Michigan Law Review

Volume 51 | Issue 4

1953

LABOR LAW-CLASS ACTION BY LABOR UNION MEMBERS TO ENFORCE COLLECTIVE BARGAINING AGREEMENT-JURISDICTION OF STATE COURTS

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LABOR LAW—CLASS ACTION BY LABOR UNION MEMBERS TO ENFORCE COLLECTIVE BARGAINING AGREEMENT—JURISDICTION OF STATE COURTS—Plaintiff was an employee of defendant corporation, and an officer of the union accredited as bargaining agent. He brought an equity suit in the Ohio courts for specific enforcement of a collective bargaining agreement and to collect back wages, on behalf of himself and other union members similarly situated. The basis of the suit was section 11257 of the Ohio General Code, providing for class actions.[1] The lower court dismissed the petition on the grounds of no jurisdiction under that section. On appeal, *held,* reversed. Although the defendant corporation's activities in interstate commerce subject it to federal labor legislation, neither the amended National Labor Relations Act[2] nor the other provisions of the Taft-Hartley Act,[3] conferring jurisdiction over labor disputes upon the National Labor Relations Board and the federal courts, prevents a state equity suit for specific performance of a collective bargaining agreement. The provision of the latter act, allowing suit by an unincorporated labor organization as a legal entity,[4] does not preclude a class suit in either federal or state courts. The suit was properly brought under the Ohio class suit provision. *Masetta v. National Bronze and Aluminum Foundry Co.,* (Ohio App. 1952) 107 N.E. (2d) 243.

The court below[5] made no decision on the relevance of the federal labor legislation to this suit. The court of appeals found therein two possible obstacles to the action: (1) that the jurisdiction conferred on the National Labor Relations Board,[6] and upon the federal district courts[7] is exclusive, preventing state court action, and (2) that the provision of Taft-Hartley, allowing a suit by or against a labor union as an entity[8] is inconsistent with the use of the class suit device. On the first point, the jurisdiction of the NLRB over unfair labor practices is exclusive,[9] but violation of a collective agreement is not an "unfair labor practice."[10] Section 301 of the Taft-Hartley Act confers jurisdiction upon the federal district courts to entertain suits for breach of collective agreements.[11] The court in the instant case held that this provision did not comprehend a suit to enjoin a contract violation, so the state court was not prevented from taking jurisdiction.[12]

[1] 8 Ohio Gen. Code Ann. (Page, 1938) §11257: "One or more can sue or defend for all. When the question is one of a common or general interest of many persons, or the parties are very numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

[2] National Labor Relations Act, as amended, 29 U.S.C. (Supp. V, 1952) §§151-168.

[3] Labor Management Relations Act, 29 U.S.C. (Supp. V, 1952) §§141-197.

[4] 29 U.S.C. (Supp. V, 1952) §185(b).

[5] Masetta v. National Bronze and Aluminum Foundry Co., 46 O.O. 20 (1951).

[6] 29 U.S.C. (Supp. V, 1952) §160(a).

[7] 29 U.S.C. (Supp. V, 1952) §185(a).

[8] Supra note 4.

[9] Supra note 6.

[10] 29 U.S.C. (Supp. V, 1952) §158; Textile Workers v. Arista Mills, (4th Cir. 1951) 193 F. (2d) 529. The presence of an unfair practice in the case will not prevent the court from taking jurisdiction over the contract breach.

[11] Supra note 7.

[12] Principal case at 246.

This holding leaves unanswered a number of problems that have arisen under section 301. Neither the words of the act nor its legislative history[18] unequivocally determine whether section 301 merely provides a federal forum or whether it creates a federal substantive right, and on this question the decisions are divided, with a majority favoring the latter interpretation.[14] In any case, Congress having acted, it is not clear whether state courts may continue to hear suits based on labor contract violation.[15] If state jurisdiction is not precluded, and the substantive right interpretation is accepted, it is uncertain whether state substantive law may be applied by a state court, although policy favoring uniformity of result suggests that it should be excluded.[16] If federal substantive law is used, the dominant authority will deny injunctive relief on the grounds that the "breach of contract" action of section 301 justifies only the damage remedy or declaratory judgment.[17] Except on this last point, the Supreme Court has made no ruling, but the Ohio court in the present case is on extremely uncertain ground in assuming both that it can take jurisdiction and that it can apply state law. The second question stated above was settled by reliance on a federal court decision wherein no inconsistency between the use of the class suit and the treatment of the union as a legal entity was found.[18] While there has been dissent from this,[19] the better view would preserve the class action wherever it serves a useful purpose. Since it is probably true that Taft-Hartley offers no individual remedies,[20] it is unwise to abandon the device by which

[13] See references to §301 in U.S. Government, National Labor Relations Board, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 (1948), and Bureau of National Affairs, NEW LABOR LAW (1947). The congressional reports and speeches indicate disagreement as to whether this additional means of enforcement of labor contracts is necessary in the light of existing state provisions, but there is no contention that a substantive right or exclusive federal jurisdiction was being created.

[14] Pepper & Potter, Inc. v. Local 977, (D.C. N.Y. 1952) 103 F. Supp. 684; Shirley-Herman Co. v. International Union, (2d Cir. 1950) 182 F. (2d) 806. Cf. John Hancock Life Ins. Co. v. United Workers, (D.C. N.J. 1950) 93 F. Supp. 296.

[15] Cf. Fay v. American Cystoscope Co., (D.C. N.Y. 1951) 98 F. Supp. 278 and John Hancock Life Ins. Co. v. United Workers, supra note 13.

[16] See Wallace, "The Contract Cause of Action Under the Taft-Hartley Act," 16 BROOKLYN L. REV. 1 (1949).

[17] Bakery Drivers' Union v. Wagshall, 333 U.S. 437, 68 S.Ct. 630 (1948); United Packing House Workers v. Wilson & Co., (D.C. Ill. 1948) 80 F. Supp. 563. *Contra:* Mountain States Div. No. 17 v. Mountain States T. & T. Co., (D.C. Colo. 1948) 81 F. Supp. 397. The Supreme Court decision was of limited scope, so the question is not necessarily closed. Also, the cases denying injunction were decided on the ground that any exception to the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. (1946) §§101-115, must be made in specific terms. Since the Norris Act is not binding upon state courts, it could be argued that injunction could be granted in a state suit, but the federal court decisions imply that no equitable remedies were intended by the language of §301.

[18] Tisa v. Potofsky, (D.C. N.Y. 1950) 90 F. Supp. 175.

[19] Schatte v. International Alliance, (D.C. Cal. 1949) 84 F. Supp. 669, affd. (9th Cir. 1950) 182 F. (2d) 158; Rock Drilling, etc. v. Mason & Hangar Co., (D.C. N.Y.) 1950) 90 F. Supp. 539.

[20] Reed v. Fawick Airflex Co., (D.C. Ohio 1949) 86 F. Supp. 822; Electrical Workers v. Fawick Airflex Co., (D.C. Ohio 1950) 25 L.R.R.M. 2397. Also discussed in lower court decision of Schatte v. International Alliance, supra note 19. The writer in 17 A.L.R.

the individual remedies outside the act can be made fruitful (assuming, in light of the foregoing discussion, that such other remedies can exist). It is a general principle that the class action remains available where there are other means of attack. This is true where the other remedies are statutory, unless the class action is excluded in specific terms.[21]

These problems aside, was the present action properly brought under the Ohio class suit provision? It should be made clear at the outset that the class suit in the Ohio courts is what would be denominated a true class suit under the federal procedural rules, res judicata as to all members of the class, whether or not before the court.[22] Thus, mere community of interest in issues of law or fact is not sufficient as it would be if the provision were one of permissive joinder for trial convenience only.[23] The requirements have been stated as both an interest in the subject matter of the action and in obtaining the whole relief demanded, a larger quantum.[24] Reduced to concrete terms, these requirements have been held a bar to maintenance of a class suit to enforce payment of wages, because each employee's recovery depends on separate facts and he has no direct interest in the recovery of other members of the class.[25] Where injunctive relief is sought, these objections tend to fall away.[26] While the Ohio courts subscribe to these principles as a general matter, the cases are by no means uniform.[27] The court relied on a 1922 decision[28] which found sufficient common interest in the desire to preserve to the class the benefits of a valuable contract. While it was recognized that there was a lack of complete identity on the demand for wages, it was held that this is overcome by the fact that the legal alternative of individual suits was inadequate because separate suits are not profitable. The class suit provision was looked upon as a device that was intended to give effect and standing to unincorporated associations, and to this end the lack of the usual identity of interest would be overlooked. Some other courts have put a similar construction on the class suit provisions of their codes.[29] While it would be desirable to remove all doubt about the propriety of this action by adopting a liberal class suit provision like that of the federal rules, this

(2d) 614 at 617 (1951), does not believe that the language of §301 will support a suit by an individual employee.

[21] Ross, "Class Representation in Ohio," 20 UNIV. CIN. L. REV. 85 at 93 (1951).

[22] Id. at 117.

[23] See note, 13 O.O. 205 at 207 (1939); Kuligowski v. Hart, 23 O.O. 213 (1942).

[24] Ibid.

[25] Kuligowski v. Hart, supra note 23.

[26] Faultless Caster Corp. v. United Workers, 119 Ind. App. 330, 85 N.E. (2d) 703 (1949). The lower court in the principal case, supra note 5, chose to regard the cause as primarily legal, and therefore not a proper subject for the equity device of a class suit. It distinguished the leading Ohio case asserting the equal applicability of the class suit to legal and equitable causes, Platt v. Colvin, 50 Ohio St. 703, 36 N.E. 735 (1893).

[27] Compare Kuligowski v. Hart, supra note 23, with Potts v. Stedman, 22 O.O. 488 (1942), and Leveranz v. Home Brewing Co., 24 Ohio N.P. (n.s.) 193 (1922).

[28] Leveranz v. Home Brewing Co., supra note 27.

[29] E.g., O'Jay Spread Co. v. Hicks, 185 Ga. 507, 195 S.E. 564 (1937).

decision represents a conscientious attempt toward effective administration with the tools at hand. But because of its res judicata effect, caution is required in broadening the application of this kind of provision.

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