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Federal Jurisdiction—A Restriction on the Application of Section 301(a) of the Taft-Hartley Act

When does section 301(a) of the Taft-Hartley Act confer jurisdiction on the federal courts?¹ The act on its face confers jurisdiction over all suits between labor unions and employers, for breaches of collective bargaining contracts, whether the benefits of the suit inure primarily to the employer, the union or the individual employee. However, a study of the cases shows that the interpretation of section 301(a) of Taft-Hartley has not proved this simple.

A restrictive interpretation of section 301(a) was first approved by the Supreme Court in the case of *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*² In that case there was a dispute over the payment of 4,000 employees who were absent on a particular day. The employer refused to pay the employees this day's wages. The union contended that by the terms of the collective bargaining agreement, unless the absences were "furlough" or "leave of absence," the company must pay the wages for that day. The union requested a declaration of rights under the agreement. It was held that the union was suing for the wages of the employees which was a "uniquely personal" right of the employees and not one of primary concern to the union. Section 301(a) was held to confer federal jurisdiction only when the rights sought to be vindicated were of primary interest to the union. Mr. Justice Frankfurter, writing for the court, discussed at length the constitutional problems of section 301(a),³ and

¹ Section 301(a) of the Taft-Hartley Act reads in part, "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties . . ." Labor Management Relations Act (Taft-Hartley) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1952).

² 348 U.S. 437 (1955).

³ The primary constitutional problem raised was whether there was a case "arising under" the Constitution, laws, and treaties of the United States when the Taft-Hartley Act gave the federal courts "bare" jurisdiction, without declaring any substantive law. The case of *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), dispelled the constitutional problem by directing the lower federal courts to "fashion a body of federal law" in this area. 353 U.S. at 451. In view of the fact that the restrictive interpretation of 301(a) originated as a briefly considered escape from constitutional issues, which have now been settled, the future of the *Westinghouse* limitation is questionable.

The constitutional problems of the *Westinghouse* and *Lincoln Mills* cases are discussed in Note, 36 N.C.L. Rev. 215 (1958).

Added doubt is cast upon the force of the *Westinghouse* decision by the sharp split of the opinions. Justices Burton and Minton joined Justice Frankfurter in the constitutional entanglement. In the two concurring decisions, the Chief Justice and Justices Clark and Reed were not troubled by the constitutional problems of section 301(a). Rather they would put the decision squarely on the restrictive interpretation of the statute. Justices Douglas and Black dissented on the ground that no such restrictive interpretation could be placed on this section of Taft-Hartley.

clearly indicated that the case was decided upon the restrictive interpretation of this section to avoid a constitutional decision.

It should be noted that the sole reason that Justice Frankfurter gave for the distinction made in the *Westinghouse* case was that "nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here . . ."⁴ In substance this is an assertion that there is no legislative intention shown. In the absence of legislative history to the contrary it would seem only reasonable to follow the plain meaning of the act.⁵ Section 301(a) provides that an action may be brought in the federal court by "a labor organization representing employees," when there is an industry affecting interstate commerce. There is no indication that such a representative suit may be brought only when the union is primarily interested in the results.

An article by Professor Bunn, an eminent authority on federal jurisdiction, suggests additional reasons why the *Westinghouse* distinction is incorrect.⁶ His argument is primarily based on the fact that a *Westinghouse* limitation of section 301(a) is contrary to Rule 17(a) of the Federal Rules of Civil Procedure. This rule provides that the real party in interest must bring the suit. It additionally provides that (1) when a party has made a contract for the benefit of a third party or (2) when a statute so authorizes, a party "may sue in his own name without joining with him the party for whose benefit the action is brought . . ."⁷ (1) The suit by a union for a right that is "primarily for the benefit of the individual employee" fits the third party beneficiary situation. The Supreme Court has held that "an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary to all benefits of the collective trade agreement . . ."⁸ (2) Section 301(b) of the Taft-Hartley Act gives the union the right to sue for the benefit of the employee.⁹

The *Westinghouse* limitation of section 301(a) to suits wherein the union is primarily interested has been repeatedly applied by the lower federal courts. Several cases have held that suits to enforce agreements to maintain union shops and check-off of union dues are primarily a union concern, and federal jurisdiction is allowed.¹⁰ However, federal

⁴ 348 U.S. at 461.

⁵ *Osaka Shosen Kaisha Line v. United States*, 300 U.S. 98 (1937).

⁶ Bunn, *Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements*, 43 VA. L. REV. 1247 (1957).

⁷ FED. R. CIV. P. 17(a).

⁸ *J. I. Case Co. v. NLRB*, 321 U.S. 332, 336 (1944).

⁹ This section says, "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." Labor Management Relations Act (Taft-Hartley) § 301(b), 61 Stat. 156 (1947), 29 U.S.C. § 185(b) (1952).

¹⁰ *United Steelworkers v. Knoxville Iron Co.*, 162 F. Supp. 366 (E.D. Tenn. 1958); *Burlisque Artists Ass'n v. I. Hirst Enterprises, Inc.*, 134 F. Supp. 203

jurisdiction has been denied because of the "uniquely personal" rights of the employee where the dispute involved extra work hours,¹¹ discharge of an employee who invoked the fifth amendment,¹² and reduction of an employee's pension allowance by the amount recovered under workmen's compensation.¹³

None of the above cases were ones where there had been an agreement between the union and the employer to arbitrate labor disputes. It is now necessary to discuss how the presence of such an agreement affects the restrictive *Westinghouse* interpretation of section 301(a). Prior to 1957, it had been settled in the lower federal courts that when there was an agreement to arbitrate, the union had standing to sue in the federal courts to force a recalcitrant employer to submit the dispute to arbitration.¹⁴ The union was held to be asserting its right to performance of an agreement that governed the relation between the employer and the union, even if the dispute arose about a benefit "uniquely personal" to the employee.

In 1957, the Supreme Court, in the case of *Textile Workers Union v. Lincoln Mills*¹⁵ and its two companion cases,¹⁶ confirmed the holdings of the lower federal courts that the union had standing to bring an action for specific performance of an agreement to arbitrate. Section 301(a) of the Taft-Hartley Act was held to afford federal jurisdiction when the employer had refused to submit to arbitration, per the collective bargaining agreement, a dispute about workloads and work assignments.

The *Lincoln Mills* case did not overrule the *Westinghouse* distinction between "uniquely personal" and "union" causes of action. The Court merely fitted the arbitration situation into the framework of the distinction.¹⁷

(E.D. Pa. 1955); *Durkin v. John Hancock Mutual Life Ins. Co.*, 11 F.R.D. 147 (S.D.N.Y. 1950); *United Steel Workers v. Shakespeare Co.*, 84 F. Supp. 267 (W.D. Mich. 1949).

¹¹ *Burlesque Artists Ass'n v. I. Hirst Enterprises, Inc.*, *supra* note 10.

¹² *United Elec., Radio and Mach. Workers, Local 506 v. General Elec. Co.*, 231 F.2d 259 (D.C. Cir.), *cert. denied* 352 U.S. 872 (1956).

¹³ *United Steelworkers v. Pullman-Standard Car Mfg. Co.*, 241 F.2d 547 (3d Cir. 1957).

¹⁴ *Local 19, Warehouse Workers Union v. Buckeye Cotton Oil Co.*, 236 F.2d 776 (6th Cir. 1956) (arbitration of disputes over hours of work, wages and working conditions); *Independent Petroleum Workers v. Esso Standard Oil Co.*, 235 F.2d 401 (3d Cir. 1956) (arbitration of new salary rates when there has been a new job classification); *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953) (arbitration of a dispute over separation pay).

¹⁵ 353 U.S. 448 (1957).

¹⁶ *Goodall-Sanford, Inc. v. United Textile Workers, Local 1802*, 353 U.S. 550 (1957); *General Elec. Co. v. Local 205, United Elec., Radio and Mach. Workers*, 353 U.S. 547 (1957).

¹⁷ *United Steelworkers v. Pullman-Standard Mfg. Co.* 241 F.2d 547, 549, 550 (3d Cir. 1957); *Textile Workers Union v. Cone Mills Corp.* 116 F. Supp. 654, 659 (M.D.N.C. 1958).

But the broad sweep of the opinions may indicate that the Court was not entirely satisfied with the limitation on 301(a).¹⁸ Moreover, the fact that the decision was written by Justice Douglas seems significant. He was one of the dissenters in the *Westinghouse* case.¹⁹

The lower courts have not found the application of the *Lincoln Mills* holding easy. In *Textile Workers Union v. Bates Mfg. Co.*,²⁰ the union sued for a wage increase purportedly authorized by the escalator clause in its contract with the employer. Pursuant to the collective bargaining agreement, the employer submitted to arbitration and there was an award in his favor. He refused to pay because he had won the award. The court held that since the arbitration agreement had been completely submitted to and refusal to pay was in compliance with the award, there was nothing more asserted by the union than a suit for wages, which was a "uniquely personal" right of the employees. Accordingly the court refused federal jurisdiction.²¹

In *Textile Workers Union v. Cone Mills Corp.*,²² a district court sitting in North Carolina heard a case where there had been an arbitration award which decreed that the company must denominate a work stoppage a "shut down," not a holiday or vacation. This decree resulted in an award of unemployment benefits to the individual employees involved. The employer, in violation of the collective bargaining agreement, refused to abide by the decree and award of the arbitrator. The union, in the federal court, sought to force the employer to comply with the award. The court refused jurisdiction. A distinction was drawn between an action to specifically enforce an agreement to submit to arbitration, and enforcement of the terms of the award after the dispute

¹⁸ The broadness of the dictum was recognized by the court in the *Cone Mills* case. 166 F. Supp. 654, 658. One commentator on the case has said, "The reasoning applies as fully to the simple suit for money as to the more complex one for arbitration." Bunn, *Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements*, 43 VA. L. REV. 1247, 1257 (1957).

¹⁹ The only reference to the *Westinghouse* case is in the form of a non-committal footnote by way of distinction. 353 U.S. 448, 456, n. 6. In the light of Justice Douglas' former disapproval of the *Westinghouse* limitation on the application of section 301(a), it would seem that the footnote was added with disapproval. All but three of the members of the court joined in this opinion. The two concurring Justices, Burton and Harlan, seem more decidedly in favor of the *Westinghouse* limitation. They said, "The District Court had jurisdiction over the action since it involved an obligation running to a union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a union." 353 U.S. 448, 460.

²⁰ 158 F. Supp. 410 (S.D. Me. 1958). Another case where there was a refusal to arbitrate a dispute over the discharge of an employee followed *Lincoln Mills* and allowed federal jurisdiction. *Item Co. v. New Orleans Newspaper Guild*, 256 F.2d 855 (5th Cir.), cert. denied 79 Sup. Ct. 98 (1958).

²¹ An alternative ground for dismissal of the union's action could have been that the parties were bound to abide by the arbitrator's award. Such an award is binding so long as the arbitrator has not exceeded his jurisdiction. *Motor Haulage Co. v. International Brotherhood of Teamsters, Local 807*, 272 App. Div. 382, 71 N.Y.S. 2d 352 (1st Dept. 1947).

²² 166 F. Supp. 654 (M.D.N.C. 1958).

has been submitted to arbitration and resolved. The former was held to be a right of primary interest to the union and there is jurisdiction.²³ But in the latter situation, federal jurisdiction was refused because the individual employee in whose favor the award was given was the party primarily interested.²⁴

The *Bates* case had said that when there was complete compliance with the agreement to submit to arbitration *and the award of the arbitrator* the union no longer had a right to sue in the federal courts. The *Cone Mills* case went a step further, and refused jurisdiction when the employer had submitted to arbitration, but refused to abide by the award.

The Sixth Circuit Court of Appeals, in *A. L. Kornman Co. v. Amalgamated Clothing Workers*,²⁵ reached a contrary conclusion in a case practically on "all fours" with *Cone Mills*. The employer had refused to abide by the arbitration award which granted certain employees the disputed vacation pay. Holding that section 301(a) of Taft-Hartley conferred jurisdiction over the union's suit to enforce the award, the court recognized the distinction enunciated in the *Westinghouse* case, but held that the decision of the Supreme Court in *Lincoln Mills* controlled this case. The court stated that it made no difference whether the union sought the aid of the federal courts before or after submission to arbitrate; if there had not been complete compliance with the collective bargaining agreement section 301(a) afforded jurisdiction. The Court said,

If the United States District Courts have jurisdiction and may order compliance with the grievance arbitration provisions of a collective bargaining agreement, they must necessarily have jurisdiction to enforce the resulting awards. To hold otherwise would render the entire arbitration machinery merely time-consuming and useless. Authority to compel arbitration carries with it authority to enforce the resulting award.²⁶

This case held that jurisdiction would be allowed until there was as complete compliance with the arbitration agreement as there was in the *Bates* case. Mere submission to the award and refusal to abide thereby was not sufficient to prevent federal jurisdiction, as held in the *Cone Mills* case.

CONCLUSION

It is respectfully submitted that the distinction between "uniquely personal" rights of the employee and those of the union is a questionable

²³ *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957).

²⁴ *Textile Workers Union v. Bates Mfg. Co.*, 158 F. Supp. 410 (S.D. Me. 1958).

²⁵ 264 F.2d 733 (6th Cir. 1959).

²⁶ *Id.* at 737.

restriction on the extent to which section 301(a) of the Taft-Hartley Act confers federal jurisdiction. Legislative history does not indicate that such a distinction was intended. Further, this distinction was the result of the Court's wanting to avoid constitutional issues which have now been resolved. Be this as it may, when this distinction is applied to the arbitration situation, the courts should find that there is a "uniquely personal" right of the employee only after there has been submission to arbitration and compliance with the award of the arbitrator. The result of the *Kornman* case seems preferable to that of the *Cone Mills* case.

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Labor Law—FLSA—Extending "In Commerce" Coverage

In *Mitchell v. Lublin, McGaughy & Associates*,¹ the respondent was an architectural and consulting engineering firm engaged in the preparation of plans and specifications for repair and construction of various interstate facilities, including air bases, roads, turnpikes, bus terminals, and radio and television installations. Also, it was engaged in the preparation of plans for the construction of homes, shopping centers, and commercial buildings. These plans and specifications consist of drawings and information needed for the estimation of cost and guidance to contractors in their bidding and in actual construction. The information is gathered by fieldmen at the sites of the projects and transmitted to the offices of the respondent. From this information draftsmen prepare the plans under the supervision of professional engineers. In addition to the draftsmen, clerks and stenographers also participate in the mechanical process of preparing the plans.

The U.S. Court of Appeals for the Fourth Circuit² held that the draftsmen, fieldmen, clerks, and stenographers, as a group, were neither "engaged in the production of goods for commerce" nor, because of the local nature of the business, "engaged in commerce" so as to come within the provisions of the Fair Labor Standards Act.³ Under an almost identical set of facts the Eighth Circuit in *Mitchell v. Brown*⁴ had held that the employer's draftsmen, fieldmen, clerks, and stenographers, as a group, were "engaged in commerce" and thus covered by the act. It was

¹ 358 U.S. 207 (1959).

² 250 F.2d 253 (4th Cir. 1957).

³ Fair Labor Standards Act § 6(a), 52 STAT. 1060 (1938), as amended, 29 U.S.C. § 206(a) (1958):

"Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rate . . ."

⁴ 244 F.2d 359 (8th Cir. 1955), *cert. denied*, 350 U.S. 875 (1955). Apparently the only factual difference in the two cases was that in the *Brown* case an agent of the defendant inspected the work of the contractor.