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Federal Jurisdiction--Labor Law--Federal Courts Authorized to Enjoin Stikes in Violation of Collective Bragaining Agreements Despite Section 4 of Norris-LaGuardia Act (Chauffers Local 795 v. Yellow Transit Freight Lines, Inc. (10th Cir. 1960))

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at that time *did* include the proceeds of the separation agreement in the gross tax estate.[30] Since this distinction is invalid, these earlier cases involving separation agreements must also rely on the above distinction that the spouse's interest was not intended to be diminished by taxes.

As to the procedure for paying the estate taxes apportioned against the widow in the instant case,[31] the Court provided that the company which was to pay the annuity should deduct a percentage of the monthly annuity payment, as it becomes due, for taxes. Since there was no separate trust established with which to pay the annuity, the question arises as to who would meet this liability if the company should become insolvent. Would the widow have to pay the full amount of the liability although she didn't receive the full amount of the payments?

The purpose of section 124 was to relieve the residuary estate from the burden of paying the entire estate tax by spreading the tax liability over all the property included in the gross tax estate.[32] This purpose was frustrated by those cases which, following the reasoning of *Matter of Brokaw*,[33] exempted from apportionment property included in the gross tax estate which was subject to contract claims. The Court here seems to be taking a large step forward in giving to the statute the construction it was originally intended to have, *i.e.*, if the property is includible in the gross tax estate, it is automatically subject to its apportioned share of the taxes.

FEDERAL JURISDICTION — LABOR LAW — FEDERAL COURTS AUTHORIZED TO ENJOIN STRIKES IN VIOLATION OF COLLECTIVE BARGAINING AGREEMENTS DESPITE SECTION 4 OF NORRIS-LAGUARDIA ACT.— Appellant labor union set up picket lines in an attempt to organize non-union office employees of appellees, six interstate motor carriers. In separate actions by the latter to enjoin the union's picketing as a violation of the no-strike clause of separate collective bargaining agreements, the United States Court of Appeals, Tenth Circuit, *held* that despite the prohibition of the Norris-LaGuardia Act against the issuance of injunctions in labor disputes, the federal courts under Section 301 of the Labor Management Relations Act (Taft-Hartley Act) have jurisdiction to enjoin strikes which are in

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[30] In the Matter of the Estate of Porter, *supra* note 27.

[31] Since the executor had already paid the tax, the widow was to pay her apportioned share to the estate.

[32] 2 Butler, NEW YORK SURROGATE LAW AND PRACTICE § 1847 (1941).

[33] 180 Misc. 491, 41 N.Y.S.2d 57 (Surr. Ct. 1943), *aff'd*, 293 N.Y. 555, 59 N.E.2d 243 (1944) (per curiam).

violation of collective bargaining agreements. *Chauffeurs Local 795 v. Yellow Transit Freight Lines, Inc.*, 282 F.2d 345 (10th Cir. 1960), *cert. granted*, 364 U.S. 931 (1961).

The case of *Commonwealth v. Hunt* [1] marked a substantial shift in the American judicial attitude away from the view that labor union activities were criminal conspiracies. The early categorical condemnation of such union activity gave way to a qualified concession of legality.[2] However, this limited inroad of labor was more than offset by the emergence of the injunction as a potent weapon against concerted activity by labor unions.[3] The failure of the Clayton Act [4] to reverse this trend [5] led in 1932 to the passage by Congress of the Norris-LaGuardia Act [6] which embodied a basically *laissez faire* approach to labor-management relations.[7] The act, for all practical purposes, withdrew the jurisdiction of the federal courts to issue injunctions or restraining orders in labor disputes.[8] But the great strides made by labor since 1932 and the establishment of labor unions as primary factors in the economic life of the nation caused Congress to realize the impracticability of its hands-off attitude.[9] This realization was reflected in the passage of the Labor-Management Relations Act,[10] which sought to inject the influence of the federal government into the area of labor-management relations.[11] It was inevitable that the Norris-LaGuardia Act and the Labor-Management Relations Act, embodying, as they did, certain fundamentally divergent legislative policies, should come into conflict with one another.[12] It is one aspect of that conflict which presents itself in the principal case.

Section 4(a) of the Norris-LaGuardia Act provides:

> 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 of the following acts: a) Ceasing or refusing to perform any work or to remain in any relation of employment. . . .[13]

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[1] 45 Mass. (4 Met.) 111 (1842).

[2] *Id.* at 134.

[3] See Loeb, *Accommodation of the Norris-LaGuardia Act to Other Federal Statutes*, 11 LAB. L. J. 473 (1960).

[4] Anti-Trust Act, ch. 323, 38 Stat. 730 (1914), 29 U.S.C. § 52 (1958).

[5] See Loeb, *supra* note 3.

[6] 47 Stat. 70 (1932), 29 U.S.C. §§ 101-15 (1958).

[7] See Loeb, *supra* note 3, at 475.

[8] Norris-LaGuardia Act § 4, 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[9] See Loeb, *supra* note 3, at 476.

[10] 61 Stat. 156 (1947), 29 U.S.C. § 185 (1958).

[11] See note, 72 HARV. L. REV. 354, 356 (1958).

[12] See Dannett, *Picketing in Breach of a No-Strike Clause*, 11 LAB. L. J. 379 (1960).

[13] Norris-LaGuardia Act § 4(a), 47 Stat. 70 (1932), 29 U.S.C. § 104(a) (1958).

Section 301 of the Taft-Hartley Act provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, 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.[14]

The interpretation of these two sections and their relationship to each other has led to the question of whether the jurisdictional grant embodied in the quoted portion of the Taft-Hartley Act by implication repealed or modified the categorical ban of the Norris-LaGuardia Act against the issuance of injunctions by the federal courts in labor disputes. In terms of the principal case, can the federal courts, by virtue of the authority vested in them by section 301, enjoin labor strikes called in violation of collective bargaining agreements, despite the provisions of Section 4 of the Norris-LaGuardia Act?[15] Put another way, is it possible to effect enforcement of a no-strike clause through an injunction?

Subsequent to the passage of the Taft-Hartley Act in 1947, the question was raised a number of times, and the courts consistently decided it in the negative.[16] In *W. L. Mead, Inc. v. Teamsters Union*,[17] the employer sued for damages and injunctive relief against the union's strike and continued picketing in violation of its collective bargaining agreement.[18] Chief Judge Magruder came to the conclusion that an employer's remedy in such a situation was limited to an action for damages.[19] The court seemed willing to concede that section 301 might justify the granting of equitable relief, but not where such relief was expressly prohibited by congressional legislation, as it was in this case, by Section 4 of Norris-LaGuardia.[20] The opinion went on to say that had Congress intended by section 301 a *pro tanto* repeal of section 4, it would have enacted an explicit provision to that effect, just as it did with regard to suits brought by the Attorney General [21] and to actions initiated by the

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[14] Labor-Management Relations Act (Taft-Hartley Act) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[15] Chauffeurs Local 795 v. Yellow Transit Freight Lines, 282 F.2d 345 (10th Cir. 1960).

[16] See, *e.g.*, W. L. Mead, Inc. v. Teamsters Union, 217 F.2d 6 (1st Cir. 1954); Alcoa SS. Co. v. McMahon, 81 F. Supp. 541 (S.D.N.Y. 1948).

[17] 217 F.2d 6 (1st Cir. 1954).

[18] *Id.* at 8.

[19] *Id.* at 9.

[20] *Ibid.*

[21] Labor-Management Relations Act § 208(b), 61 Stat. 155 (1947), 29 U.S.C. § 178(b) (1958).

National Labor Relations Board involving unfair labor practices.[22] Finally, if there were merit in the contention that preservation of the bargaining process indicated the necessity of extending injunctive relief against strikes in violation of collective bargaining agreements, it seemed to the court that such a policy consideration ought properly to be addressed to Congress rather than the courts.[23]

In *Textile Workers v. Lincoln Mills*,[24] the union sued to compel arbitration according to the terms of its contract. Before taking up the question of whether equitable relief was possible under the terms of section 301, Mr. Justice Douglas, writing for the majority, considered the more fundamental problem of the section's constitutionality which had been made the subject of serious doubt by Mr. Justice Frankfurter in *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*[25] Basically, the difficulty was this—if section 301 is purely jurisdictional, then its constitutionality must fail, since under article III, the federal courts, in the absence of diverse citizenship, can only have jurisdiction in cases "arising under . . . the laws of the United States. . . ."[26] That is to say, to be constitutionally valid, the jurisdictional grant of section 301 must be founded on a body of substantive federal law created in accordance with the legislative authority given to Congress by Article I of the Constitution.[27] The majority opinion concluded that such a body of federal substantive law did in fact exist.[28] Part of that law is represented by express legislation enacted in pursuance of the power of Congress to regulate commerce, and part has been left by Congress to be developed by the "judicial inventiveness" of the federal courts.[29]

In a concurring opinion, Justices Burton and Harlan also subscribed to the section's constitutionality, but on different grounds. Though unwilling to go so far as to say that it contained any federal substantive law, they were of the opinion that litigation under the section might involve certain "federal rights" which could serve as a basis for the exercise of "protective jurisdiction" by the federal courts.[30]

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[22] National Labor Relations Act § 10(h), as amended, 61 Stat. 149 (1947), 29 U.S.C. § 160(h) (1958).

[23] W. L. Mead, Inc. v. Teamsters Union, 217 F.2d 6, 10 (1st Cir. 1954).

[24] 353 U.S. 448 (1957).

[25] 348 U.S. 437, 449 (1955).

[26] See Bunn, *Lincoln Mills And The Jurisdiction To Enforce Collective Bargaining Agreements*, 43 VA. L. REV. 1247, 1257 (1957).

[27] See Wellington, *Judge Magruder And The Labor Contract*, 72 HARV. L. REV. 1268, 1270 (1959).

[28] Textile Workers v. Lincoln Mills, 353 U.S. 448, 457 (1957).

[29] *Ibid.*

[30] *Id.* at 460. See Judge Magruder's opinion in International Bhd. of Teamsters v. W. L. Mead, Inc., 230 F.2d 576 (1st Cir.), *cert. denied*, 352 U.S. 802 (1956).

In his dissenting opinion, Mr. Justice Frankfurter took the position that section 301 was devoid of substantive content. After examining at length the section's legislative history, he concluded that it had been intended merely as a means of providing access to the federal courts in suits involving agreements between labor organizations and employers, thereby rendering more expeditious the enforcement of "state-created rights." [31] It seemed to him that the majority had gone too far in attributing to Congress an exercise of legislative discretion which was never contemplated and had no basis in the scant provisions of section 301.[32]

With regard to the Norris-LaGuardia Act, the Court decided that it did not prevent the specific enforcement of arbitration agreements.[33] Although a literal reading of the "procedural requirements" of section 7 might not warrant such a conclusion, the majority felt its decision was justified by the legislative history of the act and the congressional policy in favor of settling labor disputes.[34]

Since 1957 there has been considerable sentiment expressed in support of the specific enforcement of no-strike clauses.[35] The proponents of this view contend that it is not only possible, but in the interest of public policy to "accommodate" the provisions of the Taft-Hartley Act to those of the Norris-LaGuardia Act.[36] This basic approach has been utilized by the Supreme Court in enjoining violations of the Railway Labor Act.[37] It is also claimed that since the no-strike clause is the *quid pro quo* in consideration of which the employer consents to arbitrate grievance disputes, it follows that granting specific performance of the latter provision would seem to require the same remedy for violations of the former.[38] Finally, an appeal has been made to the broad interpretation of section 301 adopted by the Supreme Court in *Lincoln Mills*,[39] which would seem to warrant the specific enforcement of no-strike clauses as a

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[31] Textile Workers v. Lincoln Mills, *supra* note 28, at 462, 475 (dissenting opinion).

[32] *Id.* at 464 (dissenting opinion).

[33] *Id.* at 458-59.

[34] *Ibid.*

[35] See Cox, *Reflections Upon Labor Arbitration*, 72 HARV. L. REV. 1482, 1485 (1959); Dannett, *Picketing in Breach of a No-Strike Clause*, 11 LAB. L. J. 379, 383 (1960).

[36] See Loeb, *Accommodation of the Norris-LaGuardia Act to Other Federal Statutes*, 11 LAB. L. J. 473, 482-83 (1960).

[37] See, *e.g.*, Brotherhood of Locomotive Eng'rs v. Missouri-Kan.-Tex. R.R., 363 U.S. 528 (1960); Brotherhood of R.R. Trainmen v. Howard, 343 U.S. 768 (1952); Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232 (1949); Virginian Ry. v. System Fed'n, 300 U.S. 515 (1937).

[38] See Hoebreckx, *Federal Courts Under Section 301*, 43 MARQ. L. REV. 417, 434 (1960).

[39] Textile Workers v. Lincoln Mills, 353 U.S. 448, 456 (1957).

vehicle for strengthening the bargaining process and thereby achieving stable labor-management relations.

In 1957, *A. H. Bull S.S. Co. v. Seafarers' Int'l Union*[40] revived the issue of whether section 301 authorized injunctive relief against strikes in violation of collective bargaining agreements. The employer sought an injunction, and the district court held that *Lincoln Mills* made the grant of injunctive relief possible.[41] This conclusion was reached despite what seemed to be the settled position prior to 1957, that an employer's remedy in such circumstances was limited to an action for damages.[42] On appeal, the district court's holding was reversed. In adopting the view that the prohibition of Norris-LaGuardia against the enjoining of peaceful strikes survived the provisions of section 301, the court relied on substantially the same reasons suggested in the *Mead* case.[43] Furthermore, in its view, *Lincoln Mills* did not control, since that case had only concerned itself with the specific enforcement of arbitration agreements and could not be construed as sanctioning the issuance of injunctions against peaceful strikes.[44] The Supreme Court refused to review the case.[45]

The instant case reaches the same conclusion as that adopted by the district court in the *Bull* case.[46] It interprets the Supreme Court's holding in *Lincoln Mills* as a sufficient basis for lifting the ban against the issuance of injunctions by the federal courts in labor disputes, *i.e.*, where the action is one for breach of the no-strike clause in a collective bargaining agreement.[47] The Supreme Court has granted *certiorari*,[48] and the case thus presents an occasion for a possible re-evaluation of the Norris-LaGuardia Act.

The purpose of this legislation was to promote the legitimate ends of labor by preserving its basic weapon, the right to strike, thereby assuring labor of a favorable position in the bargaining process which was and remains the central factor in our system of

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[40] 155 F. Supp. 739 (E.D.N.Y.), *rev'd*, 250 F.2d 326 (2d Cir. 1957), *cert. denied*, 355 U.S. 932 (1958).

[41] A. H. Bull S.S. Co. v. Seafarers' Int'l Union, 155 F. Supp. 739 (E.D. N.Y. 1957).

[42] See W. L. Mead, Inc. v. Teamsters Union, 217 F.2d 6, 9 (1st Cir. 1954); International Bhd. of Teamsters v. W. L. Mead, Inc., 230 F.2d 576 (1st Cir.), *cert. denied*, 352 U.S. 802 (1956).

[43] See W. L. Mead, Inc. v. Teamsters Union, 217 F.2d 6 (1st Cir. 1954).

[44] A. H. Bull S.S. Co. v. Seafarers' Int'l Union, 250 F.2d 326, 331 (2d Cir. 1957).

[45] 355 U.S. 932 (1958).

[46] Chauffeurs Local 795 v. Yellow Transit Freight Lines, Inc., 282 F.2d 345 (10th Cir. 1960), *cert. granted*, 364 U.S. 931 (1961).

[47] *Ibid.*

[48] Chauffeurs Local 795 v. Yellow Transit Freight Lines, Inc., 364 U.S. 931 (1961).

labor-management relations.[49] But where the right to strike is freely surrendered in exchange for a workable apparatus of grievance arbitration, it does not appear unreasonable to expect the concession to be effective.[50] Such a conclusion seems appropriate when one considers the importance of maintaining the vitality of the collective bargaining system. But the real problem is one of approach rather than substance. The refusal of the courts to specifically enforce the no-strike provisions of collective bargaining agreements has to a great extent been couched in terms of reluctance to indulge in "judicial legislation." [51] It remains to be seen whether the Supreme Court will adopt the same strict attitude.

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[49] Norris-LaGuardia Act § 2, 47 Stat. 70 (1932), 29 U.S.C. § 102 (1958). This section reads in part: "[I]t is necessary that [the individual worker] . . . be free . . . in the designation of . . . representatives or in self-organization or in other concerted activities for the purpose of collective bargaining. . . ."

[50] See Cox, *Reflections Upon Labor Arbitration*, 72 HARV. L. REV. 1482, 1485 (1959).

[51] See, *e.g.*, A. H. Bull S.S. Co. v. Seafarers' Int'l Union, *supra* note 44, at 332.