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Interpretation of Union-management Arbitration Agreements - Maryland Tel. Union v. Chesapeake and Potomac Tel. Co.

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INTERPRETATION OF UNION-MANAGEMENT ARBITRATION AGREEMENTS

Maryland Tel. Union v. Chesapeake and Potomac Tel. Co.[1]

Plaintiff Union brought suit to compel the defendant Company, under the "General Agreement" between the parties, to arbitrate a series of grievances filed on behalf of fifteen women operators, who upon return from pregnancy leaves, were temporarily taken back as part-time employees while other operators with less seniority were working full-time. The Agreement contained provisions for negotiation between the parties concerning layoff procedure whenever in the Company's judgment there existed a need for general layoffs or part-timing; and after specifying a three-step grievance procedure, the contract limited arbitration to unresolved disputes involving "the interpretation or application of the terms of any provision of this Agreement not specifically excluded from arbitration."[2] After the instant grievances were processed without resolution through the three-step grievance procedure, the Union's request for arbitration was denied by the Company. In seeking a decree to compel arbitration, the Union contended that the Company's practice with respect to these women operators was within and contrary to the general layoff provisions. The Company argued that these provisions could not be interpreted to apply to the instant grievances, and hence the limited arbitration clause was not applicable. The Company's more persuasive contention was that since the Union had withdrawn its demand for a guarantee of full reinstatement for employees upon return from pregnancy leaves in exchange for the Company's withdrawal of a "no strike" clause, the continuation of the Company's practice with respect to this group of employees was not disputable and therefore not subject to arbitration.

Judge Thomsen, relying on the principles recently announced by the Supreme Court in *Steelworkers v. Warrior and Gulf Co.*[3] (hereinafter referred to as the *Warrior and Gulf Co.* case) and *Steelworkers v. American Mfg. Co.*[4]

[1] 187 F. Supp. 101 (Md. 1960).

[2] *Id.*, 104. It was agreed that in the event of general layoffs or part-timing the company would notify the Union and negotiate with them as to the method to be employed. If no agreement were reached as to method, the order of layoff was to be in the inverse order of seniority.

[3] 363 U.S. 574 (1960).

[4] 363 U.S. 564 (1960).

(hereinafter referred to as the *American Manufacturing* case), entered a decree compelling arbitration. As the basis for its decision that the grievances were within the scope of the Agreement, the Court quoted from the *Warrior and Gulf Co.* case:

> "Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry . . . must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance. . . . An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[5]

The District Court found that it could not be said with "positive assurance" that the arbitration clause could not be interpreted to cover the instant grievances. Then, in reviewing the Company's contention that this did not involve a legitimate dispute because of the history of collective bargaining between the parties, the Court quoted the Supreme Court in the *American Manufacturing* case:

> "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim. . . . The processing of even frivolous claims may have therapeutic values of which those who are not part of the plant environment may be quite unaware."[6]

The Court concluded with another quotation:

> ". . . the reasonable course is to send all doubtful cases to arbitration, reserving the right to vacate any award which indisputably goes beyond the scope of the agreement."[7]

Section 301(a)[8] of the Labor Management Relations Act gave the federal courts jurisdiction over suits for

[5] *Supra*, n. 3, 582-3.
[6] *Supra*, n. 4, 568.
[7] Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1517 (1959).
[8] 61 STAT. 156 (1947), 29 U.S.C.A. (1956) § 185(a). Section 301(a) provides that: "Suits for violation of contracts between an employer and a labor organization . . . in an industry affecting commerce . . . may be brought in any district court of the United States . . . ."

violation of labor-management contracts in industries affecting interstate commerce, but it was not until 1957 that the Supreme Court determined that under the Act parties were entitled to specific performance of union-management arbitration contracts.[9] In reaching this conclusion the Court said, ". . . the substantive law to apply . . . is federal law, which the courts must fashion from the policy of our national labor laws."[10] Since 1957 federal courts have been faced with the dilemma of how to resolve the disparity between their traditional view of contract law and the unique characteristics incident to collective bargaining agreements.[11]

A large majority of courts have been able to resolve this dilemma when dealing with so-called general arbitration agreements (in which parties agree to arbitrate all disputes arising during the term of the contract irrespective of whether the issues involved are covered by the agreement), recognizing that the wide scope of expressed intent therein, combined with complexities inherent in collective bargaining agreements, clearly warranted decrees enforcing arbitration unless the area in dispute had been expressly excluded from arbitration.[12] With the limited arbitration agreements, confined to grievances involving "application and interpretation" of the terms of the agreement, there has been less uniformity. The approach of the majority of lower federal courts[13] has been to search for clear language indicating that the parties had contracted to arbitrate the particular type of grievance under consideration. The recently pronounced obligation of formulating federal sub-

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

[10] *Id.*, 456.

[11] Cox, *op. cit. supra*, n. 7, stresses the conflict between the law of ordinary contracts and its application to collective bargaining agreements.

[12] Butte Miners' Union No. 1 v. Anaconda Company, 159 F. Supp. 431 (Mont. 1958), aff'd, per curiam 267 F. 2d 940 (9th Cir. 1959); Signal-Stat Corporation v. Local 475, etc., 235 F. 2d 298 (2d Cir. 1956), *cert. den.* 354 U.S. 911 (1957); Johnson & Johnson v. Textile Workers Union, 184 F. Supp. 359 (N.J. 1960); Cuneo Eastern Press, Inc. of Pa. v. Bookbinders & B.W.U., 176 F. Supp. 956 (E.D. Pa. 1959); Tenney Engineering, Inc. v. United Elec., R. & M. Wkrs., 174 F. Supp. 878 (N.J. 1959); Armstrong-Norwalk Rubber Corp. v. Local Union No. 283, 167 F. Supp. 817 (Conn. 1958), app. dis. 269 F. 2d 618 (2d Cir. 1959). See also 24 A.L.R. 2d 752 (1960). But *cf.* Dairy, Bakery & Food Wkrs. v. Grand Rapids Milk Div., 160 F. Supp. 34 (W.D. Mich. 1958).

[13] Local 201, etc. v. General Electric Company, 262 F. 2d 265 (1st Cir. 1959); Refinery Employees Union v. Continental Oil Co., 268 F. 2d 447 (5th Cir. 1959) *cert. den.* 361 U.S. 896 (1959); Local No. 149, etc. v. General Electric Company, 250 F. 2d 922 (1st Cir. 1957) *cert. den.* 356 U.S. 938 (1957); Sunnyvale Westinghouse S.E.A. v. Westinghouse E. Corp., 175 F. Supp. 685 (W.D. Pa. 1959), aff'd. per curiam 276 F. 2d 927 (3rd Cir. 1960). See also 24 A.L.R. 2d 752 (1960).

stantive law, the unfamiliar intricacies of these agreements, and the courts' distrust of the competing self-interests of the parties were in all probability factors which played a role in the courts' reliance on traditional contract law to solve the pre-arbitration disputes. The courts undoubtedly feared a more liberal interpretation for two more cogent reasons: (1) a departure from principles of contract law brings with it apprehension that parties might be ordered to do what in fact they did not agree to; (2) by turning over more cases to the arbitrators the courts remove themselves from this area, thereby making it difficult to establish a body of law for parties to rely upon in formulating and operating under these agreements.

The textwriters have urged a more liberal approach to interpretation of these agreements, asserting their uniqueness[14] and difference from ordinary contracts. Professor Cox has stated:

> ". . . it is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its otherwise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforseeable contingencies to make the words of the contract the exclusive source of rights and duties."[15]

Prior to the principles recently announced by the Supreme Court, however, only a few lower federal court decisions[16] reflected a more liberal interpretation of pre-arbitration disputes based on the special qualities incident to such instruments. In the *Warrior and Gulf Co.* case,[17] under an arbitration agreement stipulating that disputes as to the meaning and application of the contract as well as those

[14] Shulman, *Reason, Contract, and Law in Labor Relations*, 68 Harv. L. Rev. 999, 1002-08 (1955), indicates that the collective bargaining agreement is an instrument of self-government for an extended period of time; that it deals with complex operations, vast numbers of people and problems, areas of high tension between parties; that the pressures for agreement lead to compromises, purposeful ambiguities; that all contingencies cannot be foreseen; and that still the contract must be brief and simple so as to be understood by the employees.

[15] Cox, *op. cit. supra*, n. 7, 1498-9.

[16] Local 1912, Int. Ass'n. of Mach. v. United States Potash Co., 270 F. 2d 496 (10th Cir. 1959), *cert den.* 363 U.S. 845 (1960); Local 205, United Elec., R. & M. Wkrs. v. General Elec. Co., 172 F. Supp. 53 (Mass. 1959).

[17] 363 U.S. 574 (1960).

involving local trouble of any kind were subject to arbitration, while matters strictly the function of management were not so subject, the union sought to compel arbitration of the company's practice of contracting-out certain work previously done by the union in spite of the fact that some union members were laid off for lack of work. The company had been contracting-out for several years, and although the union had sought to include a restriction on this practice, its attempts had been unsuccessful. The Fifth Circuit denied the union's claim, and reasoning that the company should not be compelled to arbitrate a matter that the union had sought unsuccessfully to include in the contract, found that the company's practice was strictly within the function of management.[18] The Supreme Court reversed,[19] Mr. Justice Whittaker dissenting,[20] reasoning that arbitration agreements were distinguishable from commercial arbitration contracts, indeed from the law of contracts:

> "The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. . . . It calls into being a new common law — the common law of a particular industry or of a particular plant."[21]

The Court added that the law which the arbitrator drew upon was that of the particular industry's shop practice which by implication was contained in the agreement, thus making the experienced arbitrator more competent than the courts to interpret the contract. The opinion accordingly stated that "in the absence of any express provision excluding a particular grievance from arbitration . . . only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail . . . ."[22] The Court reversed without discussing the question of what emphasis should be given to the past collective bargaining between the parties in negotiating the contract. The instant case posed a similar problem since the union had withdrawn their demand of job guarantees for employees returning from leaves of absence in favor of the Company's

[18] United Steelworkers v. Warrior & Gulf Navigation Co., 269 F. 2d 633, 636-7 (5th Cir. 1959), rev'd. 363 U.S. 574 (1960).

[19] *Supra*, n. 17.

[20] Mr. Justice Whittaker refused to draw a distinction between collective bargaining agreements and ordinary commercial arbitration contracts.

[21] *Supra*, n. 17, 578-9.

[22] *Id.*, 584-5.

withdrawal of a "no strike" clause. It would appear that the Supreme Court in tacitly supporting arbitration on points considered and abandoned during pre-agreement collective bargaining has formulated a philosophy of interpretation which recognizes these agreements as being outside of contract law.

In the *American Manufacturing* case[23] the Supreme Court was confronted with a union claim for arbitration under a limited arbitration agreement, where an injured employee two weeks after receiving a workmen's compensation settlement for 25% permanent partial disability sought to return to his old job under a seniority provision in the Agreement. The Sixth Circuit, in dismissing the claim, had held that even though the grievance was within the scope of the contract, it was ". . . a frivolous, patently baseless one, not subject to arbitration . . .",[24] and thus followed the doctrine first announced in *International Association of Machinists v. Cutler-Hammer, Inc.*,[25] whereby a grievance to be arbitrable must be a *bona fide* dispute, susceptible to two reasonable interpretations. The Supreme Court rejected this doctrine and reversed, again asserting that these agreements were beyond the scope of ordinary contract law,[26] with the arbitrator, not the courts, having the right to determine the merits of the grievance. The issue of whether the Union's grievances were meritorious, based on the history of collective-bargaining between the parties, arose in the instant case, with Judge Thomsen's decision to refer this question to the arbitrator being controlled by this principle.

In both the aforementioned *Steelworkers'* cases the agreements contained "no strike" clauses with the Court commenting in each that the arbitration agreement was the *quid pro quo* for a no strike provision. The Contract in the instant case did not contain a "no strike" clause, and while it is possible that the Supreme Court might therefore be less liberal in interpreting such an agreement, the concurring opinion, filed by Mr. Justice Brennan,[27] to these two Supreme Court cases indicated that the principles an-

[23] 363 U.S. 564 (1960).

[24] United Steelworkers of America v. American Mfg. Co., 264 F. 2d 624, 628 (6th Cir. 1959), rev'd. 363 U.S. 564 (1960).

[25] 271 App. Div. 917, 67 N.Y.S. 2d 317, 318 (1947), aff'd., per curiam 74 N.E. 2d 464 (1947) (". . . the mere assertion by a party of a meaning of a provision which is clearly contrary to the plain meaning of the words cannot make an arbitrable issue."). See 24 A.L.R. 2d 752 (1952) for a discussion of the *Cutler-Hammer* doctrine and cases.

[26] *Supra*, n. 23, 567.

[27] *Id.*, 573.

nounced by the Court did not appear contingent upon a "no strike" clause.

The Supreme Court seems to have indicated that it intends to support arbitration agreements wherever possible, emphasizing that this is in conformity with national labor law policy and thus discouraging recourse by the parties to the courts at least until the grievance has been decided upon by the arbitrators.[28] The implication appears to be that the Court has defined the judicial responsibility for interpretation under Section 301(a) largely to post-arbitration.[29]

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[28] *Id.*, 566, where the opinion states:

"Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U.S.C. § 173(d) states, 'Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement . . .' That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play."

[29] Steelworkers v. Enterprise Corp., 363 U.S. 593 (1960), in upholding an arbitrator's award of employee reinstatement where employees had been wrongfully discharged, reasoned that the courts should refuse to review the merits of an award but that if the arbitrator did not derive the essence of the award from the agreement, the courts must refuse enforcement of it.