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Employee Rights and Relocated Plants

Defendant corporation terminated the employment of Plaintiffs and its other employees and moved its plant from New York to Pennsylvania shortly before termination of its collective bargaining agreement, which provided for a number of benefits including lay-offs in reverse order of seniority. An employee who had at least five years' continuous employment was entitled to reemployment if an opening for one of his seniority occurred within three years after his lay-off.¹ The agreement, in its preamble, recited that it was made by Defendant, "for and on behalf of its plant facilities located at Corona Avenue and 94th Street, Elmhurst, Long Island, New York." When the plant was moved, Defendant retired employees who had satisfied the conditions prescribed for receiving retirement pay and advised others, who had sufficient service for their retirement rights to be vested according to the agreement, that they would begin receiving payments when they reached age sixty-five. Defendant offered to consider former employees who came to Bethlehem on the same basis as new applicants. There was no collective bargaining agreement at the new plant. The trial court found that the decision to relocate was made in good faith by Defendant's Board of Directors and was not made with intent to defraud Plaintiffs of any of their rights.² Plaintiffs contended that they, as beneficiaries of the contract between their union and Defendant, were entitled to go to work at Bethlehem with the seniority and other benefits which they had acquired at Elmhurst. Defendant argued that Plaintiffs individually had no standing to sue, that the collective bargaining agreement conferred on the employees no rights which survived the contract, and that the terms of the agreement limited its effectiveness solely to the Elmhurst plant.³ *Held, reversed and remanded:*

¹ The agreement contained a non-contributory pension plan and included medical and life insurance to be paid for by the employer. 185 F. Supp. at 444. The arbitration provision stated, "Any question, grievance or dispute arising out of and involving the interpretation and application of the specific terms of this Agreement . . . shall, at the request of either party, be referred . . . for arbitration." *Id.* at 445.

² After an unsuccessful attempt by the union in the state court to enforce arbitration, the Plaintiffs, who had been with the company from 10 to 25 years, brought this suit, which was removed to the federal courts on the basis of diversity of citizenship.

³ Defendant also offered the defense of res judicata; but, the state court action brought by the union to enforce arbitration was held res judicata only as to the decision that the arbitration provision, as narrowly written referring to disputes arising from specific terms of the agreement, did not confer jurisdiction to arbitrate the dispute in question. 185 F. Supp. at 445-46. It is interesting to note that this case illustrates a situation where an employee has rights not enforceable by arbitration which are, nevertheless, enforceable by the court. Although the Plaintiffs could have presented a separate issue regarding their rights under the pension and insurance plans, they did not rely upon any provision contained in special agreements setting up these plans; rather, they asserted that they had

The rights embodied in a collective bargaining agreement inure to the direct benefit of employees and may be the subject of a cause of action by them. Vested rights acquired under seniority provisions survive the termination of the agreement. Unless the geographic scope of a collective bargaining agreement is limited, employees may "follow" their vested rights to a new plant. *Zdanok v. Glidden Co.*, 288 F.2d 99 (2d Cir. 1961), *reversing* 185 F. Supp. 441 (S.D.N.Y. 1960).⁴

The essence of the free enterprise system in labor relations is that labor and management are free to bargain over the terms and conditions of employment.⁵ The individual employee's terms of employment, therefore, are usually to be found in the collective bargaining agreement.⁶ As in commercial contracts, when there is doubt as to the intent of the parties, the agreement should be interpreted in light of its background⁷ and the customs of the industry.⁸ A consideration not present in the case of other contracts is the impact of the national labor policy.⁹ Moreover, through implied covenants enforceable obligations can be imposed by the agreement even though they are not expressed in words.¹⁰ The Taft-Hartley Act provides that, when the union is a party, federal courts shall have jurisdiction over suits involving violation of collective bargaining agreements.¹¹ In *Textile Workers v. Lincoln Mills*¹² the Supreme Court interpreted this provision stating:

been deprived of rights under each of the plans by reason of the Defendant's alleged breach of the seniority provision of the collective bargaining agreement. 185 F. Supp. at 449.

⁴ Judge Madden of the United States Court of Claims participated as one of the three judges in the court of appeals decision. Although the Supreme Court granted motions to file amicus curiae briefs for an additional ten interested parties, see note 30 *infra*, the grant of certiorari was limited to the determination of the sole question, "Does the participation by a Court of Claims Judge vitiate the judgment of the Court of Appeals?" 30 U.S.L. Week 3112 (October 10, 1961).

⁵ This is the fundamental policy of the National Labor Relations Act, § 1, 49 Stat. 449 (1935), as amended, 61 Stat. 136 (1947), 29 U.S.C. § 151 (1958); see Cox, Law and the National Labor Policy 11 (1960). See generally *id.* 1-20.

⁶ *Anson v. Hiram Walker & Sons*, 222 F.2d 100 (7th Cir. 1955), citing *J. I. Case Co. v. NLRB*, 321 U.S. 332, 336 (1944).

⁷ *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 570 (1960) (concurring opinion).

⁸ *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960).

⁹ *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468 (1960).

¹⁰ *E.g.*, Williston states every contract contains, "an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract; in other words, in every contract there exists an implied covenant of good faith and fair dealing." 3 Williston, Contracts § 670 (rev. ed. 1936); see Cox, Law and the National Labor Policy 74 (1960). See also *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 570 (1960) (concurring opinion). See generally Cox, *op. cit. supra* note 5, at 64-85.

¹¹ Section 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185a (1958).

¹² 353 U.S. 448, 456, 457 (1957).

[T]he substantive law to apply in suits under § 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 problem. Federal interpretation of the federal law will govern, not state law. But state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy. Any state law applied, however, will be absorbed as federal law, and will not be an independent source of private rights.

Thus, Congress has given the federal courts broad power to create a federal common law for the interpretation of collective bargaining agreements. However, the right of a union under section 301 to compel exercise of federal jurisdiction over a suit for violation of a collective bargaining agreement is limited in one respect; the Supreme Court has held section 301 does not "authorize a union to enforce in a federal court the uniquely personal rights of an employee."¹³

Personal rights arising from the collective bargaining agreement may be enforced by the individual employee.¹⁴ These rights accrue to the employee "somewhat as a third party beneficiary" by virtue of the National Labor Relations Act.¹⁵ For example, seniority rights arise only out of contract or statute, since an employee has no inherent right to seniority in service.¹⁶ By the same token, collective bargaining agreements creating a seniority system do not *per se* create a permanent status or give an unlimited tenure to employees.¹⁷ Rights normally remain in force only for the life of the contract,¹⁸ but they may persist beyond the term of the collective bargaining agreement when the agreement so provides or is susceptible to such construction.¹⁹ Therefore, all rights under a collective bargaining agreement are not automatically terminated by relocation of an employer's plant; whether such rights continue depends on the terms of the contract.²⁰ Wide variations exist in seniority systems used in industry. With respect to the unit covered, an entire multi-plant

¹³ Association of Westinghouse Salaried Employees v. Westinghouse Elec. Co., 348 U.S. 437 (1955); see Recent Case Note, 15 Sw. L.J. 360 (1961).

¹⁴ Woodward Iron Co. v. Ware, 261 F.2d 138 (5th Cir. 1958), citing Association of Westinghouse Salaried Employees v. Westinghouse Elec. Co., 348 U.S. 437 (1955); Parker v. Borock, 5 N.Y.2d 156, 156 N.E.2d 297, 298 (1959), citing Barth v. Addie Co., 271 N.Y. 31, 2 N.E.2d 34 (1936).

¹⁵ J. I. Case Co. v. NLRB, 321 U.S. 332 (1944). See generally Hanslowe, *Individual Rights in Collective Labor Relations*, 45 Cornell L.Q. 25 (1959).

¹⁶ NLRB v. Wheland Co., 271 F.2d 122 (6th Cir. 1959); see Trailmobile Co. v. Whirls, 331 U.S. 40 (1947).

¹⁷ E.g., Shiels v. Baltimore & O.R.R., 154 F. Supp. 917 (S.D. Ind. 1957), *aff'd*, 254 F.2d 863 (7th Cir. 1958), *cert. denied*, 356 U.S. 846 (1958).

¹⁸ Shiels v. Baltimore & O.R.R., *supra* note 17.

¹⁹ See United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

²⁰ See Metal Polishers Union v. Viking Equip. Co., 278 F.2d 142 (3d Cir. 1960) (*per curiam*).

company or district may be made subject to the same system, or the system may be limited to a particular plant, department, or occupation.²¹

The parties being free to agree upon whatever seniority system they wish, the question presented by this case was merely: What did the parties agree upon? The provision in the agreement that in the event of lay-off an employee was entitled to reemployment if an opening for one of his seniority occurred within three years after his lay-off, was held to carry with it an implied condition that the seniority rights themselves necessarily extend beyond the termination of the agreement for the three year period.²² Speaking of seniority as "valuable insurance against unemployment," the court reasoned:

If one has in October a right to demand performance of the corresponding obligation at any relevant time within a period of three years, it would be strange if the other contracting party could unilaterally terminate the right at the end of three weeks. . . . We think the plaintiff employees had . . . "earned" their valuable unemployment insurance, and that their rights in it were "vested" and could not be unilaterally annulled.²³

In concluding that the geographic scope of the agreement was not limited to the plant, the court held, "that the statement of location was nothing more than a reference to the then existing situation," and had no vital significance.²⁴ The court believed that the contract must be interpreted in a manner which would not defeat the "reasonable expectations of the parties."²⁵

The significance of the decision is at the moment difficult to evaluate. Narrowly construed, the court has only interpreted the agreement in question. When given a broad construction, the ruling is that unless specifically stated to the contrary, there is no geographical limit to a collective bargaining agreement, and a clause in a seniority provision which confers a right of reemployment for a given period after lay-off extends all seniority rights beyond the termination of the agreement for that given period.²⁶ The dissent

²¹ 185 F. Supp. at 447.

²² *But cf.* Local 2040, IAM v. Serval, Inc., 268 F.2d 692 (7th Cir.), *cert. denied*, 361 U.S. 884 (1959). The court held that discontinuance of all manufacturing operations by employer justified discharge of employees, including those who had previously been laid off; and under collective bargaining agreement, properly construed, employees did not acquire permanent lay-off status or vested rights to seniority for two years following their lay-off.

²³ 288 F.2d at 103.

²⁴ *Id.* at 104.

²⁵ 288 F.2d at 104.

²⁶ It is interesting to note how far the court has gone in broadly construing employee rights by explaining away the preamble to the agreement and the lack of uniformity among seniority systems in industry.

followed the reasoning of the district court that this particular collective bargaining agreement did not give the employees the right to "follow the work" to the new site, saying:

As Judge Palmieri points out, it is not uncommon for the parties to extend beyond a single plant the area in which seniority rights are to apply. Surely unions are now fully of age and are able to protect themselves and their members at the bargaining table. The consequences of dismissing the plaintiffs' case might indeed be unfortunate and even "catastrophic" from their point of view, but it is hardly "irrational and destructive" for a court to leave the parties as they are if they have never seen fit to provide otherwise.²⁷

Moreover, to determine the status and application of seniority rights, it would seem that one can look only to the particular circumstances in view of the wide diversity among seniority plans in industry.

Although this is not a case invoking jurisdiction under section 301,²⁸ it has widespread significance because it may serve as precedent under the broad directive of the Supreme Court in the *Lincoln Mills* decision for the federal courts to create a federal substantive law to be used in interpreting collective bargaining agreements in disputes between unions and employers.²⁹ So great has been the importance attached to this case throughout the country, that the Supreme Court granted ten motions to file amicus curiae briefs.³⁰ The ruling in the instant case could have the effect of creating new provisions or causing doubt about existing agreements. Moreover, the court by its ruling raised a number of unanswered questions. Chief of these was the question, if the workers have a right to continuing seniority, to what, if anything, does the right attach? Is it to the specific machinery?—or the end products? In relating the facts the court stated:

The defendant removed a considerable part of its machinery from its Elmhurst plant to the new Bethlehem plant, and manufactured

²⁷ *Id.* at 105.

²⁸ 185 F. Supp. at 442.

²⁹ *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).

³⁰ Amicus curiae briefs have been filed by the following (listed in 30 U.S.L. Week 3112 [October 10, 1961]):

- American Spice Trade Ass'n
- California Mfrs. Ass'n
- Cleveland Chamber of Commerce
- Georgia State Chamber of Commerce
- Illinois State Chamber of Commerce
- Institute of Shortening & Edible Oils, Inc.
- National Ass'n of Margarine Mfrs.
- National Paint, Varnish & Lacquer Ass'n, Inc.
- Ohio Chamber of Commerce
- U. S. Chamber of Commerce.

there a number of the same products. The Bethlehem plant was more modern and efficient, and apparently had a considerable number of new machines, in addition to the ones moved from Elmhurst. Some of the products formerly made at Elmhurst were, after the closing of that plant, made at the defendant's Louisville plant.³¹

Even though the workers have not sought such, by the ruling of the court, one wonders if they have a seniority right to jobs in the Louisville plant because of transfer of products in spite of the fact that its workers had their own separate and distinct collective bargaining agreement? If there was no right at Louisville, on what basis were the workers entitled to jobs at new equipment making new products at the Bethlehem plant? It is not clear whether the old equipment would be the primary factor even though job descriptions were changed and incorporated different functions. "Plaintiffs counsel conceded that even if all the 160-odd employees at the Elmhurst plant had accepted employment at Bethlehem, Local 852 could not continue as accredited bargaining representative."³² Thus, the question arises: Is the mere absence of a collective bargaining agreement to be the governing factor? If so, the conclusion would be doubtful if the Defendant had concluded a collective bargaining agreement with local labor at the Bethlehem site before moving. This possibility of conflict of seniority rights between two unions³³ seems to be one of the most difficult problems raised by the instant decision. Admittedly the company's treatment of the workers in this case was harsh. But now that the existence of the problem is recognized, the more simple and reasonable approach would seem to be for the parties, who are the best judge of their problems, to protect against harsh results through their collective bargaining agreements, rather than for the courts to write provisions for them.

The decision could have far-reaching economic consequences. Among the factors motivating a plant move to a new site are cheaper labor, cheaper power, and closer proximity to raw materials. Companies whose primary objective in moving is cheaper labor may have second thoughts after viewing the extent to which this court went to read vested rights into the collective bargaining agreement. Such companies must either wait two or three years after termination of the collective bargaining agreement until seniority rights have expired or risk possible liability to its employees. The first

³¹ 288 F.2d at 100.

³² 185 F. Supp. at 448.

³³ Additional legislation is a possible solution to this problem; however, further government control seems contrary to the "free enterprise bargaining" policy of the National Labor Relations Act. See note 5 *supra*.