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Labor Law—Collective Bargaining Agreement—No Strike Clause—Specific Enforcement.—Sinclair Ref. Co. v. Atkinson

David W. Curtis

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to labor, perhaps the demise of the agency shop is the start of its return. But even such a result would leave many controversies still simmering. Since a petition for certiorari is to be filed in the instant case,³⁰ perhaps the Supreme Court will determine not only the future of the agency shop under federal law, but a policy to be followed in the future in the area of union security.

RICHARD L. FISHMAN

Labor Law—Collective Bargaining Agreement—No Strike Clause—Specific Enforcement.—*Sinclair Ref. Co. v. Atkinson*.¹—This is an action brought under Section 301 of the Taft-Hartley Act, wherein petitioner oil company seeks an injunction restraining the respondent union's breach of a "no-strike" clause contained in a collective bargaining agreement between the parties. The provisions of the contract called for compulsory and binding arbitration of "any differences regarding wages, hours or working conditions," and also a promise by the union that there would be no strikes, slowdowns or work stoppages over any matter which could be the subject of a grievance.² It does not appear that the grievance here involved (concerning the docking of the pay of three employees in the amount of \$2.19) was submitted by the union to the grievance and arbitration procedures. It is known, however, that the union did strike petitioner's plants. Petitioner brings this action to prevent the breach of that clause, and in a companion case seeks damages from the same strike under the same section.³ HELD: This case clearly involves a labor dispute within the meaning of the Norris-LaGuardia Act, and absent an express repeal of that section, the anti-injunction provisions of that act apply. Thus, the federal courts have no jurisdiction or power to grant the requested injunction.

Absent statutory provisions to the contrary, it has been held that the courts have the power to prevent work stoppages by labor unions.⁴ With the passage of the Norris-LaGuardia Act, containing specific anti-injunction provisions,⁵ Congress set forth a national policy of encouragement of the growth of labor unions.⁶ While this has consistently been the policy of the federal government since the passage of that act, the Taft-Hartley Act was

³⁰ Letter From Stuart Rothman, General Counsel for the National Labor Relations Board, to the B.C. Ind. & Com. L. Rev., August 13, 1962.

¹ 370 U.S. 195 (1962).

² Article 3 of the contract provides that "there shall be no strike . . . (1) for any cause which is or may be the subject of a grievance. . . ."

³ *Atkinson v. Sinclair Ref. Co.*, 370 U.S. 238 (1962).

⁴ *Loewe v. Lawlor*, 208 U.S. 274 (1914); *In re Debs*, 158 U.S. 564 (1894).

⁵ No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating in or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:

(a) ceasing or refusing to perform any work or to remain in any relation of employment. . . .

⁴⁷ Stat. 70 (1932), 29 U.S.C. § 104 (1958).

⁶ See 47 Stat. 70 (1932), 29 U.S.C. § 102 (1958).

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designed to make unions more responsible for their activities.⁷ Thus section 301(a) provides that the union may sue or be sued for breach of contract in the federal courts.⁸ It is this section which is in controversy.

Petitioner maintains that the use of the word "suits" in the act includes all judicial remedies, including the injunction, thus implicitly repealing the applicable section of Norris-LaGuardia. Respondent argues that there has been no such repeal and that the federal courts are powerless to issue an injunction preventing them from striking. The Court, in agreeing with the union, said:

We cannot accept the startling argument made here that even though Congress did not itself want to repeal the Norris-LaGuardia Act, it was willing to confer a power upon the courts to 'accommodate' that Act out of existence whenever they might find it expedient to do so in furtherance of some policy they had fashioned under section 301. The unequivocal statements in the House Conference Report and by Senator Taft could only have been . . . as assurances . . . that they could vote in favor of Sec. 301 without altering, reducing, or impairing in any manner the anti-injunction provisions of the Norris-LaGuardia Act.⁹

While the Supreme Court of the United States had not been called upon previously to decide this question, several lower federal courts have made conflicting decisions on the subject¹⁰ and the Supreme Court has decided similar, if not analogous, cases.¹¹ In the instant case, the Court seems to

⁷ An Act . . . to equalize legal responsibilities of labor organizations and employers . . .

It is the purpose and policy of this Act to prescribe the legitimate rights of both employees and employers in their relations affecting commerce . . . to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

61 Stat. 156 (1947), 29 U.S.C. § 141 (1958). See also, S. Rep. No. 105, 80th Cong., 1st Sess. (1947).

⁸ Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations may be brought in any district court of the United States.

61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

⁹ 370 U.S. at 201.

¹⁰ *Teamsters v. Yellow Transit Freight Line*, 282 F.2d 345 (10th Cir. 1960); *Mead v. Teamsters*, 217 F.2d 6 (1st Cir. 1954); *Alcoa SS. Co. v. McMahon*, 173 F.2d 567 (2d Cir. 1949); *Bull SS. Co. v. Seafarers*, 250 F.2d 326 (2d Cir. 1957).

¹¹ *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R. Co.*, 353 U.S. 301 (1956); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1956). Each of these cases is, of course, distinguishable. In *Chicago River*, the Court held that an accommodation must be made between the arbitration provisions of the Railway Labor Act and the Norris-LaGuardia Act, so that the purpose of both could be preserved. In that case, the Court upheld an injunction preventing the union from striking. In *Lincoln Mills*, the Court stated that the arbitration clause included in the collective bargaining contract was obviously a quid pro quo for the agreement not to strike. Thus, in furtherance of a Congressional policy of encouragement of such agreements, arbitration clauses would be specifically enforced. In that case, the Court had no difficulty "ac-

have limited the implications of the *Lincoln Mills* decision.¹² The effect will be that now, while a union can be assured that any arbitration agreement will be specifically enforced,¹³ management will not have the same assurances regarding the no-strike clause.¹⁴ This is true even though the Court has said that an arbitration agreement is the *quid pro quo* for a no-strike clause,¹⁵ and we assume the converse to be true. It would seem that this decision, rather than promoting the national policy of encouragement of such agreements, will tend to discourage them, as certainly any employer will think twice before he will enter into such an unenforceable and one-sided contract.

Yet this case may have even more effect in the long run on the relationship of state courts to the field of labor law. Much has been written about the effect of the *Lincoln Mills* decision on section 301 and on labor law in general.¹⁶ The consensus appears to be that *Lincoln Mills* established section 301 not as a jurisdictional or procedural statement of the law, but as one permitting the courts to propound and enforce a federal substantive law.¹⁷ The question still remains, however, whether the state courts, in deciding labor cases, are required to apply this decision or whether they can apply the remedies permitted by the state laws.

If the former is the case, then the effect will be a wiping out of state case law and legislation on the subject, and in some cases a deletion of remedies which employers previously possessed.¹⁸ If the latter, we will have differing precedents arising in a field which should be the object of a certain amount of uniformity.¹⁹

It would seem clear from the wording of section 301 that Congress "commodating" the provisions of Taft-Hartley with those of Norris-LaGuardia and the common law.

¹² This limitation was apparently based on the theory that Congress had, in other sections of Taft-Hartley, specifically repealed applicable sections of the Norris-LaGuardia Act. Here there was no such repeal. In fact, such a repeal was rejected by the Conference Committee.

¹³ *Textile Workers Unions v. Lincoln Mills*, supra note 11.

¹⁴ It appears, however, that the federal courts will order a union to comply with an arbitration clause, and, theoretically at least, refusal to conform to such an order would place the union in contempt. See *Teamsters v. Lucas Flour*, 369 U.S. 95 (1962). However, the emotional strife and the upset in normal relations which would accompany a strike would seem to make such an order an empty gesture.

¹⁵ Supra note 10.

¹⁶ E.g., Bickel and Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case*, 71 Harv. L. Rev. 1 (1957).

¹⁷ The question then is, what is the substantive law to be applied in suits under § 301(a). We conclude that the substantive law to apply in suits under § 301(a) is federal law which the courts must fashion from the policy of our national labor laws. . . .

Textile Workers Union v. Lincoln Mills, supra note 11, at 456.

¹⁸ Rice, *A Paradox of our National Labor Law*, 34 Marq. L. Rev. 233 (1951). S. Rep. No. 105, supra note 7, also points out that there are at least four states that allow the injunction to be issued against labor unions, Minnesota, Colorado, Wisconsin and California.

¹⁹ . . . the federal policy of uniformity would be undercut since the decisional law governing collective agreements affecting interstate commerce would be composed of two independent bodies of law, their application being dependent upon whether the parties litigated in a federal or state forum. Note, 71 Harv. L. Rev. 1172, 1174 (1957).

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tainly had no intention of removing any remedies which an employer or management might possess against the breach of contract by a labor union prior to the passage of the act.²⁰ Indeed, the statute was intended as a remedy for inequities that existed at the time.²¹ One California case²² decided subsequent to *Lincoln Mills* but prior to the instant case assumed that Norris-LaGuardia would prevent the federal courts from issuing an injunction. It held, however, that as neither Norris-LaGuardia nor section 301 was intended to deprive the state courts of the injunctive power, an injunction would issue to specifically enforce a no-strike clause, in the exercise of its (the state court's) concurrent jurisdiction.²³ It would seem that if that case were to be followed, the outcome of the case would be decided, not necessarily on the merits of the case, but perhaps on the choice of forum which petitioner chooses. If the action were brought in a state court, an injunction could issue, while if brought in a federal court, it could not.²⁴

The logical step, then, would seem to be that Congress declare its intention that labor law is an area where, within the broad confines of the commerce clause, the federal government should have exclusive jurisdiction. This would provide for a uniform law throughout the country. At the same time, however, it would be inequitable to deny management the right to enforce a contract entered into with unions in a collective bargaining contract.

The result of this case, while perhaps being in strict conformity with the precise letter of the law, does not seem to be in conformity with the spirit of the law. If the Court is to propound a federal common law of labor,²⁵ it should make every attempt to provide for equality of remedy. If the no-strike clause is the *quid pro quo* for an arbitration agreement, then the two should be equally enforceable in the courts. Lest the policy of constructive labor peace which Congress has attempted to promote become a nullity, it is hoped that Congress in its wisdom will expeditiously correct the inequality which is sure to arise from this decision.

DAVID W. CURTIS

²⁰ Nothing in the nature of rights created by section 301 requires that injunctive relief be denied in their enforcement.

McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 2d 45, 64, 315 P.2d 322, 332 (1957), cert. denied, 355 U.S. 932 (1958).

²¹ *Supra* note 6.

²² *McCarroll v. Los Angeles County Dist. Council of Carpenters*, *supra* note 20.

²³ Section 301 does not appear to contemplate jurisdiction for adjudication of disputes arising out of labor-management agreements. The permissive language of this section—"suits . . . may be brought"—suggests this conclusion, and the policy of federalism favoring concurrent jurisdiction seems to require it absent some contrary legislative expression.

Note, 72 Harv. L. Rev. 354, 366 (1959). Apparently a majority of courts would agree with this decision; e.g., *Associated Tel. Co. v. Communication Workers*, 114 F. Supp. 334, 337 (S.D. Cal. 1953); contra, *Fay v. American Cystoscope Makers, Inc.*, 98 F. Supp. 278 (S.D.N.Y. 1951).

²⁴ This might, of course, depend to some extent on the applicability of *Erie RR v. Tompkins*, 304 U.S. 64 (1938).

²⁵ *Textile Workers Union v. Lincoln Mills*, *supra* note 11, at 456.