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Miscellaneous—Labor Law—Matters for Arbitration

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that the dam itself did not interfere with any public use. After thus setting aside the possibility of control over the outlet based upon ownership or navigability the Court then based control upon an apparently new idea. That being that the state as owner of Lake George, a public body of water, has power to control, license, or forbid structures in its tributaries or in outlets therefrom, even if such tributaries are nonavigable, if the structures have an affect upon the state waters. This the Court said is a legislative power and cannot be exercised by the courts; as the trial court has suggested when it placed the Superintendent of Public Works in control of the water level of Lake George.

This theory of control is apparently based on a necessary and proper concept stemming from the state's power to control public and navigable bodies of water.[26] This is a logical and necessary extension of the state's control over its waterways, and is especially helpful when there is a lack of state ownership and navigability as a basis for control. It is noted that the Court was careful to properly place this power in the hands of the legislature rather than in itself,[26] thereby leaving the parties and the problem in status quo until such time as the legislature takes action.

Labor Law—Matters For Arbitration

Although arbitration clauses under collective bargaining agreements were unenforceable at common law,[27] explicit statutory provision for their enforcement in New York is found in section 1450 of the Civil Practice Act. However, the courts will order arbitration only if the dispute is part of a valid contract duly entered into,[28] and if it falls within the terms of the agreement to arbitrate.[29]

Two cases recently before the Court of Appeals concerned matters subject to arbitration under such clauses. One clause referred to any controversy as to validity, interpretation or performance of the agreement, and the other encompassed any dispute arising out of, or relating to, the agreement. With respect to the first, the Court, in *Wrap-Vertiser Corporation v. Plotnick*,[30] held that the arbitrator does not have jurisdiction over a claim for damages based upon fraud and misrepresentation in the inducement of the collective agreement. With respect to the second clause, the Court, in *Matter of Potoker (Brooklyn Eagle)*,[31] held that, although the bar-

25. See notes 22 and 23 *supra*.
26. Bedlow v. New York Floating Dry Dock Co., 112 N.Y. 263, 19 N.E. 800 (1889).
27. Matter of Gantt, 297 N.Y. 433, 79 N.E.2d 815 (1948).
28. Application of Spectrum Fabric Co., 285 App. Div. 710, 139 N.Y.S.2d 612 (1st Dep't 1955), *aff'd* 309 N.Y. 709, 128 N.E.2d 416 (1955); Determination of initial validity of the contract cannot be taken from the court. Martocci v. Martocci, 42 N.Y.S.2d 222 (Sup. Ct. 1943), *aff'd* 266 App. Div. 840, 43 N.Y.S.2d 516 (1st Dep't 1943).
29. Application of Spectrum Fabric Co., note 28 *supra*.
30. 3 N.Y.2d 17, 163 N.Y.S.2d 639 (1957).
31. 2 N.Y.2d 553, 161 N.Y.S.2d 609 (1957).

gaining agreement had terminated, and the defendant-corporation had gone out of business, claims for severance, notice of dismissal and vacation pay accrued during the life of the contract, and, therefore, were properly subjects for arbitration.

In the *Wrap-Vertiser* case, the Appellate Division[32] had affirmed the lower court's denial of petitioner's motion for stay of arbitration on the ground that the dispute, though precedent to the contract, came within the arbitration clause because the claimant did not seek rescission of the contract. That court also felt that the fraud was inseparable from other acts of the petitioner allegedly in breach of the contract, and, thus was part of the performance of the contract, an arbitrable area. The Court of Apeals reversed, reasoning that fraud in inducing a contract could not be a "breach of contract," within the scope of arbitration.

The dissent took substantially the same view as the Appellate Division, and further argued that the dispute comes within section 1448 of the Civil Practice Act[33] which allows arbitration of questions arising precedent to any issue between the parties. However, the word "precedent" in that section has never been defined, and it would seem to refer merely to negotiation disagreements between the parties that were not settled by the contract terms but left to arbitration under the contract. The majority view represents conformance to what appears to be a policy of strictly construing the arbitration statutes.[34]

In the *Brooklyn Eagle* case, the contract, in addition to an open-end arbitration clause, contained a stipulation that if and when the agreement should be terminated, status quo conditions would be maintained by the parties during further negotiations. The contract had expired and the union subsequently called a strike although negotiations for a new agreement continued. The company then informed its employees that it was going out of business and thereupon terminated negotiations. The company later challenged the submission of the severance, notice of dismissal and vacation pay issues to arbitration on the grounds that the claims thereunder arose after termination of the contract and therefore their validity must be determined by a court. The company contended that the contract had been terminated by the employee strike which was in violation of a no-strike clause.

In rejecting the contentions of the company, the Court of Appeals ruled that regardless of when the contract terminated, the pay claims were nonetheless based

32. 2 A.D.2d 346, 155 N.Y.S.2d 806 (1st Dep't 1956).

33. N.Y. CIV. PRAC. ACT §1448 provides:
> Such submission or contract may include questions arising out of valuations, appraisal, or other controversies which may be collateral, incidental, precedent, subsequent to, or independent of any issue between the parties.

34. Lehman v. Ostrovsky, 264 N.Y. 130, 190 N.E. 208 (1934); Riverdale Fabric Corp. v. Tillinghast-Stiles Co., 306 N.Y. 288, 118 N.E.2d 104 (1954).

upon contract provisions and hence were issues "arising out of the contract" within the arbitration clause.[35]

The dissent took the view that the pay claims by their nature arose only upon dismissal of the employees, which occurred after termination of the contract whether it was deemed terminated by the employee strike or the employer cessation of negotiations. The answer to this argument appears to lie in the distinction that, while it is true that the pay rights in issue matured upon dismissal, they nonetheless grew out of the contract while it was in effect. The majority view appears to be clearly preferable when it is considered that an opposite result would have relegated each employee to an action on his pay claim.

Per Curiam

Restoration of competency—The Court held in, *In re Henry*,[36] that as a matter of law, on the evidence in the record, petitioner-appellant had regained her mental health and thus should be declared able to manage herself and her affairs.

Election law—In *McGlynn v. Dixon*,[37] the Court held valid a rule of the 1956 Rules of the Democratic County Committee of Queens County which provided for the election of an Executive Committee of the Democratic Party of Queens County. It was held that the rule was properly adopted in accordance with the power conferred on the committee by sections 14-15 of the Election Law.

35. See note 31 *supra*.
36. 3 N.Y.2d 258, 165 NY.S.2d 60 (1957).
37. 2 N.Y.2d 68, 156 N.Y.S.2d 837 (1956).