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Injunctive Relief For Breach Of A No-Strike Clause

INJUNCTIVE RELIEF FOR BREACH OF A NO-STRIKE CLAUSE

In the case of *Textile Workers Union v. Lincoln Mills*[1] the Supreme Court held that section 301 of the Taft-Hartley Act[2] authorizes either a union or an employer to sue in a federal court for specific performance of an arbitration clause in a collective bargaining contract. This holding gave substance to the intent of Congress that both parties to a bargaining agreement are bound to their contractual obligations.[3] The problem has arisen, however, whether the *Lincoln Mills* doctrine empowers federal courts to enjoin a strike by a union in violation of a no-strike clause, *i.e.*, may section 301 of the Taft-Hartley Act be interpreted so as to imply an exception to the categorical ban contained in section 4(a)[4] of the 1932 Norris-LaGuardia Act on enjoining peaceful strikes.

The United States District Court for the Eastern District of Louisiana was faced with this problem in the recent case of *Baltimore Contractors, Inc. v. Carpenters' Dist. Council.*[5] Binding contracts containing no-strike clauses were in existence between the plaintiff and the defendant unions.[6] The Carpenters' Union threatened a strike which, if carried out, would have constituted a breach of contract; thereupon the plaintiff petitioned the federal court to enjoin the threatened strike. The court denied the petition stating that the plain language

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[1]353 U.S. 448 (1957).

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

[3]S. Rep. No. 105, 80th Cong., 1st Sess. 17 (1947): "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace."

[4]Norris-LaGuardia Act § 4(a), 47 Stat. 70 (1932), 29 U.S.C. § 104(a) (1958): "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 (as these terms are herein defined) 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. . . ."

[5]188 F. Supp. 382 (E.D. La. 1960).

[6]Id. at 382 n.1.

of section 4 of the Norris-LaGuardia Act ruled out such injunctive relief.[7]

The plaintiff's argument was based on three separate grounds: (1) the decision in several railway cases wherein the provision of the Norris-LaGuardia Act banning injunctions was lifted in order to reconcile the earlier and more general Norris-LaGuardia Act with the later and more specific Railway Labor Act;[8] (2) the holding in *Lincoln Mills* that the procedural requirements of section 7[9] of the Norris-LaGuardia Act may be dispensed with in a suit under 301 of the Taft-Hartley Act for a mandatory injunction to compel arbitration;[10] (3) a statement in *Lincoln Mills* to the effect that the arbitration clause is the *quid pro quo* given by the employer in return for the no-strike agreement by the union.[11] Heavy reliance was placed, in elaborating upon this last ground, on the theory that if the former is specifically enforceable then the latter should be specifically enforceable as well.[12]

The court rejected these arguments, holding: (1) the exceptions to the Norris-LaGuardia Act were made in the Railway Labor Act cases because of specific provisions in the Railway Act (a) for compulsory arbitration of "minor disputes" and (b) to make the decision of the Railway Adjustment Board final and binding upon the parties;[13] (2) the holding of *Lincoln Mills* that the procedural requirements of section 7 of Norris-LaGuardia may be avoided in a suit under 301 to compel arbitration does not mean that the express prohibition in

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[7]Id. at 384.

[8]Brotherhood of Locomotive Eng'rs v. M.-K.-T. R.R., 363 U.S. 528 (1960); Brotherhood of R.R. Trainmen v. Chicago R. & Ind. R.R., 353 U.S. 30 (1957); 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).

[9]Norris-LaGuardia Act § 7, 47 Stat. 70 (1932), 29 U.S.C. § 107 (1958). This section states generally that no injunction or temporary restraining order shall be issued except after testimony in open court and unless the following facts are found: (a) unlawful acts have been threatened and will be committed or have been committed and will continue; (b) substantial and irreparable injury to complainant's property will result; (c) greater harm will be inflicted upon the complainant by denial of relief than will be inflicted upon defendants by the granting of relief; (d) complainant has no adequate remedy at law; and (e) puplic officers charged with the duty of protecting complaint's property are unable or unwilling to furnish adequate protection.

[10]353 U.S. 448 (1957).

[11]Id. at 455; Accord, United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567 (1960); United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 n.4 (1960).

[12]188 F. Supp. 382, 383 (E.D. La. 1960).

[13]Ibid.

section 4 of the Act may be avoided in order to enjoin a peaceful strike in violation of a contract;[14] (3) even if the arbitration clause is the *quid pro quo* for the no-strike clause, this does not mean that the latter is specifically enforceable;[15] the employer's remedy is in damages for breach of contract.[16]

The District Court also noted that the Supreme Court has not yet been faced with the problem presented in the principal case and that, thus far, two circuits have differed on the issue.[17] The court finally concluded that, even if such an exception to the Norris-LaGuardia Act is desirable, "it could not presume to ignore the plain mandate of applicable statutes in order to achieve a result in accord with its private view of what the law ought to be. Perhaps that privilege belongs to a higher court. Or perhaps Congress itself should be permitted to do its own legislating."[18]

If the intent of Congress in enacting the Taft-Hartley Act and the subsequent language of the Supreme Court in the *Lincoln Mills* case are not to be dismissed lightly, then the reasoning of the court in *Baltimore Contractors* is questionable. The *Lincoln Mills* case pointed out that according to section 301 the courts are to play a vital part in the enforcement of collective bargaining contracts.[19] Arbitration clauses were held to be specifically enforceable in order to promote better stability in labor relations and to avoid economic warfare between management and unions. Thus, both parties can be required to perform their contracted obligations because, if such were not the case, there would be little reason for the existence of a contract. Since the failure to arbitrate was not one of the abuses at which Norris-LaGuardia was aimed, the Supreme Court held that the procedural requirements of section 7 of that Act could be dispensed with, and a mandatory injunction could be issued compelling arbitration.

The court in *Baltimore Contractors* relied on the Second Circuit case of *A. H. Bull S.S. Co. v. Seafarers' Int'l Union*[20] to support its position that the no-strike agreement was not specifically enforceable notwithstanding the strong precedent set by *Lincoln Mills*. The court in *Bull* found that a labor dispute within the meaning of the Norris-

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[14]Ibid.

[15]Id. at 383-84.

[16]Id. at 384.

[17]A. H. Bull S.S. Co. v. Seafarers' Int'l Union, 250 F.2d 326 (2d Cir. 1957); Chauffeurs Union v. Yellow Transit Freight Lines, 282 F.2d 345 (9th Cir. 1960).

[18]188 F.2d 384 (E.D. La. 1950).

[19]353 U.S. 448 (1957).

[20]250 F.2d 326 (2d Cir. 1957).

LaGuardia Act existed, that the strike could not be enjoined, and that money damages was a sufficient remedy for the employer.[21] In deciding that section 301 of Taft-Hartley is not an implied exception to section 4 of Norris-LaGuardia prohibiting the granting of injunctions in labor disputes, it was reasoned that since Congress did not expressly withdraw the restrictions of Norris-LaGuardia in enacting 301 such a withdrawal could not be implied because, in other sections of the same Act,[22] Congress had expressly lifted the Norris-LaGuardia bar to give the courts injunctive power when the National Labor Relations Board initiates proceedings.[23] There is ample precedent available, however, to show that such rules of construction have seldom been strictly followed in cases wherein the Norris-LaGuardia Act is involved. To the contrary, the Supreme Court has held the Act to be repealed by implication where such a holding will facilitate the effective enforcement of a labor statute.[24] In the *Brotherhood of R.R. Trainmen v. Chicago R. & Ind. R.R.*[25] case, the most analogous of the Railway Labor Act cases, injunctive relief was given by the Supreme Court where a union resorted to a strike over matters pending before the Railway Adjustment Board. The court reconciled the two statutes "so that the obvious purpose in the enactment of each is preserved."[26] It further stated that the obvious purpose of the Norris-LaGuardia Act was:

> "[T]o protect working men in the exercise of organized, economic power, which is vital to collective bargaining. The Act aimed to correct existing abuses of the injunctive remedy in labor disputes.... Congress acted to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital."[27]

Enjoining a strike where there is a suitable and agreed upon method of settling the dispute is "not the same as... [one] in which the in-

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[21]Id. at 331.

[22]Norris-LaGuardia Act §§ 101(h), 208(b), 302(e), 47 Stat. 70 (1932), 29 U.S.C. §§ 160(h), 178(b), 186(e) (1958).

[23]"[I]t is an accepted canon of construction that repeals by implication are not favored, especially where the previous statute (the Norris-LaGuardia Act) is not stale or forgotten, but is a 'significant and tremendously important piece of legislation, which the Congress evidently had specifically in mind when it came to enact the Labor Management Relations Act in 1947." 250 F.2d 326, 330 (2d Cir. 1957).

[24]Cases cited note 8 supra.

[25]353 U.S. 30 (1957).

[26]Id. at 40.

[27]Ibid.

junction strips labor of its primary weapon without substituting any reasonable alternative."[28]

The same policy conflict that was found to exist between the blanket restrictions of the Norris-LaGuardia Act and the more specific Railway Labor Act also exists between the Norris-LaGuardia Act and section 301 of Taft-Hartley. In direct conflict with the *Bull* case, the Court of Appeals for the Tenth Circuit in *Chauffeurs Union v. Yellow Transit Freight Lines*[29] granted injunctive relief. The court interpreted the *Lincoln Mills* holding as going beyond the mere enforcement of arbitration clauses in labor contracts:

> "Rather, we think the court had in mind a much broader concept of jurisdictional authority—one which embraced all violations of labor contracts which had been freely arrived at through the collective bargaining process. This broader jurisdictional concept is evidenced by the court's cognizance of Congressional concern for union responsibility for its collective bargaining contracts, and with 'procedure for making such agreements enforceable in the courts by either party' in accordance with the usual processes of the law."[30]

The court added that it is one thing to use the injunction to defeat or restrain the full use of economic bargaining power by a union but it "is quite another to utilize the judicial processes to preserve and vouchsafe the fruits of a bargain which the parties have freely arrived at through the exercise of collective bargaining rights."[31]

The validity of the philosophy underlying the Norris-LaGuardia Act must be questioned in the light of present economic conditions and the congressional policy of enforcement of collective bargaining agreements. The Norris-LaGuardia Act has been said to mark the epitome of the philosophy that the civil law through the use of the injunction had no useful function in the field of labor relations.[32] The principal objective of the Act, therefore, was to prohibit the abuse of the labor injunction as a means of curtailing the effective use of economic bargaining power in the collective bargaining process.[33] As long as no fraud, violence or intimidation was involved,

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[28]Id. at 41.

[29]282 F.2d 345 (10th Cir. 1960).

[30]Id. at 349.

[31]Id. at 350.

[32]Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1484-85 (1959); Cox, Current Probems in the Law of Grievance Arbitration, 30 Rocky Mt. L. Rev. 247, 253 (1958) [hereinafter cited as Cox, Current Problems]; Comment, 70 Yale L.J. 70, 96 (1960).

[33]Comment, 25 U. Chi. L. Rev. 496, 503 (1958).

the results of collective bargaining were to be left to the competitive economic struggle between management and labor.[34] As a result, "the Act was drafted in sweeping terms, with the consequent effect of prohibiting practically all injunctions in labor disputes, including all injunctions against peaceful strikes."[35] In 1932 when the Act was promulgated, the legal enforcement of a collective bargaining contract was not considered vital to effective bargaining,[36] and it is doubtful if the Congress of that year ever had in mind a suit for an injunction based on a contract.[37] Section 4 of the Act which clearly prohibits enjoining a peaceful strike makes no distinction between tort and contract actions.[38] According to the National Labor Relations Act, the Labor Management Relations Act and the 1934 amendments to the Railway Labor Act, a collective bargaining agreement imposes contractual duties and obligations on both employers and unions.[39] In view of this policy it would seem that the blanket restrictions of section 4 are anachronistic.[40]

While section 301 of Taft-Hartley does not specify a remedy in a suit for breach of the labor contract, an injunction is really the only practical and efficient form of relief against a strike.[41] Damages are inadequate since the injury to the business cannot be measured accurately.[42] Moreover, the best interests of labor-management relations are not served by forcing an employer, after the strike, to sue a union consisting of his employees.[43] The suggested remedy that the union be compelled to arbitrate while remaining on strike seems unsatisfactory because "the atmosphere of strife and emotionalism surrounding a strike would greatly detract from the effectiveness of the arbitration procedure and render compliance with the award unlikely."[44]

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[34]Cox, Current Problems, 30 Rocky Mt. L. Rev. 247, 253-54 (1958); Note, 72 Harv. L. Rev. 354, 356 (1958).

[35]Comment, 25 U. Chi. L. Rev. 496, 503 (1958).

[36]Cox, Current Problems, 30 Rocky Mt. Law Rev. 247, 255 (1958); Comment, 70 Yale L.J. 70, 96 (1960).

[37]Note, 72 Harv. L. Rev. 354, 365 (1958).

[38]Ibid.

[39]Id. at 356; Comment, 70 Yale L.J. 70, 96 (1960).

[40]Cox, Current Problems, 30 Rocky Mt. L. Rev. 247, 254 (1958); Note, 72 Harv. L. Rev. 354, 365 (1958).

[41]Cox, Current Problems, 30 Rocky Mt. L. Rev. 247, 255 (1958).

[42]Ibid.

[43]Ibid.

[44]Note, 72 Harv. L. Rev. 354, 365 (1958). "Many arbitrators will decline to hear a dispute while a strike is in progress. And the pressure upon an arbitrator who does act under strike circumstances is sufficient to raise grave doubts about the fairness of the proceeding itself." Mendelsohn, Enforcement of Arbitration Agreements Under Taft-Hartley Section 301, 66 Yale L.J. 167, 180 n.57 (1956).

Thus, injunctive relief under 301 appears to be the most adequate remedy.[45]

The holding in the *Baltimore Contractors* case creates a situation in which union responsibility under collective bargaining is decreased and is in direct conflict with the policy of section 301.[46] Under 301 a *union* has a quick and simple remedy for the failure of an employer to arbitrate. If the injunction is prohibited, no such remedy exists for an employer where a union has failed to abide by its agreement not to strike. It appears, therefore, that the court in the principal case missed an opportunity to perpetuate and strengthen the existing national policy in regard to the enforcement of labor-management contracts.[47] To rule that a strike in violation of a no-strike agreement could be enjoined under 301 of Taft-Hartley would admittedly "require strong judicial creativity in the face of the plain meaning of section 4 [of Norris-LaGuardia]..."[48] but absent an act of Congress "it is the only way to eliminate an anachronistic incongruity between two statutes which ought to form a coherent whole."[49]

RAYMOND R. ROBRFCHT, JR.

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[45]A breach of contract is not per se an unfair labor practice. Thus, it follows that an employer is not guaranteed protection under the Norris-LaGuardia Act by filing unfair labor practice charges with the National Labor Relations Board. See, e.g., Old Line Life Ins. Co., 96 N.L.R.B. 499 (1951). But see Westmoreland Coal Co., 117 N.L.R.B. 1072 (1957), involving a strike over an arbitrable dispute and Boone County Coal Corp., 117 N.L.R.B. 1095 (1957), involving a strike over dissatisfaction with an arbitration award. Both strikes were held to be attempts to modify existing bargaining contracts and so enjoinable by the Board as unfair labor practices under § 8(d) of the Norris-LaGuardia Act.

[46]See Comment, 25 U. Chi. L. Rev. 496, 504 (1958).

[47]The role of the Norris-LaGuardia Act in relation to injunctive relief in state courts has not been decided by the Supreme Court and is beyond the scope of this comment. It should be noted, however, that the Supreme Court of California upheld the granting of injunctive relief by a state court in McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957). Such relief was held justifiable despite the fact that a suit for violation of a collective bargaining agreement could have been brought in a federal court and that the federal court would have been precluded from issuing an injunction. While such a view could lead to a diversity of results among the states and would conflict with the uniformity of labor law policy advocated in Lincoln Mills, it seems likely that employers, denied injunctive relief in federal courts, will seek such aid in state courts. This points up the necessity for injunction in federal courts as a remedy against a strike under section 301.

[48]Cox, Current Problems, 30 Rocky Mt. L. Rev. 247, 256 (1958).

[49]Ibid.