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# Labor Law--Arbitration of Safety Disputes

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# LABOR LAW—ARBITRATION OF SAFETY DISPUTES

> No one in law is going to sit on their cans in Washington and tell members of the UMW that they have to work in unsafe conditions while arbitration is going on.[1]

After a sharp reduction in the air flow of a coal mine owned by Gateway Coal Company was discovered and corrected, an investigation of the safety hazard revealed that certain assistant foremen had falsified air intake measurement records prior to the discovery of the hazard. The foremen were suspended, but, while criminal charges were pending against them, they were reinstated by the company after permission to do so was given by the Pennsylvania Department of Mines.

At this point, members of the local union walked off the job in protest of the reinstatement. The union refused an offer by the employer to arbitrate. The company responded to this refusal by seeking relief in federal district court under section 301 of the Labor Management Relations Act,[2] claiming that their conflict was governed by the broad arbitration clause of the collective bargaining agreement.[3] The district court issued a preliminary injunction ordering the miners to return to work and submit the dispute to arbitration. The court also ordered the foremen suspended until the arbitrator reached a decision. The arbitrator then ruled that the foremen could return to work, since their presence created no abnormally dangerous conditions for the miners. Meanwhile, the union appealed the district court's finding to the Third Circuit Court of Appeals, which reversed and vacated the injunction on the ground that the union had no contractual obligation to submit a safety dispute to arbitration, and, consequently, there was no

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[1]Arnold Miller, President of the United Mine Workers, in response to the recent United States Supreme Court decision in Gateway Coal Co. v. United Mine Workers, 42 U.S.L.W. 4095 (U.S. Jan. 8, 1974). Charleston Gazette, Jan. 14, 1974, § A, at 1, col. 3. Arnold Miller made these remarks to a meeting of District 17 miners in Charleston, West Virginia. He also promised them that "any new contract will not be drawn up in 'legal lingo' . . . but in language miners can understand."

[2]29 U.S.C. § 185 (1971).

[3]The National Bituminous Coal Wage Agreement of 1968 was in effect. The walkout occurred in April, 1971. Therefore, the National Bituminous Coal Wage Agreement of 1971 did not apply since it did not become effective until November 12, 1971. Unlike the 1968 agreement, the 1971 agreement provides for the settlement of safety and health disputes by a detailed procedure that ultimately parallels arbitration. National Bituminous Coal Wage Agreement of 1971 art. III, § (h).

implied duty not to strike.[4] The company appealed to the United States Supreme Court. *Held,* reversed. The federal policy favoring arbitration extends to safety disputes. The arbitration provision of the labor contract involved covered the instant dispute, and the duty to arbitrate gave rise to an implied no-strike clause that would support the issuance of an injunction. The Court also held that section 502 of the Taft-Hartley Act was not applicable to the facts of the case. *Gateway Coal Co. v. United Mine Workers,* 42 U.S.L.W. 4095 (U.S. Jan. 8, 1974).

The Supreme Court's decision involved the interpretation and application of various pertinent sources of law including past Supreme Court decisions, the National Bituminous Coal Wage Agreement of 1968, section 502 of the Taft-Hartley Act of 1947,[5] and the Federal Coal Mine Health and Safety Act of 1969.[6] The first, and most basic, question presented in *Gateway* is whether safety disputes are subject to compulsory arbitration under the National Bituminous Coal Wage Agreement of 1968 or whether they should be treated as sui generis.[7] Justice Powell, who delivered the majority opinion, clearly explained "that the 'presumption of arbitrability' announced in the *Steelworkers Trilogy*[8] applies to safety disputes, and that the dispute in the instant case is covered by the arbitration clause in the parties' collective bargaining agreement."[9] On the issue of the district court's authority to enjoin the miners' walkout, the Court noted that "[t]he answer

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[4]Gateway Coal Co. v. United Mine Workers, 466 F.2d 1157 (3d Cir. 1972). A detailed analysis of this controversy prior to the Supreme Court's decision, as well as a general treatment of safety disputes, is contained in Note, *Walkouts Under Section 502 of The Taft-Hartley Act,* 76 W. VA. L. REV. 57 (1973) [hereinafter cited as *Walkouts*].

[5]29 U.S.C. § 143 (1971).

[6]30 U.S.C. § 801 (1971).

[7]466 F.2d at 1159. The Third Circuit used this term to distinguish safety disputes from all other labor disputes, and, thus, exempt them from binding arbitration.

[8]The *Steelworkers Trilogy* consists of three Supreme Court decisions: United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); and United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960). In *Warrior & Gulf,* the Court held that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." 363 U.S. at 582-83. Thus, adopting this reasoning, if it is at all possible to construe the arbitration clause to apply to safety disputes, then it should be so interpreted.

[9]42 U.S.L.W. at 4099.

depends on whether the union was under a contractual duty not to strike."[10] Although there was no express obligation not to strike, as in *Boys Markets, Inc. v. Retail Clerks Local 770,*[11] the Court used the reasoning in *Boys Markets*[12] and the holding in *Teamsters Local 174 v. Lucas Flour Co.*[13] to conclude that, absent an express intention to the contrary, "the agreement to arbitrate and the duty not to strike should be construed as having coterminous application."[14]

The final issue considered by the Supreme Court was whether the circumstances of the case satisfied the traditional equitable considerations controlling the availability of injunctive relief. The Court reviewed the Third Circuit's decision denying the company injunctive relief because of section 502 of the Taft-Hartley Act, which provides in part: "[N]or shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter."[15] The Court rejected the Third Circuit's majority opinion which called for the invocation of section 502 protection for any "good faith apprehension of physical danger."[16] Expressing its agreement with the dissenting opinion in the Third Circuit litigation, the Court explained that an honest belief alone is not sufficient. The union is required to submit "ascertainable, objective evidence supporting its conclusion that an abnormally dangerous condition for work exists."[17] The Court pointed out that here the alleged safety

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[10]*Id.*

[11]398 U.S. 235 (1970).

[12]This reasoning is reflected in the Court's language: "Any incentive for employers to enter into such an arrangement [to submit grievances to arbitration] is necessarily dissipated if the principal and most expeditious method by which the no-strike obligation can be enforced is eliminated." *Id.* at 248. The Court overruled Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), which held that, despite a contract providing for binding arbitration, section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104 (1971), bars a federal district court from enjoining a strike in breach of a no-strike provision in the collective bargaining agreement. Instead, it held that the granting of injunctive relief is not barred by the Norris-LaGuardia Act where the dispute is subject to arbitration and the union's violation of its no-strike clause is causing the employer irreparable harm.

[13]369 U.S. 95 (1962). In an action for damages, the Court found that an agreement to submit disputes to binding arbitration implied a duty not to walk out over such disagreements.

[14]42 U.S.L.W. at 4100.

[15]29 U.S.C. § 143 (1971).

[16]466 F.2d at 1160.

[17]42 U.S.L.W. at 4101, *quoting from* 466 F.2d at 1162.

hazard was eliminated by the district court's suspension of the foremen pending arbitration. As the district court had done, the Supreme Court warned that the miners' continual breach of the union's no-strike obligation would result in irreparable damage to the company.[18]

In reaching its decision that compulsory arbitration applies to safety disputes, the Court first analyzed the collective bargaining agreement and cited substantial case law supporting its conclusion. Then, to give the legal reasoning some common sense credibility, Justice Powell interposed the impracticality of the Third Circuit's decision. Without arbitration of safety disputes, work stoppages would result in the "unhappy consequences of lost pay, curtailed production, and economic instability."[19] Similarly, in defending the district court's issuance of the injunction, the Court began by applying the *Boys Markets* case to the present facts and examining section 502 of the Taft-Hartley Act. Next, the Court stressed the "common sense"[20] in its finding. It emphasized the unfairness and impracticality in a policy which permits miners to strike anytime they honestly doubt their supervisors' integrity and skill without requiring some proof that an abnormal danger exists. Seven judges joined Justice Powell in the majority opinion of the Court, while Justice Douglas dissented.

The dissent is interesting because of the opposite approach Justice Douglas took in reaching his conclusion. Lacking strong precedent to support his view, he prefaced his attack on the application of arbitration to safety disputes with candid down-to-earth language: "The dispute in this labor case does not involve hourly wages, pension benefits, or the like. It involves the life and death of the workers in the most dangerous occupation in America."[21] Thus, Justice Douglas began with an expanded setting, not of a narrow question of labor contract interpretation, but of a serious problem in modern society—the continuing neglect for the health and safety of thousands of mineworkers. Judge Hastie, who delivered the majority opinion of the Third Circuit, shared this perspective of the mine safety controversy: "Men are not wont to submit matters of life or death to arbitration and no enlightened society encourages, much less requires, them to do so."[22] Certainly, the

[18] 42 U.S.L.W. at 4101.
[19] *Id.* at 4099.
[20] *Id.* at 4101.
[21] *Id.* at 4101 (dissenting opinion).
[22] 466 F.2d at 1160.

merits in this argument should not be readily dismissed. Regardless of its inattention to labor law principles, or its potential harm to a company's profits, or even its failure to recognize possible ulterior motives of employees for striking, the policy of the law, as noted by Judge Hastie and Justice Douglas, should not require employees to stake their lives on the judgment of an arbitrator.[23] The actual and potential perils involved in underground mining are common knowledge in this country, particularly so in West Virginia. On this level, therefore, one can understand Arnold Miller's bitter reaction to the *Gateway* decision.

Upon this common sense basis of social awareness, Justice Douglas constructed his legal theories. First, he inferred, from a provision in the collective bargaining agreement and the explicit protection afforded by section 502, that the *Steelworkers Trilogy's* presumption of arbitration is not applicable to safety disputes.[24] Secondly, he asserted that, even if the agreement is construed to authorize arbitration, the Federal Coal Mine Health and Safety Act of 1969 "precludes it."[25]

While the first contention regarding the presumption of arbitration is simply a negation of he majority's view of the law, the second contention is a positive alternative to the majority position and should be closely examined. True, the 1969 Act states in its preamble that "(a) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner."[26] And, as Justice Douglas pointed out, the 1969 Act contains numerous safety provisions including federal inspections, spot investigations, detailed ventilating requirements, and penalties for violations of certain mandatory safety standards. Yet, does it really provide for the nullification of arbitration in situations involving safety disputes? Justice Douglas reasoned that the Act "must displace all agreements to arbitrate safety conditions," because, in the area of mine safety, "Congress has preempted the field.[27] The majority rejected this argument by stating that not only did the UMW not contend this, but "a fair reading of the Act discloses no congressional intention, either express or implied, to accomplish such a drastic result."[28] Douglas himself

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[23] *Id.*

[24] 42 U.S.L.W. at 4102 (dissenting opinion).

[25] *Id.* at 4103 (dissenting opinion).

[26] 30 U.S.C. § 801 (1969).

[27] 42 U.S.L.W. at 4103 (dissenting opinion).

[28] *Id.* at 4099 n.10.

acknowledged that this view is "more extreme"[29] than the holding in *United States Bulk Carriers v. Arguelles*,[30] in which arbitration was found not to abrogate a federal statute giving seamen an express judicial remedy. As Justice Douglas viewed it, a safety controversy is a special problem that should be handled by the secretary of the interior and the courts as the 1969 Act specifies. He concluded his opinion by reiterating that "Congress has given arbiters no share of the power."[31]

Whether a federal pre-emption of all contract clauses authorizing arbitration of safety disputes would be feasible is uncertain. To examine the 1969 Act's many provisions seems unnecessary, since the holding in *Gateway* strongly opposes such a view. The majority opinion gave systematic and fairly comprehensive legal justifications for its position. The ultimate test of the decision, however, will be the acceptability to the miner of arbitrating safety disputes. This, in turn, logically depends on the speed and fairness of the arbitration process. *Gateway* does not weaken section 502 of the Taft-Hartley Act as it has been traditionally applied. Employees may still refuse to work in abnormally dangerous conditions, so long as they can quickly prove the conditions are just that. Furthermore, labor organizations may still bargain for contractual clauses that provide for re-assignment from areas alleged to be abnormally dangerous and "that require speedy but knowledgeable determination of their insistence that working conditions are dangerous without any penalty for being wrong."[32]

Finally, Justice Douglas' dissent need not be completely ignored. Providing that speedy inspections are conducted under the Federal Coal Mine Health and Safety Act of 1969, a federal inspector's determination of the existence of a safety hazard should be extremely influential, if not binding, on an arbitrator. Also, repeated utilization of the contractual grievance machinery by employees because of safety complaints, coupled with citations by inspectors under the 1969 Act, should convince an otherwise recalcitrant employer to extensively renovate unsafe areas on the job site.

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[29] *Id.* at 4103 (dissenting opinion).
[30] 400 U.S. 351 (1971).
[31] 42 U.S.L.W. at 4103 (dissenting opinion).
[32] *Walkouts, supra* note 4, at 71.