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Trust—Arbitrary and Capricious Acts of Trustees

Shelby Collins worked in the coal mining industry for over twenty years before his retirement and subsequent application for a pension from the United Mine Workers of America Welfare and Retirement Fund. Although Collins had worked for over twelve of twenty mine working years in union mines which paid into the Fund, his application for a pension was denied because he had not worked for a mine operator that was a signatory to the agreement creating the Welfare Fund during his last year of employment immediately preceding retirement. Unsafe working conditions had caused Collins to quit his employment at a union mine and he consequently had to support his family by working at a non-union mine, since that was the only other suitable employment available to him.¹ Collins brought an action to recover the pension claimed to be due him. *Held*, the regulation requiring a miner to work in a signatory mine during his last year of employment prior to retirement was arbitrary and capricious and that the trustees had wrongfully denied him a pension. *Collins v. United Mine Workers of America Welfare & Retirement Fund* of 1950, 298 F. Supp. 964 (D.D.C. 1969).

The UMW Welfare Fund was established through an agreement between certain coal mine owners and operators and the United Mine Workers of America under the sanction of section 302 of the Taft-Hartley Act.² Each signatory coal mine operator is

¹Collins' testimony as to these facts was uncontradicted. *Collins v. United Mine Workers of America Welfare & Retirement Fund* of 1950, 298 F. Supp. 964, 966-67 (D.D.C. 1969).

²29 U.S.C. § 186 (c) (5) (1964):

The provisions of this section shall not be applicable . . . with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions or retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in

required to pay into the Fund a royalty of forty cents for each ton of coal mined. The Fund is an irrevocable trust administered by a board of trustees.³ One trustee is named by the union, one by the coal operators, and the third is to be a neutral party.⁴ The Fund is a third party beneficiary of the contract between the union and the coal operators with the miners and their families as the ultimate beneficiaries.⁵

The initial image of coal miners in conflict is one of union versus industry. While the Fund has had its day in court against the mine operators (usually with favorable results),⁶ *Collins* typifies a new stage in labor relations where a miner must go to court in

a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities

³This type of trust is a "hybrid" which does not fit into the ordinary categories of trusts. *Roark v. Lewis*, 401 F.2d 425, 427 (1968). The Restatement of Trusts takes notice of this kind of trust:

A trust to relieve necessitous persons who are or have been employed in the particular trade or profession is charitable. So also, a trust for the relief of poverty is charitable although the benefits are confined to the employees of the particular railroad or industrial organization. On the other hand, an employees' pension trust is not charitable, although it is provided by statute that such a trust shall not be subject to the rule against perpetuities. RESTATEMENT (SECOND) OF TRUSTS § 375, comment g (1959).

⁴*Lewis v. Mearns*, 168 F. Supp. 134 (N.D. W. Va. 1958); *Van Horn v. Lewis*, 79 F. Supp. 541 (D.D.C. 1948).

⁵*Lewis v. Lowry*, 322 F.2d 453 (4th Cir. 1963); *Lewis v. Mearns*, 168 F. Supp. 134 (N.D. W. Va. 1958). See *Lewis v. Benedict Coal Corp.*, 259 F.2d 346 (6th Cir. 1958).

⁶Disputes between the mine operators and the union as to the existence or meaning of a contract have resulted in considerable litigation with the trend of results clearly supporting the union's positions. See, e.g., *Lewis v. Lowry*, 322

order to get fair treatment from the hierarchy of his own union and his own pension fund.

Obviously, the trustees must set some eligibility requirements in order to protect the trust.⁷ The agreement establishing the Fund grants full authority to the trustees concerning eligibility and other related matters. The court's scope of review of the trustees' determination is quite narrow, being limited to a consideration of whether a denial of an application is arbitrary and capricious,⁸ or is not supported by the evidence,⁹ or is contrary to law.¹⁰ Collins' situation was found to be the proper subject of judicial review. The court pointed out that the regulation for determining eligibility adopted by the trustees permitted a person to work twenty years in the industry, spend only his final year in a signatory mine contributing to the Fund, and still be eligible for a pension. However, a person like Collins might work for nineteen years in a union mine which did pay royalties into the Fund and be denied a pension simply because he worked his last year prior to retirement in a non-union mine.¹¹ The defendants attempted to justify this regulation by explaining that it was designed to prevent miners from

F.2d 453 (4th Cir. 1963) (mine operator claimed oral agreement with union official that royalties need not be paid); *Lewis v. Coleman*, 257 F. Supp. 38 (S.D. W. Va. 1966) (mine operator charged coercion by union forced signing of contract); *Lewis v. Harcliff Coal Co.*, 237 F. Supp. 6 (W.D. Pa. 1965) (various defenses against contract liability held inadmissible because of considerations of miners' social welfare); *Lewis v. Premium Darby Coal Corp.*, 190 F. Supp. 493 (W.D. Va. 1960) (mine owner claimed written contract was a sham); *Lewis v. Young & Perkins Coal Co.*, 190 F. Supp. 838 (W.D. Ky. 1960) (Mine operator made oral agreement with union contrary to written contract); *Lewis v. Barnes Contracting Co.*, 179 F. Supp. 673 (N.D. W. Va. 1959) (mines acquired subsequent to signing of agreement held to be subject to royalties also).

⁷*See Kosty v. Lewis*, 319 F.2d 744 (D.C. Cir. 1963); *United Mine Workers of America District 22 v. Roncco*, 232 F. Supp. 865, 869 (D.C. Wyo. 1964); *Pavlovscak v. Lewis*, 190 F. Supp. 205 (W.D. Pa. 1960); *Szuch v. Lewis*, 193 F. Supp. 831, 833 (D.D.C. 1960).

⁸*Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968); *Kosty v. Lewis*, 319 F.2d 744 (D.C. Cir. 1963); *Danti v. Lewis*, 312 F.2d 345 (D.C. Cir. 1962); *Pavlovscak v. Lewis*, 190 F. Supp. 205, 209 (W.D. Pa. 1960); *Szuch v. Lewis*, 193 F. Supp. 831, 835 (D.D.C. 1960).

⁹*Kennet v. United Mine Workers of America*, 183 F. Supp. 315 (D.D.C. 1960).

¹⁰*Collins v. United Mine Workers of America Welfare & Retirement Fund of 1950*, 298 F. Supp. 964, 970 (D.D.C. 1969); *Bolgar v. Lewis*, 238 F. Supp. 595 (W.D. Pa. 1960).

¹¹*Roark v. Lewis*, 401 F.2d 425, 427-28 (D.C. Cir. 1968); *Collins v. United Mine Workers of America Welfare & Retirement Fund of 1950*, 298 F. Supp. 964, 970 (D.D.C. 1969).

returning to work in the mines for a short period for the sole purpose of achieving eligibility for a pension.¹² The *Collins* court felt that the trustees' explanation was inadequate and that the Fund could be adequately protected by adjusting the minimum requirements for employment in signatory coal mines. The results being reached under the challenged regulation were "unfair and unreasonable and border[ed] upon the absurd."¹³

While the *Collins* decision should compel the trustees to modify their eligibility requirements, it may also encourage similar legal efforts on behalf of miners who are prospective beneficiaries of the Fund to make its administration more responsive to their individual needs. A recent suit has challenged not only the eligibility requirements of the Fund but also the actions of the trustees in depositing the Fund's resources in a non-interest bearing account, the pension fund set up for the benefit of the union's top officers, and the extensive administrative expenses incurred by the Fund.¹⁴ Previous successful challenges to the trustees' action have clearly been less ambitious¹⁵ than this latest suit against the Fund and its trustees seeking damages and equitable relief for breach of trust. The most sweeping judgment previously handed down against the trustees was the 1966 decision of *Sturgill v. Lewis*.¹⁶ Here, the court held that because of the nature of the trustees' function their future proceedings:¹⁷

should conform to at least elemental requirements of fairness, which requirements in these circumstances normally

¹²*Collins v. United Mine Workers of America Welfare & Retirement Fund of 1950*, 298 F. Supp. 964, 969-70 (D.D.C. 1969).

¹³*Collins v. United Mine Workers of America Welfare & Retirement Fund of 1950*, 298 F. Supp. 964, 970 (D.D.C. 1969).

¹⁴*Blankenship v. Boyle*, Civil No. 2186-69 (D.D.C., filed Aug. 6, 1969).

¹⁵Previous actions by miners have been limited to attempts to secure individual pensions. See, e.g., *Kosty v. Lewis*, 319 F.2d 744 (D.C. Cir. 1963); *Danti v. Lewis*, 312 F.2d 345 (D.C. Cir. 1962). The miners just as often find these attempts to secure pensions rejected by the courts. See, e.g., *Gomez v. Lewis*, 292 F. Supp. 560 (W.D. Pa. 1968) (trustees permitted to change regulations so as to make plaintiff ineligible without giving him an opportunity to apply for pension under then existing criteria); *Rittenbury v. Lewis*, 238 F. Supp. 506 (E.D. Tenn. 1965) (miner never employed by signatory mine operator); *Bolgar v. Lewis*, 238 F. Supp. 595 (W.D. Pa. 1960) (insufficient employment with signatory mine operator); *Szuch v. Lewis*, 292 F. Supp. 560 (D.D.C. 1960) (plaintiff could not count time on workmen's compensation as result of mine injury to (ward prerequisite period of employment for pension).

¹⁶372 F.2d 400 (D.C. Cir. 1966).

¹⁷*Id.* at 401.

include, in addition to notice, a hearing at which the applicant is confronted by the evidence against him, an opportunity to present evidence in his own behalf, articulated findings and conclusions having a substantial basis in the evidence taken as a whole, and a reviewable record.

The *Collins* and *Sturgill* decisions, taken together, indicate significant improvements in the ability of coal miners to secure fair treatment from the trustees of their pension fund.

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