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Enforcibility of Arbitration Clauses in Collective Bargaining Agreements

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ENFORCIBILITY OF ARBITRATION CLAUSES IN COLLECTIVE BARGAINING AGREEMENTS

The case of *Gatliff Coal Company* v. *Cox*,[1] decided by the Circuit Court of Appeals for the 6th Circuit in 1944, is the only case found in which an interpretation of Kentucky decisions is applied to an arbitration clause in a collective bargaining agreement. The reasons given therein for holding such clauses unenforcible are typical of those used by the majority of courts in the United States in their holdings that an agreement in a contract to submit to arbitration any dispute arising thereunder is invalid. For convenience, therefore, the soundness of the *Cox* decision is questioned in particular, in the belief that this discussion will apply to any similar future holding.

The *Cox* case was an action brought by an employee against a coal company to collect back wages alleged to be due under a wage scale set up in a collective bargaining agreement between the Southern Appalachian Coal Operators' Association and United Mine Workers of America, District 19. The coal company was a member of the Association and had signed the agreement. Cox was a member of the Union. The company contended that the wage scale governing Cox's rate of pay was the scale set up in a collateral agreement between the coal company and the Union, which agreement had been ratified by the Association.

The wage agreement relied upon by the plaintiff contained the standard arbitration clause found in all United Mine Workers' contracts. This clause provides that any differences arising between workers and the operator as to the meaning and application of the contract and as to differences not specifically mentioned therein shall be settled in the following manner: First, between the aggrieved party and the mine management. Second, if they cannot agree, between the mine management and the Mine Committee (made up of union members employed by the company). Third, if an agreement still has not been reached, by a Board consisting of two members appointed by the Mine Workers and two members appointed by the Operators, plus an umpire designated jointly by the International President of the United Mine Workers of America and the President of the Operators' Association. A decision reached at any stage is final and binding on both parties.

After removal of the action to the federal court, the defendant coal company in its answer alleged that compliance with the foregoing provisions of the contract sued on was a condition precedent to the bringing of the action, and moved for a stay of trial and all proceedings in the action until arbitration could be had. This motion

[1] 142 F 2d 876 (C.C.A. 6th, 1944).

[*] Latter v Holsum Bread Company, 108 Utah 364, 160 P 2d 421 (1945)

was made under Section 3 of the National Arbitration Act, which provides:

> "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, provided the applicant for the stay is not in default in proceeding with such arbitration."[3]

The District Court overruled the motion for a stay and the Circuit Court of Appeals affirmed its judgment upon the following grounds:

> (1) In Kentucky an agreement between the parties to a contract to arbitrate all of the disputes arising in the future thereunder is invalid and unenforcible as constituting an attempt to oust the courts of their jurisdiction;
>
> (2) The National Arbitration Act does not apply to collective bargaining agreements concerning employees engaged in interstate commerce.

In making ruling (1) above, the court said:

> "It may be that the courts in refusing to specifically enforce arbitration agreements because against public policy have placed too great faith in the courts alone and that no unrighteous purpose would be served by upholding such contracts because their enforcement would often determine disputes and controversies, thus avoiding the formalities, the delay and expense and the vexation of ordinary litigation. The rule prevails in Kentucky that parties may not by contract deprive themselves of the right to resort to courts for the settlement of their controversies. It is our duty to expound, not make the law of the state."[4]

To support its statement of the law, the court cited four Kentucky cases, none of which dealt with collective bargaining agreements,[5] but overlooked a definite statement of legislative policy as to arbitration clauses in collective bargaining agreements.

In Article III of Chapter 105 of Acts of the General Assembly of the Commonwealth of Kentucky (1940), the Legislature said (page 427)

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[3] 43 STAT. 883 (1925) 9 U. S. C. sec. 3 (1940)

[4] 142 F 2d 876, 881 (C.C.A. 6th, 1944).

[5] Jones v. Jones, 229 Ky 71, 16 S.W 2d 503 (1929) Continental Insurance Company v. Vallandingham and Gentry, 116 Ky. 287, 76 S.W 22 (1903), Ison v Wright, 21 Ky. L. Rep. 1368, 55 S.W 202 (1900), Gaither v. Dougherty, 18 Ky L. Rep. 709, 38 S.W 2 (1896).

> "A sound, constructive and progressive development of the natural resources of this state and of industrial development and expansion promotes the general welfare and increases the opportunities of employment and improves the standards of living; and the welfare, success, and promotion of the best interests of both industry and labor are largely dependent upon reasonable, fair and equitable treatment of both employers and employees. Peaceful and amicable conciliation, mediation and *arbitration of disputes between employees should be, and is hereby declared to be the public policy of this Commonwealth,* "[6] (Italics writer's.)

This public policy is further revealed and emphasized by two Kentucky statutes enacted in the same chapter and under the above statement of public policy

Kentucky Revised Statutes, sec. 336.140, provides that the Commissioner of Industrial Relations may inquire into and mediate labor disputes within the Commonwealth. But it also provides:

> "Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the commissioner."

Kentucky Revised Statutes, sec. 336.150, sets up the mediation machinery of the Department of Industrial Relations and gives the Commissioner the power to offer this service if any emergency by reason of a labor dispute is found to exist at any time. This section, however, further provides:

> "(3) Nothing in this section shall apply where a joint wage agreement provides for settlement of disputes. Any dispute arising under such agreement shall be settled according to it."

In view of this positive declaration of public policy, it is difficult to see how it can be said that it is against public policy to enforce such arbitration clauses.

For many years lower federal courts in cases involving contracts other than collective wage agreements sought to overcome the following dictum from *Home Insurance Company of New York* v. *Morse:*

> "They [referring to cases cited] show that agreements in advance to oust the courts of the jurisdiction conferred by law are illegal and void."[7]

In 1925, Congress passed the National Arbitration Act[8] which it described as:

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[6] This important part of the statute was omitted in the 1942 revision of the statutes, with the apparently erroneous statement that it establishes no rights or duties. Notes and Annotations to the Kentucky Revised Statutes, p. 1108 (1944).

[7] 20 Wall. 445, 451 (U.S. 1874).

[8] 43 STAT. 883 (1925) 9 U.S.C. sec. 1, et seq. (1940).

> "An Act to make valid and enforceable written provisions or agreements for arbitration of disputes arising out of contracts, maritime transactions, or commerce among the states or territories or with foreign nations."[9]

Sec. 2 of this Act makes such provisions valid, irrevocable and enforcible and sec. 3 directs that upon motion of the proper party, the court will stay proceedings until arbitration can be had, if the contract containing the clause is valid in itself and if the issue is one which is referable to arbitration under the contract.

Section 1, however, provides:

> " but nothing herein contained shall apply to contracts of employment of seamen, railway employees, or any other class of workers engaged in foreign or interstate commerce."[10]

The Circuit Court of Appeals in the *Cox* case held that the above provision removed from the operation of the Act a collective bargaining agreement between coal miners and their employer.

It is believed that the court in making this ruling overlooked the fact that in 1925 when this act was passed, the concept of interstate commerce was very narrow, and for a worker to be engaged in interstate commerce, it was considered that his work must be in the actual stream of commerce. At that time, a decision of the Supreme Court held that the mining of coal was not interstate commerce.[11]

And, before the Arbitration Act was passed, Congress had made provision for the settlement by arbitration of disputes involving seamen[12] and railway employees.[13]

The more reasonable interpretation of sec. 1 would seem to be that Congress approved of arbitration of disputes between employers and employees engaged in interstate commerce, but believed that it had already adequately provided therefor by other laws. The words "any other class of workers engaged in interstate commerce" were probably meant to apply to employees such as bus and truck drivers who were engaged in the stream of commerce but were not railway employees.

The only other reasonable theory for the exclusion of such contracts from the operation of the Act is that Congress feared enforcement thereof might allow personal servitude. This story disappears upon examination. It has been the labor unions who have insisted upon the settlement of disputes by mediation and arbitration from the earliest years of their existence. The clauses are put in the contracts at their instance and the workers themselves are very jealous of all of their rights thereunder. In fact, one of the most common

[9] Feb. 12, 1925, c. 213, 43 STAT. 883 (1925)
[10] 43 STAT. 883 (1925), 9 U.S.C. sec. 1 (1940)
[11] Delaware, Lackawanna & Western R. R. v. Yurkonis, 238 U.S. 439 (1915).
[12] 17 STAT. 267 (1872).
[13] 38 STAT. 103 (1913)

arguments against making a contract with a union was that the employees expended more time in taking their grievances to the committee than they spent in productive work.

It is also true that a collective bargaining agreement is not a true contract of employment. It is an agreement made between an employer, or a group of employers, and a union. The contract defines wages, working conditions and other terms of employment. It is, as to an individual employee, merely a continuing offer,[14] and is binding on him only when, and for as long as, he chooses to work for the contracting employer. He may then sue upon the contract.[15] But, the employer could never, through specific performance or any other means, force any individual union member, against his will, to accept or continue employment. Only the bargaining agent signs the contract, never the employee, and there is nothing in the contract which could possibly be held to bind any individual to accept its terms except for the period during which he voluntarily accepts the employment.

As the court in the *Cox* case made a flat holding that the National Arbitration Act did not apply to the contract in question, it omitted any discussion of public policy as expressed by Congress on this subject. Since that decision was handed down, however, Congress has declared that:

> "Final adjustment by a method agreed upon by the parties is the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."[16]

The union would doubtless enforce the arbitration clause by strike if the employer at any time refused to comply with it. And, since public policy on this subject has been so clearly stated and the desirability of the narrow interpretation of "interstate commerce" as used in the National Arbitration Act is so apparent, it is not impossible to believe that the court would have seized upon these grounds to grant the stay of proceedings if the employee had asked for it.

The situation today in Kentucky is this: A union and an employer or association of employers, competent parties, contract at arm's length. Negotiations are often bitter and may cover a period of weeks or months. An arbitration clause, beneficial to both parties, is inserted in the contract and both parties, in most instances, comply faithfully with it. In fact, the decision in the *Cox* case has been totally ignored by the parties to such contracts and the Arbitration Board set up under the contract has become a semi-permanent, quasi-court, settling many disputes at its regular meetings. If the employer chose to disregard the clause and refused to arbitrate any

[14] Gatliff Coal Company v. Cox, 142 F 2d 876 (C.C.A. 6th, 1944).
[15] *Ibid.*
[16] 61 STAT. 120, 29 U.S.C.A. sec. 173d (Supp. 1947).

dispute arising between it and an employee, work would stop and federal and state authorities would step in and insist that it comply with the contract. But, under the present state of the law, although the individual employee, as a third party beneficiary, can enforce any of the terms of the contract against the employer, he may if he desires, totally ignore the arbitration clause and the courts, both federal and state, will uphold his inequitable conduct.

The sound public policy of the Commonwealth, as announced by the legislature, demands "reasonable, fair and equitable treatment" of the employer as well as of the employee. Since the treatment of the employer under the *Cox* decision is neither reasonable, fair nor equitable, public policy would seem to require, if the question ever reaches the courts again, a decision that arbitration clauses in collective bargaining agreements are valid and binding equally upon employer and employee; that specific performance thereof will be granted; and that in any action upon such a collective bargaining agreement, a stay will be granted upon proper motion, if the issue involved is one which is referable to arbitration under the contract. Such a decision can easily be reached in the federal courts under the National Arbitration Act. And, in view of the clear statement of the Kentucky legislature, it should be possible to reach such a result in the state courts, even in the absence of a statute.

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