ARBITRATOR'S AUTHORITY TO ISSUE INJUNCTIVE RELIEF UNDER THE NEW YORK ANTI-INJUNCTION ACT

Matter of Ruppert,
3 N.Y.2d 576, 148 N.E.2d 129 (1958)

A collective bargaining agreement between the Brewery Workers Local Unions of the International Brotherhood of Teamsters and five separate brewing corporations provided that alleged violations of a "no-strike" and "no-slowdown" clause be referred to arbitration under a "speedy arbitration procedure." An alleged slowdown by the union and workers was sent to arbitration with the compliance agreement that the arbitrator's decision "shall be final and binding upon all parties to the given dispute." The arbitrator found there were slowdowns by the union in violation of the general collective bargaining agreement and enjoined the local unions from continuing such slowdowns. The order of the arbitrator was confirmed by the New York special term and affirmed by the appellate division.

On appeal the unions alleged the arbitrator had exceeded his jurisdiction under the terms of the contract and that section 876-a of the New York anti-injunction act had been violated. However, the court upheld the companies' contention that the contract by implication gave authority to the arbitrator to issue an injunctive award. The court further held that this award does not fall within the prohibitions of the state anti-injunction statute.

Of primary importance is the delimitation of the authority of the arbitrator. This authority is based upon the terms of the conferral by the parties.[1] The relief granted must be responsive to the terms of the parties' agreement. When, however, the contract is silent as to the acceptability of specific remedies the basis of the award must be the apparent *intent* of the parties.[2] The court found in this collective bargaining agreement an intent to create authority in the arbitrator to grant quick and effective relief and that "nothing short of an injunction" would accomplish it.

Even where the injunctive remedy can be implied, the application of the directly restrictive language of the anti-injunction act must be considered.

Historically, the anti-injunction statutes were an attempt to adjust

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[1] Application of MacMahon, 187 Misc. 247, 63 N.Y.S.2d 657 (1946); 6 C.J.S. *Arbitration and Award* § 80(a) (1937); 3 AM. JUR. *Arbitration and Award* § 85 (1936); UPDEGRAFF and McCOY, *Arbitration of Labor Disputes* 29 (1946).

[2] River Brand Rice Mills, Inc. v. Latrobe Brewing Co., 305 N.Y. 36, 110 N.E.2d 545 (1953); Newburger v. Lubell, 257 N.Y. 383, 170 N.E. 669 (1931); Marchant v. Mead-Morrison Mfg. Co., 252 N.Y. 284, 169 N.E. 386 (1929); 6 C.J.S. *Arbitration and Award* § 80(b)(1) (1937).

bargaining scales that were grossly out of balance.[3] The legislation was aimed at redressing the

> abuses which (had) crept into the administration of the remedy . . . . The issuance of injunctions without notice. The issuance of injunctions without bond. The issuance of injunctions without detail. The issuance of injunctions without parties. And in trade disputes particularly, the issuance of injunctions against certain well established and indispensable rights.[4]

Studies of the judicial practices, especially that of Mr. Justice Frankfurter, while still a professor at Harvard, called attention to the abuses in this area.[5] By 1932 criticism of the injunctive policy in the labor area spurred Congress to the passage of the Norris-LaGuardia Act.[6] The federal legislation in turn influenced state[7] enactments of "Baby Norris Acts." The New York act, passed in 1935, proved as encompassing in language as its federal model.[8]

The critical difference between the New York and federal views rests on the definition of the term "labor dispute." For the most part the reading given the term by the state court is analogous to the federal

[3] For general historical background, see FRANKFURTER AND GREENE, THE LABOR INJUNCTION (1930).

[4] 48 CONG. REC. 6436 (1912).

[5] FRANKFURTER, *op. cit. supra* note 3.

[6] 47 STAT. 70 (1932), 29 U.S.C. § 101 (1953). "That no court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. . . . 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, 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."

[7] Ohio has no legislation similiar to the Norris-LaGuardia Act, the result being that the granting or withholding of injunctions in intrastate "labor disputes" depends upon the state courts' definition of that term free from statutory restraint. LaFrance Elec. Constr. and Supply Co. v. International Bhd. Elec. Workers, Local 8, 108 Ohio St. 61, 140 N.E. 899 (1923). See Note, 9 OHIO ST. L.J. 360 (1948).

[8] N.Y. CIV. PRAC. ACT art. 51, § 876(a). "No court nor any judge or judges thereof 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, as herein after defined, except after a hearing and except after the finding of all the following facts by the court or judge or judges thereof. . . . 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, changing or seeking to arrange terms or conditions of employment, or any other controversy arising out of the respective interests of the employer and employee regardless of whether or not the disputants stand in the relation of employer and employee."

definition. It is only in the "hard" cases containing unusual facts—where a court well disposed toward labor would have granted injunctive relief under the pre-statutory law—that the New York court has refused to classify the matter as a "labor dispute" and thereby granted injunctive relief. The criterion of the New York court is the *object* of the union activity. Where the object is classifiable as a non-labor matter or where the disputants are outside the statutory coverage, section 876-a is held inoperative. Examples of these unusual cases are: intraunion disputes,[9] secondary picketing in the absence of a "unity of interest,"[10] action by a union denied authority to do business in the state,[11] picketing by ethnic groups for racial gain,[12] picketing a charitable hospital,[13] and picketing by a large union against a small business run by a single individual or his family.[14]

Presently, the New York decisions are split in classifying strikes in violation of a collective bargaining agreement as a "labor dispute."[15] In contrast the federal cases hold squarely that such breaches of a collective agreement are labor disputes and therefore not enjoinable.[16]

If the New York court accepts the premise that such strikes are not labor disputes and therefore not enjoinable by the courts under normal circumstances, the question is raised as to the ability of the parties to contract out of the statutory restrictions. The holding in *Matter of Ruppert*[17] answers this question affirmatively. The parties by express provision or by implication may give the arbitrator injunctive powers denied the judiciary.[18] As precedent the New York court relies upon positive arbitration orders of specific performance, *i.e.*, retention or rehiring of employees.[19] Such awards although phrased positively contain, of neces-

[9] Wolchok v. Kovenetsky, 83 N.Y.S.2d 431, 274 App. Div. 282 (1948).

[10] Willoughby Camera Stores, Inc. v. District No. 15, Int'l Ass'n Machinists, 205 Misc. 455, 129 N.Y.S.2d 734 (1954); Feldman v. Weiner, 173 Misc. 461, 17 N.Y.S.2d 730 (1940); Weil and Co. v. Doe, 168 Misc. 211, 5 N.Y.S.2d 559 (1938).

[11] Hoffman's Vegetarian Restaurant v. Lee, 3 L.R.R.M. 785 (1939).

[12] Pappas v. Straughn, 7 L.R.R.M. 693 (1940); Anora Amus. Corp. v. John Doe, 4 L.R.R.M. 836 (1939).

[13] Jewish Hosp. v. Hotel Employees Union, 1A L.R.R.M. 7111 (1937).

[14] Sweeney v. Goolst, 91 N.Y.S.2d 579 (App. Div. 1949).

[15] Cases classifying such action as *not* a labor dispute: Bee Line, Inc. v. Local 252, Transp. Workers, C.I.O., 157 N.Y.S.2d 232 (Special Term) (1956); Uneeda Credit Clothing Stores, Inc. v. Briskin, 5 L.R.R.M. 922 (1939); Everett v. Pennsylvania, 2 L.R.R.M. 845 (1938). Cases classifying such action as a labor dispute: Carroll Towing Co., Inc. v. United Marine Div., 24 L.R.R.M. 2346 (1949); Vim Elec. Co. v. Solomon, 19 L.R.R.M. 2310, 67 N.Y.S.2d 908 (1947); Nevins, Inc. v. Kasmach, 279 N.Y. 323, 18 N.E.2d 294 (1938).

[16] A. H. Bull S.S. Co. v. Seafarers' Int'l Union, 250 F.2d 326 (2d Cir. 1957) and A. H. Bull S.S. Co. v. National Marine Eng. B. Ass'n, 250 F.2d 332 (2d Cir. 1957).

[17] 3 N.Y.2d 576, 148 N.E.2d 129 (1958).

[18] *Accord,* Wholesale Laundry Bd. Trade, 15 L.A. 867 (1951).

[19] In the matter of United Culinary Bar and Grill Employees, 299 N.Y. 577, 86 N.E.2d 104 (1949); In the matter of Devery, 292 N.Y. 596, 55 N.E.2d 370

sity, a corresponding negative implication.[20] The effect of *Ruppert* is that by resort to section 1461 of the New York Arbitration Act,[21] parties can lift a matter out of the restrictions of the "Baby Norris Act." "Arbitration is voluntary and there is no reason why unions and employers should deny such powers to the special tribunals they themselves create."[22]

In federal jurisdictions, the exact question answered in the *Ruppert* case has not been presented. One court of appeals has refused to enjoin a strike in violation of a collective agreement where the issue was not covered by an arbitration clause.[23] However, this view was later distinguished as relating only to the "traditional labor injunction" and not to specific enforcement of an agreement to arbitrate.[24] Finally, in 1957 the United States Supreme Court in the *Lincoln Mills*[25] case affirmed an injunctive order specifically enforcing an agreement to submit to arbitration. The *Lincoln Mills* case found that the Norris-LaGuardia Act did not prohibit the granting, under section 301 of Taft-Hartley, of positive injunctive relief requiring the parties to submit to arbitration. The stage is now set for the answer to the *Ruppert* question on the federal level. Several factors point to a federal result similar to the New York decision: the provision of section 8 of the Norris-LaGuardia Act encouraging arbitration,[26] the irrationality of requiring the parties to submit to arbitration if the court will not enforce the resultant award, and the social desirability that people be kept to their promises.

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(1944). See also Safe Bus Co., 21 L.A. 456 (1953); AB&C Motor Transport Co., 24 L.A. 740 (1955); *In re* Finn, 22 L.A. 870 (1954). *Cf.* Stanford v. Boston Edison Co., 316 Mass. 631, 56 N.E.2d 1 (1944); *In re* Cit-Con Oil Corp. and Oil Workers Int'l, 30 L.A. 267 (1958).

[20] Van Name v. Federal Deposit Ins. Corp., 130 N.J.Eq. 433, 23 A.2d 261 (1941): "As a general rule to enjoin one from violating a contract is an indirect method of enforcing its affirmative provisions."

[21] N.Y. CIV. PRAC. ACT art. 84, § 1461. "At any time within one year after the award is made, as prescribed in the last section, any party to the controversy which was arbitrated may apply to the court having jurisdiction as provided . . . for an order confirming the award; and thereupon the court must grant such an order unless the award is vacated, modified or corrected. . . ." *Cf. Ohio Arbitration Act,* OHIO REV. CODE §§ 2711.01-.15 (1953).

[22] *Supra* note 17, 148 N.E.2d at 131.

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

[24] Local 205, United Elec. Workers v. General Elec. Co., 233 F.2d 85 (1st Cir. 1956).

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

[26] 47 STAT. 70 § 8 (1932), 29 U.S.C. §§ 101, 108 (1953). "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."