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Labor Law--Federal Jurisdiction--Federal Courts Not Authorized to Enjoin Strikes in Violation of Collective Bargaining Agreements Despite Section 301 of Taft-Hartley Act (Sinclair Ref. Co. v. Atkinson, 370 U.S. 195 (1962))

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LABOR LAW — FEDERAL JURISDICTION — FEDERAL COURTS NOT AUTHORIZED TO ENJOIN STRIKES IN VIOLATION OF COLLECTIVE BARGAINING AGREEMENTS DESPITE SECTION 301 OF TAFT-HARTLEY ACT. — Sinclair Refining Company and Local 7-210 of the Oil, Chemical and Atomic Workers Union entered into a collective bargaining agreement containing a no-stike clause and providing for compulsory arbitration of grievances. Following a breach of the no-strike clause, Sinclair relied on Section 301 of the Taft-Hartley Act [1] and requested an injunction from the federal district court. The union's motion to dismiss was granted and the Court of Appeals affirmed. On appeal, the petitioner argued that since Section 301 of the Taft-Hartley Act granted federal district courts jurisdiction to hear suits for labor contract violations, the district court was thereby empowered to enjoin the respondent union from striking. In affirming the Supreme Court *held* that the prohibition against enjoining strikes contained in Section 4 of the Norris-LaGuardia Act [2] was not impliedly repealed by section 301. *Sinclair Ref. Co. v. Atkinson,* 370 U.S. 195 (1962).

In 1932, Congress, to overcome the anti-union attitude of the courts which had developed in the early years of union-employer conflicts, enacted the Norris-LaGuardia Act and specifically prohibited the enjoining of peaceful strikes by federal courts.[3] The

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[1] "Suits for violation of contracts between an employer and a labor organization . . . or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 61 Stat. 156 (1947), 29 U.S.C. § 185 (1958).

[2] "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 or interested in such dispute . . . from doing, whether singularly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment . . . (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified. . . ." 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[3] Stewart, *No-Strike Clauses in the Federal Courts,* 59 MICH. L. REV. 673, 676 (1961); see Feinsinger, *Enforcement of Labor Agreements—A New Era in Collective Bargaining,* 43 VA. L. REV. 1261, 1263 (1957); Note, 72 HARV. L. REV. 354, 355-56 (1958).

This trend also evidenced itself in the states. For instance, New York enacted Section 876-a of the Civil Practice Act which limits the state courts' injunctive powers in labor disputes. However, this statute does not offer to the unions as much protection as a literal reading of the legislation implies. The statute states: "No court nor any judge . . . shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute . . . except after findings of all the following facts. . . . (f) That no item of relief granted prohibits directly or indirectly any person . . . from doing . . . any of the following acts: (1) Ceasing or refusing to perform any work or to remain in any relation of employment. . . ." New York

unions thereafter gradually became a major force on the American labor scene and striking, in violation of contractual commitments, became a prevalent practice. Because of this, the congressional policy of union protection was reversed.[4] With the passage of the Taft-Hartley Act in 1947, the federal courts were given the power to settle contract disputes between employers and unions irrespective of the amount in controversy or the citizenship of the parties. The national labor policy became one of fostering collective bargaining.[5] The development of no-strike and arbitration clauses in collective bargaining agreements as a substitute for industrial strife has manifested itself in the American labor field during the past twenty years.[6]

Although the more recent enactment of Section 301 of the Taft-Hartley Act gives the federal courts jurisdiction of suits between union and management involving the breach of collective bargaining agreements, Section 4 of the Norris-LaGuardia Act, which prohibits the enjoining of peaceful labor strikes, was never repealed by Congress.

In *Textile Workers Union v. Lincoln Mills,*[7] the union brought suit under section 301 to compel the employer to arbitrate a grievance. The contention that this section was a mere procedural device to give federal courts jurisdiction in labor controversies rather than a source of substantive law was not accepted by the Court.[8] Rather, the majority found this section as authorizing the courts to fashion a body of federal substantive law for the enforcement of collective bargaining agreements:

> Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.[9]

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courts have held, however, that the state legislature had no intention of depriving the courts of the power to enjoin a breach of any employer-union contract. Thus the courts have enjoined unions from calling or continuing a strike in violation of a collective bargaining agreement. Greater City Master Plumbers Ass'n, Inc. v. Kahme, 6 N.Y.S.2d 589, (Sup. Ct. 1937). See J. I. Hass Co. v. McNamara, 21 N.Y.S.2d 441, 444 (Sup. Ct. 1940).

[4] Hoebreckx, *Federal Courts Under Section 301,* 43 MARQ. L. REV. 417, 435 (1960).

[5] Gregory, *The Law of the Collective Agreement,* 57 MICH. L. REV. 635, 645 (1959); Feinsinger, *supra* note 3, at 1268.

[6] Rice, *A Paradox of Our National Labor Law,* 34 MARQ. L. REV. 233, 252 (1951).

[7] 353 U.S. 448 (1957).

[8] See Bunn, *Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements,* 43 VA. L. REV. 1247 (1957).

[9] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 455 (1957).

The Court then faced the problem of the prohibitive nature of the Norris-LaGuardia Act. Section 8 of the act prohibits the issuance of injunctions where the party has failed to make every effort to settle the dispute through mediation, negotiation or arbitration. The Court took cognizance of the philosophy of the Norris-LaGuardia Act — that management and labor should be left to negotiation backed *only* by self-help and economic weapons.[10] In light of this attitude, section 8 might have been interpreted to prohibit the Court from giving the mandatory injunction requested. However, the Court granted relief to the union and commented that "the congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of . . . the Norris-LaGuardia Act." [11] The arbitration clause of the collective bargaining agreement was specifically enforced.

Thus, legislation which was enacted to temper union activity was successfully used by the unions themselves to compel management to meet its obligations under a collective bargaining agreement.[12] Whether management could be as successful in obtaining injunctive relief for enforcing the *quid pro quo* of the arbitration clause, *i. e.,* the no-strike clause, was still undecided.

In 1957 an employer specifically sought such injunctive relief.[13] Although the district court granted the relief desired, on appeal the decision was reversed. The Court of Appeals for the Second Circuit found no authority in *Lincoln Mills* for enjoining a strike. Although the Supreme Court had held that the order compelling arbitration was not prohibited by the Norris-LaGuardia Act, in the court's opinion this did not authorize a finding that section 301 would enable a court to enjoin strikes where the application of this remedy was specifically prohibited by statute. Since section 4 specifies strikes as one of the union activities exempted from the federal injunctive powers, the redress requested by the employer was refused.

A similar dispute arose in the Tenth Circuit and that court was also faced with the problem of reconciling the jurisdictional grant of Taft-Hartley, with the drastic prohibition of injunctive relief in Norris-LaGuardia.[14]

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[10] See Cox, *Grievance Arbitration in the Federal Courts,* 67 HARV. L. REV. 591, 602-03 (1954).

[11] Textile Workers Union v. Lincoln Mills, *supra* note 9, at 458-59.

[12] Feinsinger, *supra* note 3, at 1272.

[13] A.H. Bull S.S. Co. v. Seafarers' Int'l Union, 155 F. Supp. 739 (E.D.N.Y.), *rev'd,* 250 F.2d 326 (2d Cir. 1957), *cert. denied,* 355 U.S. 932 (1958).

[14] Chauffeurs Local 795 v. Yellow Transit Freight Lines, Inc., 282 F.2d 345 (10th Cir. 1960), *rev'd,* 370 U.S. 711 (1962) (per curiam).

The Tenth Circuit felt that the Norris-LaGuardia Act had to be read in light of the later enactment of the Taft-Hartley Act so that the purpose of each act might be preserved. The court, in granting the relief refused by the Second Circuit, concluded that

> [I]f the courts are to exercise jurisdiction for the redress of violations of collective bargaining agreements . . . they are empowered to vouchsafe the integrity of a bargaining contract to the end that *neither* party shall be deprived of the fruits of their bargain . . . . And this is so . . . whether the claimed violation is a refusal to arbitrate according to the terms of the contract [the *Lincoln Mills* situation], *or the violation of an agreement not to strike.* . . .[15]

The Supreme Court in the instant case considered the above argument but found, in harmony with the Second Circuit, that section 301 was not intended to repeal Section 4 of the Norris-LaGuardia Act. Viewing the history and language of the Taft-Hartley Act and finding no basis for granting the relief requested by the petitioner, the Court then turned to the *Lincoln Mills* decision.

> [T]he equitable relief granted in that case — a mandatory injunction to carry out an agreement to arbitrate — did not enjoin any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of the United States courts. An injunction against work stoppages . . . however, prohibits the precise kinds of conduct which . . . the Norris-LaGuardia Act unequivocally say[s] cannot be prohibited.[16]

The majority intimated that although a change in this area might be beneficial, the feasibility of such action "is a question for law-makers, not law-interpreters." [17]

The dissent argued that the circumstance which motivated the Norris-LaGuardia Act — "the at-largeness of federal judges in enjoining activities thought to seek 'unlawful ends' or to constitute 'unlawful means' "—was not present in the case at hand.[18] The purpose of section 301, *i. e.*, to assist in collective bargaining, was thought reason enough to hold the union to their express contractual commitment to refrain from striking.

However, the dissent did not agree with petitioner that section 301 repeals section 4 but rather, argued that these two statutes were intended to coexist. When the Norris-LaGuardia Act stands in the way of an important objective of the Taft-Hartley Act, the former should not bar granting the relief requested.

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[15] *Id.* at 349. (Emphasis added.)
[16] Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 212 (1962).
[17] *Id.* at 215.
[18] *Id.* at 219 (dissenting opinion).

Regarding policy considerations, three basic points might be advanced in support of the conclusion reached by the majority:

(1) The most fundamental argument is that a no-strike clause is *not* the specific *quid pro quo* for an arbitration clause and, therefore, while the arbitration clause will be enforced, this in itself offers no logical reason for enjoining a strike. It is contended that since a no-strike clause is the *only* important promise that a union makes to an employer, *all* promises running from employer to employee comprise the *quid pro quo* for the no-strike clause.[19] It is further claimed that to equate grievance procedures with a pledge not to strike is unsound since it leads to the assumption that a union will necessarily strike for every grievance issue.[20] However, it may be argued that since multitudinous strikes are exactly what the employer tries to avoid by a no-strike clause, and since the union demands a safeguard or a proper grievance procedure before it will surrender this right, each clause *does* appear to be the *quid pro quo* for the other.

(2) It may be claimed that to enjoin strikes would make unions hesitate to enter into collective bargaining agreements containing no-strike provisions. However, on the state level, in four states where legislation permitting such injunctions has been enacted, no such trend has been observed.[21]

(3) An obvious reason for not enjoining strikes, through section 301, is that to do so is to concede the repeal of Section 4 of the Norris-LaGuardia Act. The prohibitive language of section 4 is plain.[22] This policy was adopted in the instant case. The Court pointed out the function of the court is to adjudicate; the work of remedial legislation is the prerogative of Congress.

The question remains, is there a need for such legislation? The employer still possesses two basic remedies which are left intact by the instant case: a termination of the collective bargaining agreement[23] and a suit for damages against the union.[24]

Although it is true that management may terminate the agreement when violated by a union strike, this is a poor remedy indeed. The union usually strikes because it is unsatisfied with

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[19] Stewart, *No Strike Clauses in the Federal Courts,* 59 MICH. L. REV. 673, 686 (1961).

[20] See Stewart, *supra* note 19, at 687.

[21] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 453 n.4 (1957); Rice, *A Paradox of Our National Labor Law,* 34 MARQ. L. REV. 233, 234-35 (1951).

[22] Note, 72 HARV. L. REV. 354, 371 (1958).

[23] Hoebreckx, *Federal Courts Under Section 301,* 43 MARQ. L. REV. 417, 437 (1960).

[24] *Id.* at 433.

the present agreement.[25] By terminating, the employer places himself in a position where he must negotiate a new collective bargaining agreement if the union still represents a majority of the employer's workers.[26]

The more effective economic weapon retained by the employer is the suit for damages. However, a money judgment is also a poor substitute for performance [27] since it does not compensate for actual loss suffered by the employer. A strike often involves the loss of future business, and such an injury which is occasioned long after the strike is settled, is so speculative in nature that courts are necessarily reluctant to award damages.[28]

The monetary award, although not completely compensating the employer, may, however, prove an effective weapon. A substantial judgment may cripple even the abundant treasury of a large national union, and where the union is local only, even an unsubstantial award may prove a valuable bargaining weapon.[29]

It should also be noted that although the employer is powerless to enjoin a strike, the *Lincoln Mills* doctrine suggests he has the power to force the union to arbitrate where the agreement so provides.[30] Even with these economic weapons, however, the employer is still not completely equal to the union. The union may obtain specific performance of the arbitration clause, while the *quid pro quo,* the no-strike clause, remains safe from federal injunction.

As of 1960 few employers attempted to avail themselves of injunctive relief in reliance on section 301.[31] Now that it is finally determined that such relief is unattainable, employers suffer no unexpected loss. Therefore, this inequality should have little effect upon future collective bargaining.[32] If, however, the future shows that the imbalance is seriously hindering peaceful labor relations,

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[25] *Id.* at 437.
[26] *Ibid.*
[27] Rice, *supra* note 21, at 253.
[28] Hoebreckx, *supra* note 23, at 433.
[29] *Ibid.*
[30] Note, *supra* note 22, at 365.
[31] Hoebreckx, *supra* note 23, at 419.
[32] The instant case raises some problems in the state injunctive area. Many states have enacted "Little Norris-LaGuardia Acts." See, *e.g.,* N.Y. CIV. PRAC. ACT § 876-a. Whether state courts can continue to interpret these statutes as permitting the enjoining of union strikes remains to be seen. See Note, 72 HARV. L. REV. 354, 366-68 (1958). Assuming the states are not specifically prohibited from granting this equitable relief, they may on policy grounds follow the principles enunciated in the present case. If the future shows that the states are not obligated to follow the case at hand, and they refuse to do so voluntarily, the National Labor Relations Board may take jurisdiction over cases which previously in their discretion they have refused, in order to prohibit parties from circumventing the instant decision by choosing a state forum.

then Congress is the proper forum in which to remedy the problem.[33]

TAXATION — MEDICAL EXPENSES — LIMITED DEDUCTION FOR CAPITAL IMPROVEMENT ALLOWED. — Appellant suffered from a heart condition that rendered him incapable of climbing the steep hillside that connected the street and lower level of his residential property. In order to enjoy the normal use of his property and to avoid further damage to his heart, the appellant erected a Hil-A-Vator, designed to carry him up and down the incline. He unsuccessfully sought to deduct the entire cost of the device as a medical care expenditure in the district court. In reversing the judgment of that court in favor of the Commissioner, the Circuit Court for the Ninth Circuit *held* that the expense involved in the purchase and installation of the Hil-A-Vator was a medical care expenditure, and, to the extent that the cost of the device exceeded the increase in value of the property, it was deductible. *Riach v. Frank*, 302 F.2d 374 (9th Cir. 1962).

Both the 1939 and 1954 Internal Revenue Codes contain substantially similar provisions for the deduction from gross income of certain medical expenses.[1] Both Codes likewise contain very

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[33] Certain sections of the Taft-Hartley Act do *expressly* repeal sections of the Norris-LaGuardia Act. For example, § 301(e) (61 Stat. 156 (1947), 29 U.S.C. § 185(e) (1958)) repeals § 6 of the Norris-LaGuardia Act. It would appear that if Congress had also intended to repeal § 4 this also would have been done expressly.

[1] Int. Rev. Code of 1939, § 23(x), added by ch. 619, § 127, 56 Stat. 825 (1942), as amended, Int. Rev. Code of 1939, ch. 2, § 24(a)(1), 53 Stat. 16 (1939), as amended, ch. 619, § 127, 56 Stat. 826 (1942) [hereinafter cited as 1939 Code]: "Deductions from gross income. In computing net income there shall be allowed as deductions: . . . . (x) Medical, dental, etc., expenses. Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent . . . . (2) . . . . The term 'medical care,' as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance)."

INT. REV. CODE OF 1954, § 213 [hereinafter cited as 1954 CODE]:

"Medical, dental, etc., expenses. (a) Allowance of deductions. — There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent. . . . (e) Definitions—For purposes of this section—

(1) The term 'medical care' means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of