St. John's Law Review

Volume 32
Issue 2 *Volume 32, May 1958, Number 2*

Article 14

May 2013

Arbitration and Award--Labor Management Relations--Injunctions--Arbitrator's Injunction Held Not in Violation of Section 876-a of Civil Practice Act (Matter of Ruppert, 3 N.Y.2d 576 (1958))

St. John's Law Review

RECENT DECISIONS

ARBITRATION AND AWARD—LABOR MANAGEMENT RELATIONS—INJUNCTIONS — ARBITRATOR'S INJUNCTION HELD NOT IN VIOLATION OF SECTION 876-a OF CIVIL PRACTICE ACT. — Petitioners-employers moved for a court order confirming an arbitration award which enjoined the respondent-unions from continuing "slowdowns." Respondents contended that the arbitrator's injunction was unlawful and that it violated Section 876-a of the New York Civil Practice Act. The Court of Appeals, affirming the lower court, *held* that an arbitrator may issue an injunction and that such injunction does not violate Section 876-a. *Matter of Ruppert,* 3 N.Y.2d 576, — N.E.2d — (1958).

At common law arbitrators derived their jurisdiction over both the parties and the dispute from the consent of the submitting parties.[1] Under the New York arbitration law, the arbitrator apparently retains these jurisdictional powers.[2] While no statute expressly defines the arbitrator's powers, the provisions of Section 1448 of the Civil Practice Act, making valid and enforcible arbitration submissions and contracts, suggest the adoption of the common-law concept.[3] An award will not be enforced, however, when the arbitrator is guilty of evident partiality or corruption, misconduct prejudicial to the rights of any party, or exceeding or imperfectly executing his powers.[4]

The Court of Appeals previously had impliedly recognized the power of an arbitrator to issue mandatory injunctions [5] by upholding awards containing them.[6] The court did not question the equitable

---

[1] Dodds v. Hakes, 114 N.Y. 260, 263-64, 21 N.E. 398 (1889); *accord,* Nutt v. United States, 125 U.S. 650, 653 (1887).

[2] See Marchant v. Mead-Morrison Mfg. Co., 252 N.Y. 284, 299, 169 N.E. 386, 391 (1929).

[3] Section 1448 begins: "Except as otherwise prescribed in this section, two or more persons may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission which may be the subject of an action, or they may contract to settle by arbitration a controversy thereafter arising between them and such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract."

[4] N.Y. CIV. PRAC. ACT § 1462.

[5] When the Court in the instant case says that it has never confirmed an award containing an "injunction" but has upheld awards containing "mandatory injunctions," the distinction must refer to prohibitory injunctions which restrain for a period of time, perhaps for the life of the contract, and mandatory injunctions which can be obeyed immediately.

[6] Matter of United Culinary Bar & Grill Employees, 299 N.Y. 577, 86 N.E.2d 104 (1949), *affirming* 272 App. Div. 491, 71 N.Y.S.2d 160 (1st Dep't 1947); Matter of Devery, 292 N.Y. 596, 55 N.E.2d 370 (1944) (mem. opinion), *affirming* 266 App. Div. 213, 41 N.Y.S.2d 293 (1st Dep't 1943).

relief ordered by an arbitrator acting within his powers.[7] On the other hand, a few lower courts have refused to recognize the grant of equitable powers to an arbitrator by the parties on the ground that injunctions properly issue from the court's equity powers alone.[8]

In the case under discussion, respondents first contended that the arbitrator, in issuing an injunction, exceeded his powers. Their collective bargaining contract with the brewery owners prohibited lockouts, strikes, and slowdowns, and provided for an arbitration of alleged violations within twenty-four hours of the demand for arbitration. This clause did not expressly give the arbitrator equitable powers.[9] The Court reasoned that the agreement for "speedy" arbitration manifested an intent that the arbitrator have the necessary powers to remedy any violation. The only effective remedy in case of slowdowns, the Court found, was an injunction. Since the parties impliedly contemplated equitable relief, the Court held that the arbitrator was within his powers in enjoining the union from continuing the slowdown.

The respondent-union further contended that Section 876-a of the Civil Practice Act was violated when the lower court confirmed the arbitrator's injunction.[10] This section forbids court injunctions in labor disputes unless based on certain findings which were not made by the arbitrator in the present case. Furthermore, it expresses the public policy of shielding legitimate industrial protest from court action.[11] But Article 84 of the Civil Practice Act expresses the

---

[7] In the *Bar & Grill Employees* case, note 6 *supra*, the Court of Appeals affirmed without opinion the Appellate Division's holding that there was sufficient service of notice to arbitrate. In the *Devery* case, note 6 *supra*, the court likewise affirmed the Appellate Division's holding that the arbitration clause which allowed the arbitrator to make a "just" disposition of the dispute authorized his issuance of a mandatory injunction.

[8] Matter of Pocketbook Workers Union of N.Y., 149 N.Y.S.2d 56 (Sup. Ct. 1956); Young v. Deschler, 202 Misc. 811, 110 N.Y.S.2d 220 (Sup. Ct. 1951). In the *Pocketbook Workers* case, the court refused to confirm the injunctive portion of an arbitrator's award on the grounds that the arbitrator's order was repugnant to equity. In the *Young* case, the court confirmed the award's injunction, but by virtue of its own equitable jurisdiction. However, in the motion for a court order on an award, § 1461 of the Civil Practice Act seems to direct the court's powers to granting an order on the exact terms of a jurisdictionally valid award, and not to adjudicating on the arbitrator's finding of fact.

[9] A clause expressly giving the arbitrator power to award equitable relief is found in Matter of Devery, 266 App. Div. 213, 41 N.Y.S.2d 293 (1st Dep't 1943): ". . . [T]he Impartial Chairman may make such award . . . which . . . may contain provisions commanding or restraining acts and conduct of the Employer or the Union." *Id.* at 215, 41 N.Y.S.2d at 295.

[10] Matter of Ruppert, 2 M.2d 744, 152 N.Y.S.2d 327 (Sup. Ct. 1956).

[11] Laws of N.Y. 1935, c. 477. See also Matter of Tarrytown Rd. Restaurant, Inc., 115 N.Y.S.2d 626 (Sup. Ct. 1952).

public policy of arbitrating disputes.[12] Thus the Court was presented with the problem of apparently conflicting public policies.

Where the ability to arbitrate a dispute has been challenged because of policy considerations, the courts have occasionally disallowed arbitration. Thus, where the matter of dispute is clearly illegal or is of such interest to the state that the courts alone should resolve it, arbitration is denied.[13] A lower court, considering the policy conflict presented in the *Ruppert* case, concluded that

> . . . illegality can result only if it be held that the public policy underlying Sec. 876-a C.P.A. is such as to preclude the possibility of including the regulation of strikes involving a labor dispute in the area of permissible arbitration. . . . Concededly, Sec. 876-a C.P.A. is expressive of profound public policy. That policy, however, is not so commanding as to override the public policy underlying Article 84, C.P.A.[14]

The Court in the instant case admits that the court has ordered this injunction "although not in the sense of the statute." But in lieu of validating the injunction by holding Section 876-a inapplicable, the Court presumes the apparent conflict of the policies, one being injunction under the stringent requirements of Section 876-a and the other injunction by arbitration, in the area of court action in labor relations. The Court then resolves the conflict by "harmonizing" the policies, stating that the parties' voluntary settlement of a dispute should not be denied them for any reason. Thus, Section 876-a is ineffectual against the arbitrator's injunction, and the Court allows to the private tribunal a power it could not exercise itself.

The *Ruppert* case clarifies the status of, and strengthens the policy behind, New York's arbitration law. The Court's construction of the "speedy" arbitration provision as contemplating an injunction will probably occasion more injunctions in proceedings under similar

---

[12] Laws of N.Y. 1920, c. 275. Matter of Feuer Transportation, Inc., 295 N.Y. 87, 62 N.E.2d 178 (1946); Matter of Fletcher, 237 N.Y. 440, 143 N.E. 248 (1924); Berkovitz v. Arbib & Houlberg, Inc., 230 N.Y. 261, 130 N.E. 288 (1921) (declared the arbitration law constitutional); Petition of Minasian, 14 N.Y.S.2d 818 (Sup. Ct. 1939).

[13] See, *e.g.*, Matter of Western Union Tel. Co., 299 N.Y. 177, 86 N.E.2d 162 (1949) (a violation of the penal code); Matter of Kramer & Uchitelle, Inc., 288 N.Y. 467, 43 N.E.2d 493 (1942) (a violation of OPA maximum price). The state's interest in the matter of dispute invalidated arbitration in Matter of East India Trading Co., 305 N.Y. 866, 114 N.E.2d 213 (1953) (dictum) (an award of penalties); Matter of Publishers Ass'n of N.Y.C., 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952) (an award of punitive damages); Matter of Kingwood Management Corp., 272 App. Div. 328, 70 N.Y.S.2d 692 (1st Dep't 1947) (the statute violated under the contract included the remedy for its violation); Matter of Michelman, 5 M.2d 570, 135 N.Y.S.2d 608 (Sup. Ct. 1954) (visitation of children); Matter of Hill, 199 Misc. 1035, 135 N.Y.S.2d 608 (Sup. Ct. 1951) (custody of children).

[14] Matter of Wholesale Laundry Bd. of Trade, Inc., 103 N.Y.S.2d 23, 27-29 (Sup. Ct. 1951).

clauses. Moreover, aware of this construction, parties to collective bargaining contracts will better be able to frame the exact results they want from arbitration.

ATTORNEYS' FEES — FIRST DEPARTMENT CONTINGENT FEE SCHEDULE — HELD VOID AS CONTRARY TO STATUTE. — Plaintiff-attorneys sought a judgment declaring invalid Special Rule 4 [1] of the Appellate Division, First Department. The Rule purported to regulate the amounts of contingent fees which attorneys may charge in personal injury and wrongful death actions. The Appellate Division affirmed the New York Supreme Court *holding* that, since the Appellate Division has no power to enact rules of civil practice contrary to statute,[2] the Rule was void as being in opposition to Section 474 of the Judiciary Law.[3] *Gair v. Peck,* 139 N.Y.L.J. No. 64, p. 1, col. 1 (App. Div. 3d Dep't March 27, 1958) (per curiam), *affirming* 6 M.2d 739, 165 N.Y.S.2d 247 (Sup. Ct. 1957).

Contracts for attorneys' fees have always been subject to court scrutiny.[4] In New York, contingent fee agreements are valid provided they are reasonable according to the circumstances of the case.[5]

The New York Appellate Division has powers of inquiry into the activities of attorneys.[6] They may discipline those guilty of unprofessional conduct [7] and regulate the admission of attorneys to practice.[8]

Through its general powers of inquiry the Appellate Division has the power to discipline an attorney if he charges an unconscionable fee.[9] The unconscionableness of the fee, however, is a matter of fact. All the circumstances of the case must be considered, such as the

---

[1] 1ST DEP'T SPECIAL RULE 4.

[2] N.Y. JUDICIARY LAW § 83.

[3] Attorneys' fees are to be determined by contract between the parties. *Id.* § 474.

[4] See, *e.g.,* Nesbit v. Lockman, 34 N.Y. *167, 169-70 (1866).

[5] Fowler v. Callan, 102 N.Y. *395, 7 N.E. 169 (1886). See also CANONS OF PROF. ETHICS, A. B. A. 13, which provides that a contingent fee agreement is valid, provided it is reasonable according to the circumstances of the case. The canons of professional ethics are entitled to the force of the law in New York. *Cf.* Matter of Annunziato's Estate, 201 Misc. 971, 108 N.Y.S.2d 101 (Surr. Ct. 1951).

[6] People *ex rel.* Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487 (1928).

[7] N.Y. JUDICIARY LAW § 90(2). See also note 6 *supra.*

[8] *Id.* §§ 53, 56, 460-61, 463-70.

[9] See Morehouse v. Brooklyn Heights R.R., 185 N.Y. 520, 78 N.E. 179 (1906); Matter of Fitzsimons, 174 N.Y. 15, 66 N.E. 554 (1903).