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Labor Law—1962 Tennessee Survey

*Paul H. Sanders**

I. Rights Under Labor Agreements

Two decisions during the survey period involve implementation of rights under collective bargaining agreements. These Tennessee decisions interrelate with other decisions in an area of labor law that has been developing with astonishing rapidity since the Supreme Court of the United States embarked on the project of fashioning a body of federal common law governing the enforcement of collective bargaining agreements in the famous *Lincoln Mills* decision in 1957.[1] It has been determined that rights under collective bargaining agreements, where the parties would be subject to the Taft-Hartley or Labor-Management Relations Act of 1947, arise under this federal "common law." Suits for the enforcement of such rights may be maintained in state courts as well as in federal courts.[2] In other words, there is no federal pre-emption of the subject matter so as to oust state courts of jurisdiction, but the substantive law to be applied is federal law rather than local law.[3]

It has been made clear in *Smith v. Evening News Ass'n*,[4] deeided by the Supreme Court of the United States on December 10, 1962, that the foregoing principles relating to forum and substantive law are applicable when an individual employee is seeking to assert a right under a collective bargaining agreement subject to the scope of section 301 of the Taft-Hartley Act. Furthermore, that case held that these principles are similarly applicable even though the particular conduct charged as a contract violation would also make out an unfair labor practice subject to the jurisdiction of the National Labor

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1. Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448 (1957).

2. Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962); Local 174, Teamsters Union v. Lucas Flour Co., 369 U.S. 95 (1962).

3. Local 174, Teamsters Union v. Lucas Flour Co., *supra* note 2.

4. 371 U.S. 195 (1962). The case thus overrules the Court's previous decision in Association of Westinghouse Salaried Employees v. Westinghouse Corp., 348 U.S. 437 (1955).

Relations Board.

The first Tennessee case during the survey period to which the foregoing discussion is related is *Mechanics Universal Joint Division Borg-Warner Corp. v. Fooshee.*[5] This was a declaratory judgment action to determine the rights of the parties under a collective bargaining contract and to set aside an arbitration award under which the arbitrator had found that an assistant supervisor was entitled to certain rights under the agreement. The Supreme Court of Tennessee, in an opinion written by the late Chief Justice Prewitt, unanimously affirmed the decree of the chancellor, which had sustained the union's demurrer to the company's bill on the ground that the bill did not show on its face that the arbitrator exceeded powers conferred upon him by the collective bargaining agreement. The opinion concurs with the view of the chancellor that the collective bargaining agreement provided for arbitration and "the arbitrator having acted there was no appeal from his decision."[6] This is followed by the broad statement, "the courts are without jurisdiction to review the merits of a grievance or arbitration award."[7]

The decision in this case was based upon the state of the pleadings, particularly the fact that the company's bill did not show on its face any limitation or restriction of the power of the arbitrator and did not show that the arbitrator exceeded his powers. The factual situation indicated in the case, however, seems to have been a highly unusual one and one where normally there would have been no power in the arbitrator to grant relief. Of course it is not possible to judge fully these facts from the opinion alone but in a sense the actual facts are irrelevant in light of the basis of the supreme court's decision. The court's opinion, however, states that the grievant whose grievance was submitted to arbitration in this instance was at the time of his discharge, and had been for some months prior thereto, employed in a capacity of assistant supervisor and that under the agreement assistant supervisors were excluded from the collective bargaining unit. The opinion goes on to say that the grievance attacking the discharge of the assistant supervisor was filed under the grievance procedure established in the collective bargaining agreement. The opinion of the court declares that although assistant supervisors were excluded from the bargaining unit, the arbitrator found that the grievant was entitled to benefits and rights under the agreement and the court states, "The arbitration award sought to be set aside in this action was autho-

5. 209 Tenn. 330, 354 S.W.2d 59 (1962).

6. *Id.* at 332, 354 S.W.2d at 60.

7. *Id.* at 333, 354 S.W.2d at 60, citing United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960) and United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

rized by the provisions of said collective bargaining agreement."[8]

It might be observed that if in fact the assistant supervisor was not covered by the collective agreement, then normally he would be in no position to claim any rights under the agreement. A timely assertion of his exclusion from the unit should have resulted in a dismissal of the grievance by the arbitrator, in the absence of some evidence of mutual intention to extend the benefits of the agreement to the out-of-unit employees. The decision in this case might be misleading if it is taken as indicating that an arbitrator's award could not be set aside by a reviewing court, even though the arbitrator had acted in excess of the jurisdiction and powers conferred upon him by the collective bargaining agreement under which he was proceeding. While the applicable Supreme Court decisions under section 301 of the Taft-Hartley Act have made it clear that a reviewing court should not set aside an award merely because of disagreement with the merits of the arbitrator's decision, this does not mean that the courts are powerless to set aside an award where the arbitrator acted in excess of the jurisdiction and powers conferred upon him by the collective agreement. This is made clear by the opinion of Mr. Justice Douglas in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*,[9] cited by the Tennessee Supreme Court in the case under discussion:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.[10]

In *Johnson v. Union Carbide Nuclear Co.*[11] an employee who had been laid off in connection with a reduction in force sought a declaration of her rights and an award of compensatory and punitive damages in a suit filed against her employer and the union which represented her. In the alternative, she sought a mandatory injunction requiring her reinstatement to employment with full seniority and back pay. The plaintiff's suit was filed in a United States district court. The precise basis of that court's jurisdiction is not discussed in the opinion although the court recognizes that it is being asked to accord rights which are controlled by the collective bargaining agreement between the company and the union. As has been indicated above, *Smith v.*

8. 209 Tenn. at 332, 354 S.W.2d at 60.
9. 363 U.S. 593 (1960).
10. *Id.* at 597.
11. 205 F. Supp. 322 (E.D. Tenn. 1962).

Evening News Ass'n[12] makes it clear that such a suit is controlled by section 301 of the Taft-Hartley Act and the developing body of case law applicable to federal and state cases proceeding under that section. Chief Judge Robert L. Taylor granted the company's motion to dismiss because the plaintiff had failed to comply with the grievance and arbitration procedures provided in the collective bargaining agreement. The union's motion to dismiss was denied without prejudice to it being renewed at pre-trial or during the trial on the merits.

The plaintiff based her action in this case upon a claim that her seniority rights had been violated when she was laid off and an employee with less seniority was retained by the company. The facts stated in the opinion indicate that the plaintiff's length of service was greater than that of two other employees who worked with her in the same seniority group; that the three employees were on the same date in 1949 transferred to a seniority group carrying a different name, although the employees continued to engage in the same work; and that immediately thereafter, the company posted a list of the three employees in the new group, showing an identical date (the date of their entry into the new group). The plaintiff was listed third on this posted seniority list. The facts indicate further that the plaintiff noticed that the listing seemed to be in reverse order of length of service and called this to the attention of her supervisor and her union job steward. The opinion states that the job steward ("now deceased") reported to the plaintiff that the necessary correction had been made. The opinion also states that the plaintiff subsequently was not advised nor did she note the fact that the listing of names remained the same until the time of her layoff with the retention of one of the employees whose name preceded her on the above listing.

The opinion of Judge Taylor then states that a grievance was filed on the plaintiff's behalf and that the union supported her claim and requested that the affected employees be transferred to the seniority group out of which they had been transferred in 1949 and that seniority in this group should start with the original hire-in date. The company refused to make this requested change. The plaintiff's grievance was supported by the union through the several steps of the grievance procedure provided in the collective bargaining agreement, but the opinion states that the union refused to take the complaint to arbitration.

It is stated that the plaintiff's complaint in this instance charges that the union and the company owed plaintiff a duty to pursue the remedies provided by the arbitration provisions of the collective bargaining agreement and that by reason of the failure to pursue this

12. 371 U.S. 195 (1962).

remedy the company and the union are liable to the plaintiff and that she is entitled to injunctive relief and compensatory and punitive damages. Judge Taylor's opinion declares that the rights of the plaintiff are controlled by the collective agreement and that the terms of that agreement between the company and the union became a part of the plaintiff's individual contract of employment. Portions of the collective agreement dealing with seniority are examined and quoted, including a section which states that the employees transfering permanently from one seniority group to another retain their seniority in the group from which they came for a period of twelve weeks only, after which the original group seniority is abolished and seniority dates from the transfer to the new seniority group. The opinion also quotes from a section which states that the seniority of each employee is his relative position with respect to other employees in the seniority group. It is stated that a seniority list which showed the plaintiff as third on the seniority list in her group had been issued periodically by the company and made available to the union.

The opinion declares that the company's motion to dismiss should be granted upon the ground that neither the plaintiff nor the union, her bargaining agent, had exhausted the administrative remedies provided in the collective bargaining agreement.[13] The union's motion to dismiss challenged the jurisdiction of the court and the propriety of a declaratory judgment proceeding and also claimed that the cause of action was barred by statutes of limitations and the plaintiff's delay and laches. The court stated that it was denying the union's motion "in view of the broad allegations in the complaint regarding the union"[14] but that this was without prejudice to the renewal of the motion at pre-trial or trial. The court's opinion does not present any further detail as to the reasons for denying the union's motion.

The case is important in its indication that a claim of an employee under a collective agreement against an employer will not be heard by the court until such time as the procedures in the collective agreement have been exhausted, even though the union is apparently unwilling to pursue the remedies in the agreement. The case obviously has potential for presenting a question as to whether the union may be ordered to prosecute the plaintiff's grievance through the arbitration procedure provided in the collective agreement. There is also the possibility of a damage claim against the

13. 205 F. Supp. at 324, citing Arnold v. Louisville & N.R.R., 180 F. Supp. 429 (M.D. Tenn. 1960); Haynes v. United Chem. Workers, 190 Tenn. 165, 228 S.W.2d 101 (1950); Jenkins v. Atlas Powder Co., 27 Lab. Arb. 778 (Tenn. 1956). See Sanders & Bowman, *Labor Law and Workmen's Compensation—1960 Tennessee Survey*, 13 VAND. L. REV. 1159, 1165 (1960).

14. 205 F. Supp. at 325.

union by reason of its failure to pursue the contract remedies or possibly by reason of an alleged failure to correct the seniority listing at some time in the past.

It is obvious, of course, that labor organizations do not and could not as a matter of practical and financial feasibility carry all claims to arbitration, even though the company management has continued to refuse a particular claim. It is generally recognized that labor organizations must be allowed a considerable degree of discretion in compromising and settling claims, as well as in determining which cases will be carried on to the subsequent steps of the grievance procedure and taken through the arbitration process. In the absence of a showing of bad faith or invidious discrimination against an individual or a group it is unlikely that courts will interfere with this exercise of discretion as to the processing of individual complaints.[15] There is nothing in the reported opinion in this case to indicate that the labor organization acted in bad faith. There is the additional factor with regard to posted seniority lists that the individual employee is usually in a position to check such lists and to make timely requests that they be corrected. The opinion in this case does not indicate whether or not the posted seniority list was located where it would have been readily available to the plaintiff.

II. Picketing

In *Dunn v. Retail Clerks International Ass'n, AFL-CIO, Local 1529*,[16] the Sixth Circuit Court of Appeals denied a motion for an injunction pending appeal. The prayer for an injunction discussed in the per curiam opinion was that the court require the regional director of the National Labor Relations Board to petition the United States District Court for the Western District of Tennessee for an injunction enjoining certain labor unions from picketing the petitioner's stores for recognition purposes. In the alternative, the petitioning employer prayed that the court issue an injunction directly enjoining the labor unions from picketing for recognition prior to certification by the National Labor Relations Board. The district judge denied the motion for a temporary injunction and granted the motions of the defendant unions to dismiss on the ground that he had no jurisdiction to grant the relief. The court of appeals states that the relief prayed for is extraordinary in that, pending appeal, it asks that the regional director of the National Labor Relations Board be ordered to file a complaint against a labor union charging an unfair labor practice and that

15. Stewart v. Day & Zimmerman, Inc., 43 CCH Lab. Cas. ¶¶ 17, 167, 48 L.R.R.M. 2989 (5th Cir. 1961). See also Ford Motor Co. v. Huffman, 345 U.S. 330 (1953).
16. 299 F.2d 873 (6th Cir. 1962).

this official be ordered to seek an injunction in the United States district court to restrain the union from picketing. As an alternative to these, the appellate court itself is asked to enjoin the union. The opinion states that the regional director is called upon to exercise his discretion as to whether he will file a complaint and institute injunction proceedings. There is no discretion, however, once he has decided that a complaint should issue (See section 10(*l*) of the National Labor Relations Act). The opinion states that even if injunction proceedings are instituted in the federal district court, that court could not grant such an injunction without hearing the evidence and finding that there was reasonable cause to believe the charge. The relief requested, the opinion states, is the ultimate relief and that to obtain such relief the appellants would have to prevail on the merits of the case. "We ought not to grant temporary relief which would finally dispose of the case on its merits."[17]

III. UNEMPLOYMENT COMPENSATION

In *Special Products Co. v. Jennings*[18] the Supreme Court of Tennessee was concerned with the disqualification provision of the Tennessee Employment Security Law. The particular question presented was whether or not employees who had lost their positions as a result of having been replaced during a strike were disqualified for unemployment benefits by reason of the "voluntary quit" section.[19] The Tennessee Supreme Court, in an opinion by Chief Justice Prewitt, affirmed the decree of the chancellor which had upheld the entitlement of some sixty-two former employees to unemployment compensation benefits after the employees in question had ended their strike and sought to return to their former jobs. The court refers to the finding of the board of review to the effect that at the time the claims for unemployment compensation benefits were filed the parties had offered unconditionally to return to their jobs and that as of that time there was no labor dispute in active progress. The opinion then states that it would be inappropriate for the court to make any finding relative to misconduct since an attempt to do this would require an adjudication of the merits of the labor dispute and "we are without jurisdiction to pass upon this question."[20] The opinion also indicates that the labor dispute disqualification under the Tennessee Employment Security Law has no application because there was no longer an active labor dispute. "We find here that the employer

17. *Id.* at 874.
18. 209 Tenn. 316, 353 S.W.2d 561 (1961).
19. TENN. CODE ANN. § 50-1324A(1) (Supp. 1962).
20. 209 Tenn. at 319, 353 S.W.2d at 562.

considered the strike ended and thereafter the unemployment of these individuals was not due to the strike, but because there were no jobs available to them at the time the strike was ended since the jobs had previously been filled."[21] The opinion indicates that to refuse benefits to the claimants in this instance would, in effect, require a holding that the claimants were wrongfully on strike originally; that they were not justified in striking; that the strike was their own fault and that they were thus unemployed because of their own fault. The opinion indicates that such a holding would be improper.

The holding in this case is entirely consistent with a proper analysis of the labor dispute disqualification.[22] Furthermore, it is in accordance with the necessary accommodation between the labor dispute disqualification and the disqualification provided in the case of "voluntary quits," and the fundamental purpose underlying such provisions.[23]

21. *Id.* at 321, 353 S.W.2d at 563.

22. See Williams, *Labor Dispute Disqualifications—A Primer and Some Problems,* 8 VAND. L. REV. 338 (1955).

23. See Sanders, *Disqualification for Unemployment Insurance,* 8 VAND. L. REV. 307, 309, 310, 316 (1955).