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## COMMENT: THE ENFORCEMENT OF AGREEMENTS TO ARBITRATE

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Three 1960 Supreme Court decisions[1] have limited the ability of litigants to challenge successfully the jurisdiction and award-making powers of labor arbitrators. The limitations imposed by the Court upon the judiciary's power to question the arbitrator, a reversal of traditional procedure, is of great significance and will unquestionably necessitate some readjustment on the part of management. This article attempts to place these recent developments in perspective and to suggest briefly certain practical changes in the attitudes of courts and contract negotiators that may result from them.

### I. Background

Because of the limited union growth and bargaining power prior to the National Labor Relations Act of 1935,[2] management, with few exceptions, was able to dominate and exercise unilateral control over most internal plant matters. As unionism grew, the employer's ability to control his labor force was greatly reduced, particularly since good faith bargaining was required over wages, hours, and working conditions. The collective bargaining agreements that were drawn up contained clauses by which many controversies were submitted to arbitration and the power of the firm waned.

Yet, because of the widespread notion that many industrial decisions are strictly management prerogatives, the firm was able to keep many disputes from reaching the arbitrator. Disagreement followed as to the types of disputes that were arbitrable by agreement. During the past two and a half decades the traditional notions of contract law have tended to preserve the power of the firm, a result agreeable to management personnel. However, with the 1960 Supreme Court decisions, further inroads have been made on management prerogatives and, once again, it can be anticipated that a period of labor-

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1. United Steelworkers Union v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers Union v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers Union v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960).

2. Ch. 372, 49 Stat. 449 (1935) (now Labor Management Relations Act, 29 U.S.C. § 151 (1958)).

management adjustment will be necessary.[3]

When the Labor Management Relations Act was promulgated in 1947, section 301 provided:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court . . . .[4]

In the famous and controversial *Textile Workers Union v. Lincoln Mills*[5] decision, Justice Douglas, writing the majority opinion, noted that Congress approved of arbitration as a democratic means of maximizing plant justice and labor-management peace, and that section 301 must be considered in this light.[6] He also said that the courts charged with enforcing federal legislation would be required to fashion a body of rules, obviously in a piece-meal fashion, to implement this national policy favoring arbitration.[7] As could be anticipated, although labor arbitration is a desirable phenomenon worthy of protection and encouragement, the grant of power to judges to carve out *ad hoc* ground-rules created many legal problems.

One criticism levied at *Lincoln Mills* concerned the extensive rule-making power which the Supreme Court handed to the judiciary[8] without spelling out in detail any guiding criteria. This mandate to the lower courts was criticized both by scholars adhering to the view usually taken by Justice Frankfurter, who would limit the judicial role wherever possible, and by others who view labor-management problems with a less legalistic philosophical approach due to the lack of judicial or legislative guidance in the field.[9] The sparseness of legislative guidance is noticeable: the Labor Management Relations Act does no more than express a policy favoring arbitration and the United States Arbitration Act has been interpreted to exclude employment contracts from coverage.[10]

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3. It is not intended to imply that management fully adjusted to the shift in power prior to 1960.
4. 61 Stat. 156, 29 U.S.C. § 185 (1958).
5. 353 U.S. 448 (1957).
6. *Id.* at 456.
7. *Id.* at 457.
8. Justice Douglas stated: "The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. . . .
"It is not uncommon for federal courts to fashion federal law where federal rights are concerned . . . ." *Ibid.*
9. It should be pointed out that there is little procedural aid in the Taft-Hartley Act even though mentioned in *Lincoln Mills* as a source of guidance. See Bickel & Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case*, 71 HARV. L. REV. 1 (1957).
10. Pennsylvania Greyhound Lines v. Amalgamated Ass'n of Street Ry.

Another criticism levied at the sweeping concept enunciated in *Lincoln Mills* was that a motion to stay or compel arbitration subjects the arbitrator to the whims of the court. To some degree this argument is unrealistic. The social impact of labor-management problems is often overlooked by those leveling a jaundiced eye toward the legalistic approach and those expressing concern with the need of the arbitrator for complete autonomy. It is true that courts have needlessly badgered the arbitration process in many ways. Yet, if industrial peace can be maximized by the limited procedural interference of the judiciary to force labor and management to live up to the terms of their agreements to arbitrate, society is the winner.[11]

The so-called *Cutler-Hammer* doctrine,[12] first enunciated by a state court in New York, has been followed, at least to some extent, by federal courts.[13] In *Cutler-Hammer,* the meaning of a contractual provision, "to discuss payment," was disputed; the New York court affirmed the view that the judiciary would decide what is arbitrable.[14] Under this view courts necessarily determine the merits of every dispute submitted to arbitration.

Employers obviously favor the approach taken in *Cutler-Hammer* because of the protection it gives to some degree to management pre-

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Employees, 193 F.2d 327 (3d Cir. 1952); International Union United Furniture Workers v. Colonial Hardwood Flooring Co., 168 F.2d 33 (4th Cir. 1948); Gatliff Coal Co. v. Cox, 142 F.2d 876 (6th Cir. 1944); Lewittes & Sons v. United Furniture Workers, 95 F. Supp. 851 (S.D.N.Y. 1951); General Elec. Co. v. Local 205, United Elec. Workers, 353 U.S. 547 (1957). The position taken by the courts when interpreting section 1 of the Arbitration Act has been quarreled with. Section 1 excludes from coverage "contracts of employment of seamen, railroad employees, or any other class of workers. . . ." It can be argued that a collective bargaining agreement is not a contract of employment—its purpose is to spell out the rights of those entering into an employer-employee relationship. Only an employee can negotiate an employment contract; it is then given the protection of the master agreement, the collective bargaining contract. This was the view expressed in Local 205, United Elec. Workers v. General Elec., 233 F.2d 85 (1st Cir. 1956). Although affirming this decision (353 U.S. 547), the Supreme Court disagreed with the reasoning of the First Circuit and held that section 301 furnishes the substantive law necessary to enforce an agreement to arbitrate. For recommendations that the Federal Arbitration Act should be amended to cover this situation see Pirsig, *The Minnesota Uniform Arbitration Act and the Lincoln Mills Case,* 42 MINN. L. REV. 333 (1958).

11. In two of the three 1960 decisions, later reviewed, the Supreme Court was concerned with enforcing agreements to arbitrate. If the basic proposition in *Lincoln Mills*—the desirability of promoting arbitration as a means of settling disagreements between labor and management—is accepted, then enforcing agreements to arbitrate, in the last analysis, may result in less court interference at a subsequent date.

12. International Ass'n of Machinists v. Cutler-Hammer, Inc., 297 N.Y. 519, 74 N.E.2d 464 (1947).

13. See, *e.g.,* Davenport v. Procter & Gamble Mfg. Co., 241 F.2d 511 (2d Cir. 1957).

14. Judge Fuld of the New York Court of Appeals disagreed with the majority opinion and took a position which was later followed by Justice Douglas in United Steelworkers Union v. American Mfg. Co., *supra* note 1.

rogatives with a resultant retention of unilateral employer control. The courts have displayed a traditional hostility to arbitration, and employers are aware of judicial attitudes. Unions on the other hand oppose any limitation on the authority of arbitrators who have exhibited a more realistic and favorable approach to problems. Because of the anti-labor views historically expressed by courts, union leaders have been critical of *Cutler-Hammer* as another indication of judicial bias.

## II. THE THREE 1960 SUPREME COURT DECISIONS

Against the background of widespread speculation and confusion surrounding *Lincoln Mills* and the controversial implications of *Cutler-Hammer,* the Supreme Court, in 1960, undertook the task of providing "markers" for the judiciary when dealing with arbitrability and the scope of court review under section 301. These decisions will now be examined.

### *The American Case*

In *United Steelworkers Union v. American Mfg. Co.,*[15] the collective bargaining contract contained an "all disputes" provision "as to the meaning, interpretation and application of the provisions of this agreement."[16] Included in the agreement were clauses giving management the right to punish employees "for cause"; promotion and employment were to be determined by seniority "where ability and efficiency are equal."[17] It should be noted that these are standard clauses found in many labor-management agreements. An employee, awarded workmen's compensation benefits, later claimed reinstatement via the seniority clause. The employer refused to reinstate the employee and, in addition, refused to arbitrate. Both the district court and the court of appeals denied, for different reasons, the union's request for an order to arbitrate. The district court invoked the doctrine of estoppel while the court of appeals referred to the employee's claim as frivolous.

The Supreme Court reversed the lower court decisions and referred to section 203(d) of the Taft-Hartley Act which favors arbitration as a means of settling disputes. Since the collective bargaining agreement contained an "all disputes" provision, even frivolous claims are arbitrable according to the Court. Justice Douglas, writing the majority opinion, stated:

> The function of the court is very limited when the parties have agreed

15. 363 U.S. 564 (1960).
16. *Id.* at 565.
17. *Id.* at 566.

> to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.[18]

The Supreme Court ruled that if arbitrators are contractually empowered to adjudicate the dispute, even frivolous claims or claims subject to estoppel are within his jurisdiction.

Justice Douglas felt that some courts were guilty of unwarranted "preoccupation with ordinary contract law," and that the proper course to steer should be determined by market place realities.[19] The majority favored what might be called a realistic approach in contradiction to the contractual view expressed in *Cutler-Hammer*.

Justice Brennan in a concurring opinion made reference to the position taken by Justice Douglas that "there is no exception in the 'no-strike' clause and none therefore should be read into the grievance clause, since one is the *quid pro quo* for the other."[20] Justice Brennan felt:

> The Court makes reference to an arbitration clause being the *quid pro quo* for a no-strike clause. I do not understand the Court to mean that the application of the principles announced today depends upon the presence of a no-strike clause in the agreement.[21]

### *The Warrior Case*

In *United Steelworkers Union v. Warrior & Gulf Navigation Co.*,[22] the employer furloughed a number of employees after certain plant maintenance work was let to independent contractors.[23] The independent contractors then hired some of the furloughed employees at a reduced wage rate. Included in the collective bargaining contract were "no-strike" and "all disputes" provisions, but excluded from arbitration were all legal issues and management functions. The employer refused to arbitrate the layoffs and the union petitioned the court for an order to enforce the arbitration clause.

The Supreme Court, emphasizing the need for an industrial common

18. *Id.* at 567-68. Is it proper to distinguish between a "frivolous grievance" and a "frivolous claim that a grievance is within the scope of the agreement"? See ARBITRATION AND PUBLIC POLICY 14 (Pollard ed. 1961).
19. 363 U.S. at 567.
20. *Ibid.*
21. *Id.* at 573.
22. 363 U.S. 574 (1960).
23. It should be noted that the contracting-out of work is one means by which the effectiveness of union organization can be limited and could, carried to the extreme, lead to the breaking of unions.

law, noted that a collective bargaining agreement differs from a contract entered into between business firms because of the possible disruptive effects on labor-management harmony and the attendant coercive possibilities which such an agreement contains. As a consequence, the grievance procedure culminating in arbitration is an integral and essential part of every union-management agreement as a means of keeping industrial peace. The Court recognized the plain fact that agreements are often unclear and incomplete; now, all doubt should be resolved in favor of arbitration. Thus, *Cutler-Hammer*, as legal ideology, was buried on a federal level.

Justice Douglas again exhibited concern with the "no-strike" feature of the agreement and said:

> When . . . an absolute no-strike clause is included in the agreement, then in a very real sense everything that management does is subject to the agreement, for either management is prohibited or limited in the action it takes, or if not, it is protected from interference by strikes . . . .[24]

In other words, a "no-strike" agreement is the *quid pro quo* for an agreement to arbitrate. Justice Brennan did not write a concurring opinion in *Warrior & Gulf Navigation Co.* but indicated in *American Mfg. Co.*[25] that the view therein expressed applied to *Warrior & Gulf Navigation Co.* and *Enterprise Wheel & Car Corp.*

In *Warrior & Gulf Navigation Co.*, the defendant argued that the clause, "strictly a function of management," authorized the unilateral contracting of work to an independent firm. The Supreme Court decided that the assignment of work to an outside firm and the resultant layoffs are arbitrable *unless the agreement specifically provides for an exclusion.*[26] The Court recognized that the meaning of "strictly a function of management" is nebulous. Yet evidence, not expressed in writing, was available indicating that the contracting-out of work was deemed to be a management function *by the litigants.*

Justice Whittaker, in his dissenting opinion, argued that the letting out of work was clearly a management function because the union unsuccessfully tried for nineteen years "to induce the employer to

24. 363 U.S. at 583.

25. United Steelworkers Union v. American Mfg. Co., 363 U.S. 564, 569 (1960).

26. 363 U.S. at 584-85. "A specific collective bargaining agreement may exclude contracting out from the grievance procedure. Or a written collateral agreement may make clear that contracting out was not a matter for arbitration. In such a case a grievance based solely on contracting out would not be arbitrable. Here, however, there is no such provision. Nor is there any showing that the parties designed the phrase 'strictly a function of management' to encompass any and all forms of contracting out. In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad . . . ."

agree to a covenant that would prohibit it from contracting out work . . . ."[27] It should be noted that the opinion written by Justice Douglas failed to mention the nineteen year bargaining history. Justice Whittaker also felt that the majority opinion violated sound contract law which prohibits courts from writing agreements for parties engaged in litigation and that arbitrability is always a judicial question.[28]

The majority position taken in *Warrior & Gulf Navigation Co.* can be buttressed by examining historical developments since 1935. As a matter of fact management prerogatives, whatever they may be, have been sharply restricted by contract since section 9(a) required the employer to bargain in good faith over "rates of pay, wages, hours of employment, or other conditions of employment." It is difficult to envision what management functions do not ultimately affect wages, hours and working conditions. Although management and many textbooks and articles speak in terms of management prerogatives, none of these voices stop to define them in light of the Taft-Hartley Act. Certainly many public officials, union leaders, arbitrators, and labor economists have a notion differing from that of management as to the meaning of "management functions."[29] What may have been considered a management function twenty-five years ago is not necessarily controlling today. The fact that employers and unions are required to bargain in good faith by law creates a changing concept of management prerogatives even though an agreement is not clear.

*The Enterprise Case*

In *United Steelworkers Union v. Enterprise Wheel & Car Corp.*,[30] several employees were discharged for participating in a temporary walkout. The union successfully petitioned the district court for an order to enforce the arbitration proviso, and the arbitrator decided that discharge—the capital punishment of the industrial world—was too harsh a penalty. The question ultimately presented to the Supreme Court was whether the arbitrator could award back pay and reinstate the employees from the date that the collective bargaining agreement had expired. Justice Douglas, again presenting the majority view, said:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand

27. *Id.* at 588.
28. It should be noted that whether stated or not, the jurisdiction of an arbitrator is questionable under the majority opinion. The real question is the extent to which the courts will question the arbitrator.
29. See, *e.g.*, GOLDBERG, MANAGEMENT'S RESERVED RIGHTS—A LABOR VIEW IN MANAGEMENT RIGHTS AND THE ARBITRATION PROCESS 118 (McKelvey ed. 1956).
30. 363 U.S. 593 (1960).

> 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 . . . .[31]

In this case it was not clear whether the arbitrator had exceeded his authority. Stating that all doubts should be resolved in his favor, the Court held the award enforceable.

Justice Douglas felt that the arbitrator may have acted rightfully because the grievance arose prior to the expiration date of the collective bargaining agreement and the award could "be read as embodying a construction of the agreement itself . . . ."[32] Furthermore the decision in *Enterprise Wheel & Car Corp.* is understandable in the light of the need to maintain industrial peace.[33]

## III. ANTICIPATED EFFECTS

The right of the judiciary to question arbitration procedure has been clipped by the three 1960 Supreme Court decisions. Together with *Lincoln Mills,* the three 1960 Supreme Court decisions stand for the basic proposition that the courts will favor the arbitration process if at all feasible. Labor economists, long critical of judicial interference with arbitration and unconcerned with legal doctrine, will rejoice, while many persons steeped in legal lore will regret the curb placed on courts[34] and the absence of a forum to question the arbitrator.

It seems to this writer that the three 1960 Supreme Court decisions will not prevent the judiciary from reviewing arbitrability to the extent feared by some.[35] Courts will guard their prerogatives and control as zealously as management. Judges have long exhibited an uncanny, positive ability to protect extensive areas of judicial inquiry

31. *Id.* at 597.
32. *Id.* at 598.
33. Meltzer, *The Supreme Court, Arbitrability and Collective Bargaining,* 28 U. CHI. L. REV. 464, 482 (1961). Professor Meltzer argues that the union, even after the collective bargaining contract expired, retained majority status (noted by Justice Douglas, 363 U.S. at 595) and could have subjected the employer to economic reprisal.
34. *Id.* at 473. Professor Meltzer, expressing the judicial viewpoint at least to some extent, indignantly states: *"Lincoln Mills* gives an ironic twist to the Court's view that labor arbitrators are giants in dealing with the exotic mysteries of the labor agreement, while even the best courts are dwarfs. It is strange that courts, competent to fashion a new law for the labor agreement, are so unqualified to deal with the "merits" of grievances that they cannot be trusted to enforce a pervasive obligation of good faith in the context of controversies over arbitrability."
35. 45 MINN. L. REV. 282, 289 (1960). "Another shortcoming . . . is the fact that the Court so emphatically restricted the lower courts' power to go into the merits of a dispute that they may be reluctant to do so even in circumstances which would fall within those approved . . . in *Warrior.*" Based upon judicial history this seems an unlikely result, for courts have been reluctant to relinquish control to arbitrators.

(the need for some flexibility rather than a fixed non-intervention policy is not denied). One available means of retaining control of the arbitration process is obviously suggested in *Enterprise Wheel & Car Corp.*—the decision-making authority of the arbitrator must stem from the collective bargaining contract.[36] When is the arbitrator acting under the guise of contractual authority? As indicated in *Enterprise Wheel & Car Corp.*, this may be difficult to determine. *Warrior & Gulf Navigation Co.* states that disputes are not arbitrable when specifically excluded by contract. When are disputes specifically excluded from arbitration? Furthermore, when is a contract ambiguous and when does it fail completely to authorize the arbitrator to make a decision? It can be anticipated that judicial attitudes and environments will limit the broad sweep of the 1960 decisions.

Admittedly the Supreme Court decisions will prevent judicial inquiry in many instances. Yet the federal courts have already found reasons to safeguard traditional judicial prerogatives. In *Vulcan-Cincinnati, Inc. v. Steelworkers Union*,[37] the Sixth Circuit Court of Appeals ruled that the violation of a no-strike clause by a union is not arbitrable because the grievance procedure was not extended by contract to quarrels between the union and management. Similar decisions have been reached by other courts.[38]

A district court has refused to order arbitration even though the dispute, within the jurisdiction of the NLRB, was covered by a collective bargaining contract.[39] If the submission is sufficiently broad to permit the arbitrator to consider past practices unrelated to the present agreement, the employer cannot be compelled to arbitrate.[40] The penalty imposed by an employer against an employee cannot be changed where the submission only authorizes the arbitrator "to determine whether good cause for *some* disciplinary action existed, the determination of the appropriate action to be taken expressly reserved to management."[41] An award granting holiday pay can be

36. 363 U.S. at 597. See also Local 201, Elec. Workers Union v. General Elec. Co., 283 F.2d 147 (1st Cir. 1960).

37. 289 F.2d 103 (6th Cir. 1961).

38. Sinclair Ref. Co. v. Atkinson, 290 F.2d 312 (7th Cir. 1961); Drake Bakeries, Inc., v. Local 50, American Bakery Workers, 287 F.2d 155 (2d Cir. 1961); Yale & Towne Mfg. Co. v. Local 1717, Int'l Ass'n of Machinists, 194 F. Supp. 285 (E.D. Penn. 1961). But see Lodge 700, Int'l Ass'n of Machinists v. United Aircraft Corp., 193 F. Supp. 69 (Conn. 1961).

39. Local 1357, Retail Clerks Ass'n v. Food Fair Stores, Inc., 48 L.R.R.M. 2284 (E.D. Penn. 1961). *But see* Local 50, American Bakery Workers v. Ward Baking Co., 48 L.R.R.M. 2695 (S.D.N.Y. 1961); Local 557, Freight Drivers Union v. Quinn Freight Lines, Inc., 48 L.R.R.M. 2783 (Mass. 1961).

40. Proctor & Gamble Independent Union v. Proctor & Gamble Mfg. Co., 48 L.R.R.M. 2443 (E.D.N.Y. 1961).

41. Local 1386, Textile Workers Union v. American Thread Co., 291 F.2d 894, 900 (4th Cir. 1961). Other reasons were also cited as to why the award was erroneous.

set aside if the contract fails to clothe the arbitrator with authority to penalize the employer.[42] If a written grievance signed by the local and employer is required by contract, arbitration will not be ordered by the court when the firm signs and the local does not.[43]

Because of the "escapes" and uncertainties already indicated, litigants will frequently seek declaratory judgments[44] or bring suits[45] to determine if arbitration is in order. As is often said by the master of ceremonies: "And it's only the beginning, folks."

Another possible effect of the three Supreme Court decisions is that many employers may attempt to curtail the decision-making power of the arbitrator by carefully wording submissions.[46] Because the agreement to arbitrate favors the union, management will seek, where possible, to limit the role of the arbitrator. Whether the three decisions are applicable to submissions was not indicated by the Supreme Court. In addition courts may be asked more frequently in the future to review the arbitrator's authority as stipulated in the submission.

Without question attorneys representing management will seek, by contract, specifically to exclude certain types of grievances from the arbitration process and will no longer rely on the vague catch-all management prerogatives clauses. In some respects this highly legalistic approach to arbitration and collective bargaining is paradoxical; one reason often advanced for the need for arbitration is to maintain flexibility and to prevent a hardened rules-type approach to labor relations. Although the 1960 Supreme Court decisions go far in protecting the autonomy of the arbitrator, they will be instrumental in producing a more detailed and technical type of contract which may limit the flexibility needed to deal with union-management problems.

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42. Texas Gas Transmission Corp. v. International Chem. Workers, 48 L.R.R.M. 2616 (W.D. La. 1961).

43. Local 201, Electrical, Radio & Machine Workers Union v. General Elec. Co., 47 L.R.R.M. 2002 (1st Cir. 1960).

44. Radio Corp. of America v. Association of Professional Engineering Personnel, 48 L.R.R.M. 2270 (3d Cir. 1961); International Tel. & Tel. Corp. v. Local 400, Int'l Union of Elec. Workers, 286 F.2d 329 (3d Cir. 1960).

45. Lodge 12, Int'l Ass'n of Machinists v. Cameron Iron Works, Inc., 292 F.2d 112 (5th Cir. 1961); International Tel. & Tel. Corp. v. Local 400, Int'l Union of Elec. Workers, 290 F.2d 581 (3d Cir. 1961); Local 95, Office Employees Union v. Nekoosa-Edwards Paper Co., 287 F.2d 452 (7th Cir. 1961); American Brake Shoe Co. v. Local 149, U.A.W., 285 F.2d 869 (4th Cir. 1961); Local 183, American Newspaper Guild v. Hammond Publishing Co., 48 L.R.R.M. 2577 (N.D. Ind. 1961); Proctor & Gamble Independent Union v. Proctor & Gamble Mfg. Co., 48 L.R.R.M. 2446 (E.D.N.Y. 1961); Office Employees Union v. Ward-Garcia Corp., 190 F. Supp. 448 (S.D.N.Y. 1961); Retail Store Employees v. Sears Roebuck & Co., 47 L.R.R.M. 2354 (W.D. Wash. 1960); Local 18, Mine Workers v. American Smelting & Refining Co., 47 L.R.R.M. 2269 (Idaho 1960); UAW v. Waltham Screw Co., 47 L.R.R.M. 2196 (Mass. 1960).

46. Textile Workers Union v. American Thread Co., 291 F.2d 894 (4th Cir. 1961).