, U.A.W.-C.I.O. v. Auto Specialties Mfg. Co., (D.C. Mich. 1951) 19 CCH Lab. Cas. ¶66,162; United Auto Workers v. Wilson Athletic Goods Mfg. Co., (D.C. Ill. 1950) 18 CCH Lab. Cas. ¶65,867; United Shoe Workers of America v. Le Danne Footwear Co., (D.C. Mass. 1949) 83 F. Supp. 714.

only one employee.[12] The further question raised by the court in the principal case as to the binding effect of such an action on employees not joined should not prove an insuperable obstacle to a suit by the union. It may be that the individuals would not be concluded. The Supreme Court has held in a similar case under the Railway Labor Act that employees who did not have notice of the proceedings would not be bound by the resulting adjustment.[13] The same problem arises in connection with spurious class actions[14] but that has not been considered a bar to such an action.[15] Another possible approach is suggested by one district court, which has indicated that upon a finding for the union there could be a hearing to determine the damages of the individual employees.[16] However, even if there is no theory on which relief can be obtained for the employees in this type of action, the union should still be allowed to maintain an action for a declaratory judgment regarding the meaning of the collective agreement. The legal interest of the union in the proper interpretation of its contract is given tacit recognition in the LMRA,[17] and was made the basis of decision by the Sixth Circuit in the only other court of appeals case[18] that has considered fully the matter of federal jurisdiction under section 301 in a situation like the one presented in the instant case. Even before passage of the LMRA, a federal district court concluded that a union could maintain an action for a declaratory judgment as to the wages due under the collective agreement even though it could not maintain an action to recover those wages for the benefit of the individual employees.[19] Although the court in the principal case did not consider the possibility of a declaratory judgment, its decision places it squarely in conflict with the Sixth Circuit. A decision by the Supreme Court is apparently in order.

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[12] United Protective Workers Local 2 v. Ford Motor Co., note 9 supra.

[13] Elgin, J. & E. Ry. Co. v. Burley, 325 U.S. 711, 65 S.Ct. 1282 (1945).

[14] Apparently the only bar to bringing this suit as a class action is that the union as such is not damaged in the same way as the employees are and hence not one of the class.

[15] Oppenheimer v. F. J. Young & Co., (2d Cir. 1944) 144 F. (2d) 387.

[16] Local 937, U.A.W.-C.I.O. v. Royal Typewriter Co., (D.C. Conn. 1949) 88 F. Supp. 669. See also Food & Service Trades Council v. Retail Associates, (D.C. Ohio 1953) 115 F. Supp. 221.

[17] A proviso to §9(a) says that a bargaining representative must be given an opportunity to be present at any adjustment of grievances. 61 Stat. L. 143 (1947), 29 U.S.C. (1952) §159(a).

[18] A.F.L. v. Western Union Telegraph Co., (6th Cir. 1950) 179 F. (2d) 535.

[19] Milk Wagon Drivers Union of Chicago, Local 753 v. Associated Milk Dealers, (D.C. Ill. 1941) 42 F. Supp. 584.