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LABOR LAW-ARBITRATION-APPLICABILITY OF THE UNITED STATES ARBITRATION ACT TO COLLECTIVE BARGAINING AGREEMENTS

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LABOR LAW—ARBITRATION—APPLICABILITY OF THE UNITED STATES ARBITRATION ACT TO COLLECTIVE BARGAINING AGREEMENTS—Plaintiff brought an action in the federal district court for Pennsylvania against the defendant labor union for damages caused by a strike, allegedly in violation of a written collective bargaining agreement between them. This contract also provided, inter alia, for submission to arbitration of all differences arising between the parties under the contract. However, no arbitration had been had prior to this suit. Defendant moved to stay all proceedings pending arbitration, allegedly as authorized by section 3 of the United States Arbitration Act[1] providing for such stays in ". . . any suit or proceeding . . . brought in any of the courts of the United States upon any issue referable to arbitration . . . ." Plaintiff urged that these words were limited by section 1, the definition section of the act,[2] which contained a clause that ". . . nothing herein contained shall apply to contracts of employment . . . ."[3] The district court sustained defendant's arguments and further pointed out that even if section 1 were applicable to section 3, it was

[1] 61 Stat. L. 669 (1947), 9 U.S.C. (Supp. IV, 1951) §1 et seq. This act was originally passed in 1925, 43 Stat. L. 883 (1925), and re-enacted in 1947. Its purpose was to change the common law, which would not specifically enforce an agreement to arbitrate. The common law rule is discussed in 43 ILL. L. REV. 678 (1948), and GRISMORE, PRINCIPLES OF THE LAW OF CONTRACTS 510 (1947).

[2] Ibid.

[3] Other pertinent provisions of the Arbitration Act are as follows: Section 2 makes "valid, irrevocable, and enforceable" a written agreement to arbitrate any "maritime transaction or . . . contract evidencing a transaction involving commerce. . . ." Section 4 provides for the specific enforcement of an agreement to arbitrate.

doubtful that a collective bargaining agreement was a "contract of employment" for purposes of exclusion from the act.[4] On appeal, *held*, reversed. Contracts of employment, which include collective bargaining agreements, are excluded from the operation of the entire Arbitration Act. *Pennsylvania Greyhound Lines, Inc. v. Amalgamated Association of Street, Electric Railway, & Motor Coach Employees of America, Division 1063*, (3d Cir. 1952) 193 F. (2d) 327.

Prior to this decision, the circuit courts of appeals were divided on the question whether the "contracts of employment" exclusion of section 1 of the United States Arbitration Act limited section 3 of the act providing for stays pending arbitration in "*any* suit or proceeding" brought in a federal court.[5] [Emphasis added]. The Fourth,[6] Sixth,[7] and Tenth Circuits[8] had recognized such a limitation, while the Third Circuit alone did not.[9] This latter court had reasoned that section 3 governed procedure applicable in the federal courts and accordingly was not in any manner restricted by the definitions and exclusions found in section 1. Thus, courts in the Third Circuit were willing indirectly to enforce all written agreements to arbitrate by the method of staying judicial proceedings pending such arbitration in any suit where the federal courts could gain jurisdiction over the matter.[10] By the principal case, the Third Circuit, relying on certain headnote changes in section 1 made in the re-enactment of the Arbitration Act in 1947,[11] now admits that these arguments were erroneous and were a misconstruction of the true intent of Congress wholly to exclude contracts of employment from the operation of

[4] (D.C. Pa. 1951) 98 F. Supp. 789. The statement of facts here given is condensed from this district court decision.

[5] On this general problem, see 28 N.C.L. REV. 225 (1950); 4 ARB. J. 39 (1940).

[6] International Union United Furniture Workers of America et al. v. Colonial Hardwood Flooring Co., (4th Cir. 1948) 168 F. (2d) 33. Cf. Agostini Brothers Building Corp. v. United States, (4th Cir. 1944) 142 F. (2d) 854, discussed infra note 10.

[7] Gatliff Coal Co. v. Cox, (6th Cir. 1944) 142 F. (2d) 876.

[8] Mercury Oil Refining Co. v. Oil Workers' International Union, C.I.O., (10th Cir. 1951) 187 F. (2d) 980.

[9] Donahue v. Susquehanna Collieries Co., (3d Cir. 1943) 138 F. (2d) 3; Watkins v. Hudson Coal Co., (3d Cir. 1945) 151 F. (2d) 311, cert. den. 327 U.S. 777, 66 S. Ct. 522 (1946), rehearing den. 327 U.S. 816, 66 S. Ct. 701 (1946); Jones v. Mississippi Valley Barge Line Co., (D.C. Pa. 1951) 98 F. Supp. 787.

[10] The Supreme Court and other circuit courts of appeals have not yet passed on the precise question presented here. However, the Second Circuit has held that the stay provisions of §3 are not limited to those cases which can be specifically enforced under §4 of the act, supra note 3; Shanferoke Coal and Supply Corp. v. Westchester Service Corp., (2d Cir. 1934) 70 F. (2d) 297, affd. 293 U.S. 449, 55 S. Ct. 313 (1935); while the Fourth Circuit has held that §3 was not limited to the class of cases enumerated in §2 of the act, supra note 3; Agostini Brothers Building Corp. v. United States, supra note 6. To this same effect and containing an excellent discussion of the various cases pertaining to this problem is Wilson & Co. v. Fremont Cake & Meal Co., (D.C. Neb. 1948) 77 F. Supp. 364, affd. (8th Cir. 1950) 183 F. (2d) 57. Cf. Shirley-Herman Co. v. International Hod Carriers, Building and Common Laborer's Union of America, Local No. 210, (2d Cir. 1950) 182 F. (2d) 806, dealing with the applicability of the Arbitration Act to suits brought under §301 of the Labor-Management Relations Act of 1947, 29 U.S.C. (Supp. IV, 1951) §185.

[11] See note 1 supra. In the re-enactment, Congress added these words to the heading of §1: "exceptions to operation of *title*" [Emphasis added].

the entire act.[12] Further, this decision joins the trend of other circuit courts of appeals in rejecting the contention that Congress intended to distinguish collective bargaining agreements from other contracts of employment for purposes of exclusion from the Arbitration Act.[13]

It now seems clear that there is no method under existing federal legislation to enforce, directly or indirectly, an agreement to arbitrate contained in a collective bargaining agreement. No doubt, this result is dictated by the technical rules of statutory construction,[14] the legislative history,[15] and context applicable to the Arbitration Act.[16] Yet, such a result seems completely antithetical to an apparently accepted national policy in favor of promoting industrial peace through the use of arbitration to settle disputes between labor and management.[17] Accordingly, it would seem that congressional action specifically rectifying this anomaly would be desirable.

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[12] Actually, these views were first announced by the Third Circuit in Amalgamated Association, etc. v. Pennsylvania Greyhound Lines, Inc., (3d Cir. 1951) 192 F. (2d) 310, on which the principal case relies.

[13] See for example, Gatliff Coal Co. v. Cox, supra note 7. This distinction was first recognized in analogous state court decisions: Levy v. Superior Court, 15 Cal. (2d) 692, 104 P. (2d) 770 (1940), and cases collected at 129 A.L.R. 965 (1940). Only recently has it been suggested and upheld by the federal district courts: Lewittes & Sons v. United Furniture Workers of America, (D.C. N.Y. 1951) 95 F. Supp. 851. Dictum in the Supreme Court case of J. I. Case Co. v. National Labor Relations Board, 321 U.S. 332, 64 S. Ct. 576 (1944), supports this distinction; however, the Third Circuit has distinguished this case from those similar to the principal case on their facts: Amalgamated Association, etc., v. Pennsylvania Greyhound Lines, Inc., supra note 12.

[14] See dissent in Watkins v. Hudson Coal Co., supra note 9.

[15] The Arbitration Act was presented primarily as a measure to regulate commercial contracts. No mention is made in the congressional debates of the impact of the act on collective bargaining agreements. See 28 N.C. L. REV. 225 (1950).

[16] See Amalgamated Association, etc., v. Pennsylvania Greyhound Lines, Inc., supra note 12.

[17] See Shirley-Herman Co. v. International Hod Carriers, Building and Common Laborer's Union of America, supra note 10.