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Arbitration - Dispute Involving Hazardous Working Conditions Is Within the Scope of Broad Arbitration Clause of a Collective Bargaining Agreement in Absence of Forceful Indication of Exclusionary Intent; Gateway Coal Co. v. United Mine Workers

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• Labor Law — Arbitration — Dispute Involving Hazardous Working Conditions Is Within the Scope of Broad Arbitration Clause of a Collective Bargaining Agreement in Absence of Forceful Indication of Exclusionary Intent. *Gateway Coal Co. v. United Mine Workers*, 94 S. Ct. 629 (1974).

THE SUPREME COURT, in *Gateway Coal Co. v. United Mine Workers of America*,[1] extended its continued development of national labor policy by applying the "presumption of arbitrability" to labor disputes concerning safety of employees.

The collapse of a ventilation structure substantially reduced the air flow into a mine operated by the Gateway Coal Co., seriously increasing the danger of accumulation of dust, flammable gas and possible explosion. Three assistant foremen, whose duties included checking and recording the airflow[2] in the mine, made false entries in their logbooks that failed to disclose the reduced air flow. The three foremen were suspended, and criminal proceedings were instituted against them. While the charges remained pending, the Company, after receiving permission from the Pennsylvania Department of Environmental Resources, reinstated the foremen. Ruling that the continued presence of the foremen in the mines constituted a safety hazard, the union struck. Gateway then sought to arbitrate under the collective bargaining agreement. The Company invoked jurisdiction of the District Court under Section 301 of the Labor Management Relations Act.[3] The District Court determined the issue arbitrable and thereby enjoined the strike and ordered immediate arbitration.[4] On appeal, the Court of Appeals for the Third Circuit[5] reversed the judgment and vacated the preliminary injunction. The Supreme Court granted certiorari.[6] In reversing the decision of the Appellate Court the Supreme Court determined that the presumption of arbitrability formulated by the Steelworkers' Trilogy[7] applies to safety disputes; the collective bargaining agreement then in force between the parties imposed a compulsory duty to submit safety disputes to arbitration and this duty to arbitrate implied a no-strike obligation supporting the issuance of the injunctive order.

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1 Gateway Coal Co. v. UMW, 94 S. Ct. 629 (1974).

2 Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 863(d)(1) (1969).

3 29 U.S.C. § 185 (1970).

4 *See* Gateway Coal Co. v. UMW, 94 S. Ct. 629, 634 (1974).

5 Gateway Coal Co. v. UMW, 466 F.2d 1157 (3d Cir. 1972).

6 410 U.S. 593 (1973).

7 United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960); United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960).

The cornerstone of federal labor policy is the achievement of peaceful resolution of industrial strife through arbitration.[8] This emphasis on arbitration and the continual evolution of federal labor policy has spawned a presumption of arbitrability for labor disputes: "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[9] Justification for the formulation of this expansive body of federal labor law favoring arbitration is grounded upon legislative mandate;[10] yet the underlying theory of judicial enforcement of collective bargaining agreements is the principle that the court is merely enforcing what the parties had previously agreed. As the Court here noted, obligation to arbitrate a particular dispute does not arise solely by operation of law as "the law compels a party to submit to arbitration only if he has contracted to do so."[11] Judicial inquiry in arbitrability cases must therefore be strictly confined to the question of whether or not the parties did in fact agree to arbitrate the grievance.[12] The threshold question then is that of arbitrability—was it agreed, either explicitly or implicitly that the issue in dispute be submitted to arbitration? In the absence of any express exclusion or forceful evidence that an exclusion was intended, all doubts as to arbitrability should be resolved in favor of arbitration.[13]

Obviously, arbitration of disputes concerning the collective bargaining agreement is not only widely accepted, but as a practical matter, provides an advantageous and workable method of settling labor disputes. As such, the collective bargaining agreement itself is not limited by the substantive law of contracts[14] and the Court in the instant case agreed with this basic premise by recognizing the existent flaw in the collective bargaining agreement, *i.e.*, "[i]t cannot define every minute aspect of the complex and continuing relationship between the parties."[15] Hence, the very nature of collective bargaining effectuates an industrial common law of sorts which is developed through procedures and tribunals specified by the parties themselves in their basic agreement.

Once the dispute is determined to be arbitrable, there is an implied

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[8] *Id.*

[9] Gateway Coal Co. v. UMW, 94 S. Ct. 629, 637 (1974), *quoting* United Steelworkers of America v. Warriors and Gulf Navigation Co., 363 U.S. at 582-83.

[10] Section 203(d) Labor Management Relations Act, 29 U.S.C. § 173(d) (1947).

[11] Gateway Coal Co. v. UMW, 94 S. Ct. 629, 635 (1974).

[12] United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U.S. 574 (1960). *See* Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235, 254 (1970): "When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the district court may issue no injunctive order until it first holds that the contract does have that effect."

[13] *Id. See also In re* General Telephone Company, 53 Lab. Arb. 248 (Morris 1969).

[14] *See Cox, Current Problems in the Law of Grievance Arbitration,* 30 ROCKY MT. L. REV. 247, 262 (1958).

[15] 94 S. Ct. at 637.

agreement not to strike[16] which is enforceable by a federal court injunction[17] because of the close relationship between the duty to arbitrate and the duty not to strike.[18]

The threshold question is twofold: (1) did the collective bargaining agreement in question impose on the parties a duty to submit matters of health and safety to arbitration and (2) does the "presumption of arbitrability" apply to safety disputes?

The focal point is determining the intent of the parties in applying the grievance provision of the collective bargaining agreement.[19] The National Bituminous Coal Wage Agreement of 1968 provides for resolution of grievances by direct negotiation between the parties and ultimately for arbitration by a mutually agreed upon umpire.[20] In addition, it provides for arbitration as to the meaning and application of the contract. The very fact that the agreement so provides suggests that the parties recognize the impossibility of foreseeing and providing for all questions which may arise during the time span of the agreement.[21] It can therefore be argued, and the Court's reasoning suggests, that a clause which empowers an arbitrator to interpret and apply the provisions of the agreement authorizes him to decide questions of arbitrability, which require interpretation and application of the arbitration clause.[22] Since the collective bargaining agreement is less complete and more loosely drawn than most other contracts it may also be argued that it is necessary to supply terms from the context in which it was negotiated, *i.e.*, the principles, assumptions, understandings and aspirations of the on-going mining operation.[23]

Mr. Justice Powell circumvented this type of analysis by considering the arbitration provision on its face. The clause was sufficiently broad, it

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[16] Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962).

[17] Boys Markets, Inc. v. Retail Clerks Union, 98 U.S. 235 (1970).

[18] *Id.* at 247-249; Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 104, 106 (1962).

[19] The Court of Appeals seemingly by-passed this orderly procedure and apparently proceeded to attack the presumption of arbitrability: "[A] Court [should] reject any avoidable construction of a labor contract as requiring final disposition of safety disputes by arbitration." 466 F.2d at 1160.

[20] The pertinent clause in the agreement provides: "Should differences arise ... as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble arise ... [B]e referred to an umpire to be mutually agreed upon. ..." This clause is strikingly similar to the broad clause involved in United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960), which the Court interpreted as intent to arbitrate.

[21] NLRB v. Highland Park Mfg. Co., 110 F.2d 632 (4th Cir. 1940); *See also* Loew's, Inc., 10 Lab. Arb. 227 (Aaron 1948); Yale and Towne Mfg. Co., 5 Lab. Arb. 753 (Raphael 1946).

[22] Note, 74 HARV. L. REV. 175 (1960); *See generally* 49 GEO. L.J. 373 (1960); 46 CORNELL L.Q. 336 (1960).

[23] COX, *Reflections Upon Labor Arbitration*, 72 HARV. L. REV. 1482 (1959).

excepted from arbitration only those disputes "national in character,"[24] and the dispute here was local in nature therefore the agreement requires submission to arbitration.[25] Yet, the "Mine Safety Committee" provision of the agreement,[26] while not an express exception to the arbitration clause, at least creates an ambiguity as to the intention of the parties which should reasonably anticipate a process of contractual interpretation. Reference to custom and practices of the mining industry in general may have indicated the intended meaning of this provision, and since this same agreement has been entered into by the United Mine Workers and many other mining companies, the custom and practice of any of these parties operating under the agreement may be taken as some indication of the intended meaning of this provision.[27] The Court dismissed this process by stating that circumvention of the formalized procedures established for implementation of that provision[28] created a disagreement as to the meaning and application of the agreement thereby committing it to resolution through arbitration.

Having examined the agreement, without finding any forceful indication of exclusionary intent, the Court was then faced with the proposition of the Court of Appeals that the presumption of arbitrability is inapplicable to issues of health and safety. In formulating such an idea, that Court, while paying lip service to the established federal policy in favor of arbitration, distinguished wages, hours, seniority and other economic matters from safety disputes.[29] Through this assumption of isolation, that Court reasoned such circumstances are *sui generis* and exempt from the presumption,[30] therefore declaring a presumption of non-arbitrability in the area of safety. In so holding, the majority of the Court of Appeals apparently assumed that safety disputes are rarely arbitrated or that employees would never agree to submit safety disputes to arbitration. This is simply not so.[31] Yet, both the Court of Appeals and

[24] 94 S. Ct. at 636.

[25] Paragraph three of the agreement provides: "[A]ll disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this agreement unless national in character . . ." 94 S. Ct. at 635 n.7.

[26] The mine safety provision established a committee empowered to close the mines if it believed there was imminent danger. The management could request that the arbitrator remove members of the committee if they believe the action of the committee arbitrary, but the arbitrator was not given the power to review the recommendation that the mine be closed.

[27] E. W. Bliss Co., 53 Lab. Arb. 725 (McDermott 1969); American Machine and Foundry Co., 48 Lab. Arb. 1011 (Geissinger 1967); Lake Mining Co., 20 Lab. Arb. 297 (Marshall 1953); Smith Display Service, 17 Lab. Arb. 524 (Sherbow 1951).

[28] The committee itself did not actually decide that a danger existed. Rather the local membership vote to strike was construed by the Court of Appeals to constitute substantial compliance with the provision. Mr. Justice Powell felt that as a matter of simple contractual interpretation, such contention was unacceptable. 94 S. Ct. at 640.

[29] 466 F.2d at 1160.

[30] *Id.*

[31] Mr. Justice Douglas has also accepted this assumption in his dissent "[M]en are

Mr. Justice Douglas were obviously influenced by the very hazardous nature of coal mining.[32] They felt that issues of safety add a new dimension to established principles of arbitration; *i.e.*, where life is at stake, those directly affected by hazardous conditions should be given greater latitude in seeking a remedy to eliminate those hazards.

Mr. Justice Powell neither considered nor reflected upon the safety of employees which so troubled the dissent. Rather, he leaped to the conclusion that the presumption of arbitrability is as applicable to disputes touching the safety of employees as to other varieties of disagreement.[33] The major emphasis implicit in this conclusion is not necessarily the importance of individual safety but the avoidance of industrial strife and the resultant lost pay, curtailment of production and economic instability.[34] In this balancing of interests, the employees lose. Although the preservation of life and protection from injury are surely goals which maintain a lofty position in our social order, many commentators maintain that a weighing of the costs and benefits is necessarily involved in improving safety. Elimination of risk at all cost is not only unrealistic but economically unfeasible.[35]

The dissent also relies (as did the Court of Appeals) on section 502 of the Labor Management Relations Act[36] in formulation of this novel presumption of non-arbitrability. The Court rebutted this argument by simply noting that to the extent section 502 might be relevant to the issue of arbitrability, the considerations favoring arbitrability outweigh the ambiguous impact of this section.[37] The Court should have looked to more specific authority to support its conclusion. Since section 502 and section 301 are part of the same chapter of the LMRA they were read in

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not wont to submit matters of life and death to arbitration. . . ." 94 S. Ct. at 644. For reported arbitration decisions on safety issues *see* A. G. Suitor Construction Co., 52 Lab. Arb. 599 (Jones 1969); American Oil Co., 51 Lab. Arb. 484 (Barnhart 1968); Fruehauf Trailer Corp., 48 Lab. Arb. 1291 (Kallenbach 1967). *Compare* the agreement between Chrysler Corp. and UAW containing an express limitation on the arbitration procedure concerning health and safety. This limitation forcefully implies that matters of health and safety are strikeable issues even in the presence of a no-strike provision. Memorandum of Understanding—Health and Safety, at 193, *with* the basic agreement between the USW and the major steel companies containing a *contra* provision, specifically providing for arbitration of safety disputes, § 14(c).

[32] Bureau of Labor Statistics, *Handbook of Labor Statistics* 362, 363 (1972); Bureau of Labor Statistics Report No. 406, *Injury Rates by Industry 1970*, 3, 4, 6 (1972). For a discussion of the influence of mining hazards on the Court of Appeals decision, *see* 41 CIN. L. REV. 943 (1972).

[33] 94 S. Ct. at 638.

[34] *Id.*

[35] *See* Wheeler and Snow, *Proposals for Administrative Action Under the Federal Coal Mine Health and Safety Act of 1969*, 3 NAT. RES. REV. 248, 253 (1970). For a discussion of acceptable risks and rules of law *see* Coase, *The Problem of Social Cost*, 3 J. LAW & ECON. 1 (1960).

[36] Section 502 of Labor-Management Relations Act, 29 U.S.C. § 143 (1947) provides: "[N]or shall the quitting of labor by an employee or employees in good faith because of an abnormally dangerous conditions . . . be deemed a strike, . . ."

[37] 94 S. Ct. at 636 n.8.

pari materia by the Court of Appeals. The Court should have realized that although this reasoning is rational, the Court of Appeals conveniently omitted accommodation of section 203(d)[38] in its reading of the LMRA. Accommodation at this point would have been logically appropriate.[39] In circuitously skirting the issue, the Court considered section 502 on its face and felt that it related more directly to the scope of a no-strike obligation than on the arbitrability of safety disputes. This evasive procedure failed to recognize the obvious analogy between a finding that a walkout under section 502 is not a strike and therefore not within the arbitration provision of the collective bargaining agreement.

Developing an accommodation procedure would lead to a consideration of other legislative enactments dealing specifically with industrial safety—The Federal Coal Mine Health and Safety Act of 1969[40] and The Occupational Safety and Health Act of 1970.[41] These enactments contemplate a joint Labor-Management effort to reduce health and safety hazards.[42] They empower federal inspectors, upon request of employees or their representatives, to make independent third-party determinations as to the existence and severity of the alleged safety hazards and demand removal of the employees in the event he feels such danger is imminent.[43] If an inspector advises an employer that such condition is existent, a restraining order would be obtained shutting down the entire operation or at least that portion which endangers the physical safety of the employees.[44] It is precisely this type of independent determination as to the existence of a safety hazard that would have been accomplished through the arbitration procedure established by the parties in the collective bargaining agreement. Assuming that the safety issue in dispute is not arbitrable, the employer could not force the union to arbitrate rather than resort to a walkout testing the economic power of the parties. It would conversely mean that the union could not compel the company to arbitrate a similar issue, and if the union has neither the desire nor the economic ability for a prolonged work stoppage, it may well leave the employees devoid of an effective method to protect against such safety hazards.[45] In the latter situation, the protection afforded by federal

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[38] *See* text accompanying note 10, *supra.*

[39] Boys Market, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970), accommodating § 4 of Norris-La Guardia Act and § 301 of LMRA; Brotherhood of Railroad Trainmen v. Chicago River and Indiana R.R. Co., 353 U.S. 30 (1957), accommodating Norris-LaGuardia Act and Railway Labor Act.

[40] 30 U.S.C. § 801 *et. seq.* (1969).

[41] 29 U.S.C. § 651 *et. seq.* (1970).

[42] *See* The Occupational Safety and Health Act. of 1970 § 2(b)(1); Federal Coal Mine Health and Safety Act of 1969 § 2(e); [hereinafter cited as OHSHA and FCMHSA respectively].

[43] FCMHSA § 103, 104; OSHA §§ 8, 9, 10, 11, 13.

[44] OSHA § 13(c); *See generally* Spann, *The New Occupational Safety and Health Act,* 58 A.B.A.J. 255 (1972).

[45] *See* Brief for the petitioner at 26-28.

legislation may necessarily be the sole method to implement corrective measures. Thus, contrary to Mr. Justice Douglas' interpretation, the intent of Congress as expressed in the Labor Management Relations Act, OSHA, and the Federal Coal Mine Health and Safety Act, that disputes be resolved by peaceful means, is clearly consistent with and an amplification of the Court's expansive notions encompassing the presumption of arbitrability.[46]

Despite the absence of an express no-strike clause in the collective bargaining agreement, injunctive relief may be granted on the basis of an implied understanding not to strike.[47] Although the Court realized that such an implied understanding must be ascertained by analyzing the intent of the parties, absent an explicit expression of non-inclusion, intent could be found by the inclusion of the arbitration provision: "A no-strike obligation, express or implied is the *quid pro quo* for an understanding by the employer to submit disputes to the process of arbitration."[48]

Such reasoning is obviously influenced by the fear that inability to enjoin the dispute, which in effect is the breach of a no-strike provision, would have a devastating impact on the stability of labor relations.[49]

Thus is evidenced the continual emphasis on peaceful resolution of industrial strife by expansion of the presumption of arbitrability to cover disputes relating to the health and safety of employees. Such expansion is consistent with the congressional intent embodied in the Labor Management Relations Act. If disputes touching upon safety of employees are to be resolved on the picket line, the result would necessarily rest upon the relative economic strength of the parties. If the resources of the parties are unequal there is no assurance that the ultimate resolution of the conflict will in any way reflect the socially desirable result of insuring the safety of those employees. Hence, the Court's emphasis on the federal labor policy favoring peaceful resolution of disputes, here, those concerning safety. Yet, this is not to suggest that all such disputes will be so peacefully resolved. The holding in this case can reasonably be expected to be circumvented by negotiators armed with specific contractual provisions excluding issues of health and safety from the arbitration procedure. In the future we can therefore anticipate that disputes like that of the

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[46] *Id.* at 21-24.

[47] Since the decision in *Lucas Flour* lower courts have consistently implied an agreement not to strike over arbitrable disputes. Old Ben Coal Corp. v. Mine Workers, 457 F.2d 162 (7th Cir. 1972); Blue Diamond Coal Co. v. Mine Workers, 436 F.2d 551 (6th Cir. 1970); United States Steel Corp. v. Mine Workers, 320 F. Supp. 743 (W.D. Pa. 1970). *But see* United Mine Workers v. NLRB, 257 F.2d 211 (D.C. Cir. 1958), where the court did not agree that a contract provision which should be arbitrated is the same as a binding agreement not to strike. This case was decided before *Lucas Flour*.

[48] 94 S. Ct. at 639 quoting Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235, 248 (1970).

[49] Judge Rosen, in his dissent, discussed this possible effect on labor relations.

United Mine Workers may very well be settled on the picket line. Then the answer by the Court is really no answer at all. To effectuate the goal of industrial stability, the intent of Congress of peaceful resolution of labor disputes may indeed be read as to pre-empt the field of safety from, not as Mr. Justice Douglas would suggest, *i.e.*, arbitrators, but from inclusion or exclusion in the agreement itself. In such case it would be negotiators who would receive no share of the power. All such disputes could then be effectively reconciled with the ultimate legislative and social goal—the safety of the individual worker.

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