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Labor Law—Federal Court Injunction against Breach of No-Strike Clause

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LABOR LAW — FEDERAL COURT INJUNCTION AGAINST BREACH OF NO-STRIKE CLAUSE

A union picketed interstate motor carriers to induce non-union clerical employees to join the union, and caused a shutdown of employers' terminals. The employers sought an injunction to specifically enforce the no-strike clause of the collective bargaining agreement in a federal court under Section 301(a) of the Labor Management Relations Act which states:[1]

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

Held: Federal courts have jurisdiction to issue injunctive relief to enforce the no-strike clause in spite of the Norris-LaGuardia Act prohibition[2] against issuance of injunctions in a labor

[38] Pugach v. Dollinger, 81 Sup. Ct. 650, 652 (1961).

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[1] 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[2] The relevant sections under the Norris-LaGuardia Act are the following:

1. Section 4: "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. . . ." 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

2. Section 7: "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after finding of fact by the court. . . ." 47 Stat. 71 (1932), 29 U.S.C. § 107 (1958).

3. Section 13(c): "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining,

dispute.[3]

The main purpose of the Norris-LaGuardia Act was to remedy what Congress regarded as the unjust practice of freely enjoining strike activity by which some Federal courts deprived labor of its most powerful weapon in disputes with management.[4] After the Act was passed, management was forced to bargain collectively with labor instead of having union organizational activities enjoined on one of the various possible grounds previously available. The main issue of the principal case, therefore, was whether Section 301(a) repealed by implication the Norris-LaGuardia Act's specific prohibitions against the issuance of an injunction in a labor dispute.

The judiciary generally does not favor the repeal of an important piece of legislation by implication.[5] When Congress enacted

changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 71 (1932), 29 U.S.C. § 113(c) (1958).

[3]Teamsters Union v. Yellow Transit Freight Lines, 282 F.2d 345 (10th Cir. 1960) *cert. granted,* 81 S.Ct. 378 (1961).

Contra, A. H. Bull Steamship Co. v. Seafarer's Union, 250 F.2d 326 (2nd Cir. 1957), *cert. denied,* 355 U. S. 932 (1958), Baltimore Contractors v. Carpenters, 188 F. Supp. 382 (E.D. La. 1960).

There are a number of collateral cases which refused to issue an injunction under Section 301(a). The district court in Local 861, IBEW (AFL-CIO) v. Stone & Weber Engineering Corp., 163 F. Supp. 894 (W.D. La. 1958), refused to issue an injunction when the union alleged the company stopped work in violation of its contract with the union. The reason being that the Norris-LaGuardia Act precluded the issuance of an injunction in a labor dispute.

In Sperry Gyroscope Co. v. Hall, 185 F. Supp. 65 (S.D. N.Y. 1960), the district court refused to issue an injunction enjoining the president of the Engineer's Union from affiliating with an international union without first obtaining the approval of the majority of those in the bargaining unit, as required by the collective bargaining agreement, since this was a labor dispute under the Norris-LaGuardia Act.

In Local 33, International Hod Carriers, Building and Common Labors' Union v. Mason Tenders District Council, 186 F. Supp. 737 (S.D. N.Y. 1960) and International Union of Doll & Toy Workers v. Metal Polishers, 180 F. Supp. 280 (S.D. Cal. 1960), the respective district courts refused to grant an injunction due to the violation of a no-raiding agreement between two unions. But, in United Textile Workers v. Textile Worker's Union, 258 F.2d 743 (7th Cir. 1958) and Local 2608, Lumber and Sawmill Workers v. Millmen's Local 1495, 169 F. Supp. 765 (N.D. Cal. 1958), the respective courts reached opposite results on similar facts.

[4]S. Rep. 163, 72nd Cong., 1st Sess., 11, 25 (1932); FRANKFURTER and GREEN, THE LABOR INJUNCTION, 52, 81, 200, 205 (1930).

[5]For a discussion of the implied repeal of the Norris-LaGuardia Act by Section 301(a) of the Taft-Hartley Act, see Judge Magruder's opinion

the Taft-Hartley Act, it was not unmindful of the Norris-LaGuardia Act. Congress took special care to make the Norris-LaGuardia restrictions inapplicable in two specific cases: national emergency strikes where the suit is brought by the Attorney General,[6] and unfair-labor-practice cases where injunctive relief in a district court is sought by the National Labor Relations Board.[7] The main purpose of Section 301(a) was to make collective bargaining agreements equally binding on employers and unions, by removing the main obstacles to suits by and against unions: *i.e.* the procedural difficulties arising from suits involving an unincorporated association,[8] and the limitation of federal jurisdiction in terms of diversity and jurisdictional amount.[9]

Thereafter, a question arose as to whether the statute should be construed as merely jurisdictional or as also establishing a federal substantive law for the enforcement of collective bargaining agreements.[10] This question was resolved in *Textile Workers Union v. Lincoln Mills,*[11] which held a federal substantive law had been created. In that case, the Supreme Court held that Section 301(a) requires federal courts to give specific enforcement to agreements to arbitrate grievance disputes. In reaching this conclusion, the Court relied heavily upon the legislative history of Section 301(a). This history, although characterized by the Court as being "cloudy

in W.L. Mead, Inc. v. Interantional Bhd. of Teamsters, 217 F.2d 6 (1st Cir. 1954), holding that federal courts are without jurisdiction to issue temporary injunctions in order to enforce collective bargaining agreements which contain no-strike clauses. *Compare,* U. S. v. Hutcheson, 312 U.S. 219 (1940), which conveys the impression that the Norris-LaGuardia Act must be read in conjunction with all other labor legislation; thus Section 301(a) could repeal Norris-LaGuardia by implication.

[6] 61 Stat. 155 (1947), 29 U.S.C. § 178(a) (1958).

[7] 61 Stat. 149 (1947), 29 U.S.C. § 160(h) (1958).

[8] S. Rep. No. 105, (Part 1), 80th Cong., 1st Sess., 15-18 (1947); H.R. Rep. No. 510, 80th Cong., 1st Sess., 65-66 (1947); statements by Senator Taft, 93 Cong. Rec. 3839, 4262 (1947).

[9] H.R. Rep. No. 245, 80th Cong., 1st Sess., 6, 46 (1947).

[10] Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U.S. 437 (1954).

[11] 353 U.S. 448 (1957). For leading articles discussing this case, see, Cox, *Reflections Upon Labor Arbitration,* 72 HARV. L. REV. 1482 (1959); Gregory, *The Law of the Collective Agreement,* 57 MICH. L. REV. 635 (1959); Bickel and Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case,* 71 HARV. L. REV. 1 (1957); Feinnsinger, *Enforcement of Labor Agreements—A New Era in Collective Bargaining,* 43 VA. L. REV. 1261 (1957); and Bunn, *Lincoln Mills and the Jurisdiction to Enforce Collective Bargaining Agreements,* 43 VA. L. REV. 1247 (1957).

and confusing,"[12] was read as reflecting a federal policy of promoting the inclusion of no-strike clauses in collective bargaining agreements and providing for the enforcement of arbitration clauses given in return for the no-strike agreements.[13] Or, as the Court worded its reasoning, the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike.[14] The principal case relied upon this reasoning in reaching its own conclusions; an inference to be drawn from the enforcement of arbitration clauses given in return for no-strike clauses.[15]

The Court in the *Lincoln Mills* case was faced with the difficult question of deciding what substantive law was to be applied to breach of contracts under Section 301(a), after deciding that Section 301(a) was more than jurisdictional. The Court solved this question by stating, "We conclude that the substantive law to apply in suits under Section 301(a) is federal law, which the courts must fashion from the policy of our national labor laws . . . . The range of judicial inventiveness will be determined by the nature of the

[12] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 452 (1957).

[13] Mr. Justice Frankfurter dissented in a rather unusual 86 page opinion, including the entire relevant legislative history of Section 301(a), in an attempt to show that Section 301(a) created procedural rights rather than substantive rights. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 460 (1957).

[14] Textile Union Workers v. Lincoln Mills, 353 U.S. 448, 455 (1957). Heavy reliance is placed upon the *quid pro quo* statement mentioned in the Lincoln Mills case, which is repeated in subsequent decisions concerning the enforcement of collective bargaining agreements: Steelworkers Union v. American Manufacturing Co., 363 U.S. 564, 564 (1960); Steelworkers Union v. Warrior & Gulf Co., 363 U.S. 574, 578 (1960). The meaning of the *quid pro quo* doctrine is not too clear, but seems to infer that the arbitration clause is the *quid pro quo* given by the employer in return for the no-strike clause agreed to by the union. From this it is argued that the latter provision is also specifically enforceable. It appears from the American Manufacturing Co. case that several members of the United States Supreme Court have disassociated themselves from the *quid pro quo* doctrine. See, 363 U.S. 564 (1960) (Mr. Justice Brennan, joined by Justice Frankfurter and Harlan, concurring).

[15] Teamsters Union v. Yellow Transit Freight Lines, 282 F.2d 345, 349 (10th Cir. 1960), *cert. granted*, 81 S. Ct. 378 (1961). "It is true that Lincoln Mills was concerned only with the agreement to arbitrate in a labor contract, and it is also true that the injunctive enforcement of such agreements was not one of the abuses against which Norris-LaGuardia was aimed. But even so, it seems plain enough that the court in Lincoln Mills did not intend to confine Section 301 jurisdiction to the specific performance 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."

problem."[16] The Court in the principal case also relied upon these expressions of what law is to apply in suits under Section 301(a), and felt that the policy and purpose of our national labor laws warranted the enforcement of a no-strike agreement embodied in the collective bargaining agreement.[17] If the *quid pro quo* doctrine, originated in the *Lincoln Mills* case, is literally applied, a court might specifically enforce an arbitration clause and enjoin a strike as upsetting or interfering with the mandate of the court to arbitrate.[18]

In a number of suits under the Railway Labor Act,[19] the federal courts have held that the Norris-LaGuardia statute does not apply to an injunction against a strike over a contract dispute which is required to be submitted to the National Railroad Adjustment Board.[20] This was done under the premise that the Railway Labor Act offers specific machinery for the handling of such disputes. It is quite conceivable that a court could follow this same rationale in reviewing a collective bargaining agreement entered into under the National Labor Relations Law, and setting up specific arbitration machinery for the settlement of strikes.

But there is a distinction between the enforcement of an arbitration clause and the enforcement of a no-strike clause. When the Court in *Lincoln Mills* held that arbitration was enforceable because it was not one of the abuses covered under the anti-injunction facet of the Norris-LaGuardia Act, it was, in effect, holding Norris-LaGuardia inapplicable because of the absence of a "labor dispute." In this situation, the only federal law that was being carried out and fashioned from our national labor laws was the Taft-Hartley Act itself. But when the problem of a no-strike clause is considered, then certainly the Norris-LaGuardia Act cannot be dismissed so easily. While Congress may not have legislated in Norris-LaGuardia as to arbitration, it does seem that it specifically legislated with respect to strikes in that Act. It could be argued that

[16] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 456, 457 (1957).

[17] "While this controversy may come within the literal reading of Norris-LaGuardia, we think the jurisdictional limitations there must be read in the light of the language and underlying of Section 301. . . ." Teamsters Union v. Yellow Transit Freight Lines, 282 F.2d 345, 350 (1960), *cert. granted,* 81 S. Ct. 378 (1961).

[18] See, *e.g.,* Johnson & Johnson v. United Textile Workers, 184 F. Supp. 359 (D. N.J. 1960).

[19] Brotherhood of R.R. Trainmen v. Chicago R. & Ind. R.R., 353 U.S. 30 (1957); Long Island R.R. v. Brotherhood of R.R. Trainmen, 185 F. Supp. 356 (E.D. N.Y. 1960); and Denver & R. G. W. R.R. v. Brotherhood of R.R. Trainmen, 185 F. Supp. 369 (D. Colo. 1960).

[20] 48 Stat. 1189 (1926), 45 U.S.C. § 153 (1958).

since the Norris-LaGuardia Act has been of such prime importance in formulating our national labor law, its procedural facet is not all that should be considered, but that it has acquired a substantive facet too.[21] If this is true, then according to *Lincoln Mills,* the courts should take this into consideration with respect to a no-strike provision in a collective bargaining agreement.

In the final analysis, the principal case may be correct in that it will effectuate more positively the policy of our national labor laws. Both the Norris-LaGuardia Act and the National Labor Relations Act have as their general objectives the settling of disputes within the bargaining process. The labor movement has become sophisticated to such an extent today that stability would result if collective bargaining agreements were specifically enforced.[22] The Norris-LaGuardia Act was passed at a time when there was great instability in the labor movement. The unions were fighting for recognition and the right to bargain collectively with management. These goals having been achieved, it seems only correct that both labor and management should be able to rely upon their contracts and be bound by their freely made agreements.[23]

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[21] See, U.S. v. Hutcheson, 312 U.S. 219 (1940).

[22] "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." S. Rep. 105, (Part I), 80th Cong., 1st Sess., 18 (1947).

[23] The policy argument broadly stated is, "[E]ven if it [lifting the Norris-LaGuardia ban on strike injunctions in arbitration cases] be viewed as a return to the era of labor injunctions, this anathema of a generation past must be viewed from a present day perspective. Labor organization has now reached a state of development where it should be bound by its contractual obligations as is any ordinary individual. If in return for collective benefits the union agrees not to strike, it should be held to both the benefits and the burdens of the contract. If the parties agree to arbitrate, the agreement should be enforceable—and effectively—regardless upon whom the onus may fall. . . . The zealous protection and humanitarian immunization formerly accorded to organized labor were necessary and desireable in a period when labor-management equality was not a reality but an ever sought after goal. If the goal has been achieved and a contract has been freely and voluntarily made, the protection and immunization become anachronisms—unsuitable for current conditions and indeed a hinderance to the development of responsible unionism." Mendelsohn, *Enforceability of Arbitration Agreements Under Taft-Hartley Section 301,* 66 YALE L. J. 167, 183 (1956). On the general proposition of specifically enforcing no-strike agreements, see, Garbus, *Equitable Remedies and the Collective Bargaining Agreement,* 15 N.Y.U. INTRA. L. REV. 105 (1960).