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Labor Law - Equity - Specific Performance of Arbitration Agreements

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consistent with principles of equity.[31] As a general proposition, recovery by an insured has been limited to his actual interest in the property destroyed thereby indemnifying him for his actual loss sustained. Until passage of title and acquisition of the property by the condemnor it would appear that the interest of the owner in the main case was sufficient to sustain a full recovery under the policy.

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Labor Law — Equity — Specific Performance of Arbitration Agreements—Plaintiff union was the duly selected bargaining agent of the employees of the defendant company. The union and company had a collective bargaining agreement containing a grievance procedure clause which provided for the submission of any grievance to arbitration, should all preliminary methods of settling the dispute fail. In violation of the bargaining agreement, a union member and employee of the defendant was refused re-employment after a leave of absence. After all preliminary negotiations failed, a plaintiff invoked the arbitration clause of their contract but defendant refused to take part in any arbitration of the matter. In a resulting declaratory judgment action brought by plaintiff, the court found a dispute existed and also that there was a valid arbitration agreement in force; this was affirmed by the Supreme Court of Wisconsin.[1] Thereafter, plaintiff brought an action in equity for the specific performance of this arbitration clause. *Held:* Specific performance denied. Agreements between employees and employers for the arbitration of labor disputes are valid but unenforceable in equity. *Local 1111 of the United Electrical, Radio and Machine Workers of America v. Allen-Bradley Co., 259 Wis. 609, 49 N.W. 2d 720 (1951).*

The decsion in the principal case is apparently one of first impression in Wisconsin.[2] The result is, however, in accord with a long line of decisions which are thought to have found their origin in a dictum of Lord Coke in 1609.[3] Since that time courts have quite uniformly held

[31] See collected cases, 29 AM. JUR. INSURANCE § 1195.

[1] Local 1111, U.E.W. et al. v. Allen-Bradley Co., 255 Wis. 613, 39 N.W. 2d 740 (1949).

[2] Earlier Wisconsin cases usually cited as dealing with arbitration agreements actually involve appraisals. See Hopkins v. Gilman, 22 Wis. 454 (1868); Schneider v. Reed, 123 Wis. 488, 101 N.W. 682 (1904); Kipp v. Laum, 146 Wis. 591, 131 N.W. 418 (1911); Depies-Heus Oil Co. v. Sielaff, 246 Wis. 36, 16 N.W. 2d 386 (1944). "An 'arbitration' presupposes a controversy or difference to be decided and the arbitrators proceed in a judicial way. On the other hand, an appraisal or valuation is generally a mere auxiliary feature of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one." BLACK'S LAW DICTIONARY, 128 (3rd ed., 1933). Under the common law, appraisals are governed by different rules than are arbitrations. 6 WILLISTON ON CONTRACTS, Sec. 1921 A (rev. ed., 1938); STURGES, COMMERCIAL ARBITRATION AND AWARDS, 18-42 (1930).

[3] Vynior's Case, 8 Co. 80 a, 816 (1609).

that equity will not specifically enforce agreements to arbitrate future disputes.[4] The rationale of these decisions is found in the common law character of arbitration contracts. Although considered to be valid, they were held to be revocable by either party at any time prior to a valid award.[5] Either party was believed to have the power to break the agreement, though he might thereby render himself liable in nominal damages at least. Clearly an equitable decree ordering an arbitration could be made nugatory by either party exercising this power. In addition to this theory of revocability, the courts were probably also influenced by the idea that such agreements tended to oust the courts of their jurisdiction.[6] There have been some decisions to the contrary,[7] but the court in the principal case has reached a conclusion in accord with the majority of decisions. The court did not reach its decision, however, by adopting the common law rule. Instead, it felt compelled to reach this conclusion because of existing Wisconsin statutes.

In 1931, the Wisconsin legislature adopted a statute[8] which made commercial arbitration agreements specifically enforceable but expressly excepted labor agreements. Why the legislature made this exception is not clear. A search of the 1931 session laws discloses no statement of policy which would clarify the statute. The session laws do reveal, however, several statutes passed at the same session which could only be construed as sympathetic to the cause of labor.[9] These latter enactments clearly indicate a legislative state of mind favoring liberal pro-

[4] Tobey v. County of Bristol, 3 Storey 800,825 (C.C. Mass., 1845). RESTATEMENT, CONTRACTS, § 550, comment a (1932); *cf.* Kulukundis Shipping Co. v. Amtog Trading Corp., 126 F.2d 978 (2d Cir., 1942). STUGRES, COMMERCIAL ARBITRATION AND AWARDS, 83, n. 106 (1930).

[5] Simpson, *Specific Enforcement of Arbitration Contracts,* 83 U. OF PA. L. REV. 160, 161-164 (1934). U.S. Asphalt Refining Co. v. Trinidad Lake Petroleum Co. 222 F. 1006 (S.D.N.Y., 1915). *See* Park Construction Co. v. School Dist. No. 32, 209 Minn. 182, 296 N.W. 475, 135 A.L.R. 59 (1941) (Dissenting Opinion). Sayre, *Development of Commercial Arbitration Law,* 37 YALE L. J. 595 (1928).

[6] Simpson, *Specific Enforcement of Arbitration Contracts, supra,* note 5.

[7] See note, 135 A.L.R. 79 (1941).

[8] WIS. STATS. (1931), Sec. 298.01. "A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, . . . shall be valid, irrevocable and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract; provided however, that the provisions of this chapter shall not apply between employers and employes, or between employers and associations of employes."

[9] See Wis. Laws (1931) c. 376. This chapter prohibits so-called "Yellow-dog" contracts, delineates lawful conduct in labor disputes, etc. The public policy as to collective bargaining is declared in this chapter as follows: "Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employes . . . it is necessary that the individual workman have full freedom of association, self-organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purchase of collective bargaining or other mutual aid or protection."

labor legislation. Considering this attitude, it would seem to be a *non sequitur* to say this legislature felt public policy to be opposed to labor agreements. The reason for this exclusion clause in the arbitration statute must lie elsewhere.

The so-called Draft State Arbitration Act[10] which was proposed by the American Arbitration Association has served as a model for many state statutes.[11] Wisconsin's arbitration statute is also patterned on this draft, and there are several striking similarities of phraseology between the two. The Draft State Act contains an exclusion clause similar to that of the Wisconsin statute, the wording being almost identical.[12] Considering the pro-labor attitude of the legislature which enacted section 298.01, it seems quite probable that the reason the exclusion clause appears in this statute is that it was in the model from which the Wisconsin law was drafted. This being the case, it would appear that no legislative intention as to invalidation of labor arbitration agreements could be validly drawn from the clause. In the principal case, the court interprets section 298.01 as declaring a public policy against specific enforcement of agreements to arbitrate labor disputes and holds that it has no power to order arbitration without an express legislative authorization. Justice Currie in his dissenting opinion, takes the view that the basic public policy favors their enforcement, and unless expressly prohibited, the court should enforce such agreements. After considering the attitude on labor problems of that 1931 legislature as shown by its other labor enactments of the same session, the dissent seems to be more correct in its view of the basic public policy.

In 1939, Chapter 111 was added to the Wisconsin statutes by Chapter 57 of the session laws. This "Wisconsin Employment Peace Act" created an administrative agency (the Wisconsin Employment Relations Board) to deal with labor relations, including breaches of agreements to arbitrate labor disputes.[13] Cases involving this question are occupying an ever-increasing amount of the Board's time. Illustrative of its attitude on this issue is the WERB's decision in the *International Association of Machinists v. Wausaw Motor Parts Co.*[14]

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[10] STURGES, COMMERCIAL ARBITRATION AND AWARDS, 977 (1930).

[11] Simpson, *Specific Enforcement of Arbitration Contracts*, 83 U. OF PA. L. REV. 160, 161 (1934).

[12] Compare WIS. STATS. (1931), Sec. 298.01, ". . . provided however, that the provisions of this chapter shall not apply between employers and employes, or between employers and associations of employes," with DRAFT STATE ARBITRATION ACT, Sec. 2, ". . . provided however, that the provisions of this act shall not apply to collective contracts between employers and employees, or between employers and associations of employees, in respect to terms or conditions of employment."

[13] WIS. STATS. (1939), Sec. 111.06 "(1) It shall be an unfair labor practice for an employer individually or in concert with others:. . . (f) To violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award)."

[14] Case I, No. 1463 Ce-206 Decision No. 1388 (1947).

There, the defendant employer refused to arbitrate a dispute which was in violation of his agreement. The plaintiff union took the case before the WERB which held: The employer's refusal to arbitrate was a violation of the collective bargaining agreement and was contrary to section 111.06 (1) (f). The Board then ordered the employer to:

> "(a) Immediately submit to a Board of Arbitration as provided for in Article V of the Collective Bargaining Agreement now in effect between complainant union and respondent employer."

This holding is on all fours with the principal case and seems to indicate that had the plaintiff there brought his complaint before the WERB it would have prevailed.

The court, in the principal case, apparently grounds its decision on the idea that the legislature by its re-enactment of section 298.01 in the closing paragraph of Chapter 57,[15] intended thereby to continue the common law rule against the enforcement of labor arbitration agreements by the courts. As stated above, it is questionable that this was the legislative intention. Prior to this re-enactment in 1939, the section provided in effect, that all arbitration agreements are valid and enforceable, except those dealing with labor disputes. The legislature by this 1939 enactment, merely added the phrase, "except as provided in section 111.10 of the statutes."[16] From this it would appear that the more plausible construction of the legislative intent of the 1939 Session would be, that by section 298.01, non-labor arbitration agreements are enforceable by the courts; and by section 111.10, labor agreements are enforceable by the WERB notwithstanding section 111.07.[17]

Whether this delegation of exclusive power to the WERB is the best solution to the question is perhaps debatable. However, among other reasons,[18] there is clearly merit to the position that the WERB can give labor-management problems more expeditious and specialized consideration.

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[15] Wis. Laws (1939), c. 57.

[16] WIS. STATS. (1939), sec. 111.10. "Parties to a labor dispute may agree in writing to have the board act or name arbitrators in all or any part of such dispute, and thereupon the board shall have the power so to act. The board shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in chapter 298 of the statutes."

[17] WIS. STATS. (1939), sec. 111.07. "(1) Any controversy concerning unfair labor practices may be submitted to the board in the manner and with the effect provided in this chapter, but nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction." Since agreements to arbitrate were apparently unenforceable at common law, the 1931 legislature must not have intended this saving clause to apply to section 111.10 if the court in the principal case is correct in its holding that such agreements are also unenforceable under section 298.01. If, however, the legislature did intend this clause to apply to section 111.10 then it would seem it did not intend to exclude labor agreements from the arbitration statute, as this is the only other remedy available save a grossly inadequate remedy of damages.

[18] Rice, *A Paradox of our National Labor Law*, 34 MARQ. L. REV. 237 (1951).