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Labor Law—Statute of Limitations Under Taft-Hartley Act §303

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be insisted upon. As a practical matter such subjects will be eliminated from labor contracts because neither party can be forced to accept them. He expressed the view that it was not the intention of Congress in setting out "wages, hours, and other terms and conditions of employment" to limit collective bargaining to those things. Rather, these were merely guides to help the NLRB to determine when the parties were acting in good faith.

The decision in the principal case is in accord with the current interpretation given to the National Labor Relations Act § 8(b) (3), 29 U.S.C. 158(b) (3) (1952), assuming that the court was correct in deciding that a performance bond is not within the scope of mandatory bargaining. However, in following this policy the courts are consciously or unconsciously allowing the government to enter substantive labor negotiations, by allowing the NLRB to decide what are subjects of bargaining in labor agreements.

John Templeton Kay, Jr.

Labor Law—Statute of Limitations Under Taft-Hartley Act § 303

D contended that *P*'s action to recover damages under the Labor Management Relations Act (Taft-Hartley Act) § 303, 61 Stat. 158 (1947), 29 U.S.C. § 187 (1958), should be barred by the state statute of limitations. *P* contended that no statute of limitations applied, or that if one did apply, it should be an analogous federal statute of limitations. *Held*: Where no limitation is laid down by Congress, the court will not adopt either a state or a federal statute of limitations, the only time requirement on the bringing of the action being the equitable doctrine of laches. *Fischbach & Moore, Inc. v. International Union of Operating Eng'rs*, 198 F. Supp. 911 (S.D. Cal. 1961).

Labor law involves a large portion of federally created law. Fitting this new law into the established law often causes problems. The principal case presents one of the problems which arose under such a federally created right of action. Under this particular statute the question whether any statute of limitations should be applied had never before been raised. As the court pointed out in its opinion, a similar question arose under this section of the statute in *UMW v. Meadow Creek Coal Co.*, 263 F.2d 52 (6th Cir. 1959); but the court in that case only decided which of two possible

state statutes would be applied, not whether any statute at all should be applied.

In the past some general rules have evolved concerning the use of local statutes in cases involving federally created rights. At first when there was no statute of limitations on a cause of action which had been enacted by Congress, some of the lower courts would not apply a state statute of limitations unless Congress had declared that it should be applied. *Welles v. Graves*, 41 Fed. 459 (N.D. Iowa 1890). But the general rule had been that where there is no federal statute of limitations applicable to a cause of action created by federal statute, the statute of limitations of the state wherein the action is brought will apply. *Cope v. Anderson*, 331 U.S. 461 (1947); *Davis v. Rocton & Rion R.R.*, 65 F. Supp. 67 (W.D. S.C. 1946). But this is tempered with the proposition that state law cannot deny benefits or disturb rights which were created by federal statutes. Also the state statute of limitations will not apply where it would limit or otherwise defeat the purpose of the federal statute. *Davis v. Rocton & Rion R.R.*, *supra*.

Situations arise frequently which Congress has not provided for in enacting legislation. The court in the principal case was faced with such a situation, and it had to determine to what extent its judicial legislation should go. The court listed five possible solutions which it considered. They were: (1) utilization of state statutes of limitations; (2) utilization of an arbitrary, judicially-enacted, period to be applied in all similar cases; (3) utilization of an analogous federal statute of limitations; (4) utilization of the equitable doctrine of laches; and (5) utilization of no period of limitations at all. As previously mentioned there is good authority for applying the state statute of limitations. However, the court felt that in the interest of uniformity, this cause of action should not be burdened with a different statute of limitations in each jurisdiction where it might be brought. As to the second possibility, the court did not wish to become so involved in the law making process that it would create a statute of limitations which would apply for all cases of this type. Further, it would not seem realistic to adopt an analogous federal statute of limitations since this would be arbitrary at best, and would also be close to judicial legislation. The court decided to use the last possibility outlined above, tempered with the next to the last possible solution. Thus the situation now stands that no period of limitations will be used on the bringing of an action for damages under section 303 of the Labor Management Relations Act

of 1947, and the only limitation which might arise would be the doctrine of laches if a plaintiff has slept on his rights. In the absence of congressional action on the question, the solution of the court seems logical.

At least one interesting question seems to present itself from the court's decision not to use a state statute in this situation. This cause of action may be brought in any court which has jurisdiction of the parties. *Douglas v. International Bhd. of Elec. Workers*, 136 F. Supp. 68 (W.D. Mich. 1955). Since this action may be brought in a state court, would the rule laid down by the court in this case preclude the state court from applying its own state statute of limitations? If the court's basic reasoning of uniformity were to be upheld, this would seem to be the only possible result. There would be no problem if Congress had set a statute of limitations, since that would be binding on state and federal courts alike. *Mitchell v. Clark*, 110 U.S. 633 (1884). But will a decision by a federal court have the same effect?

In federally created causes of action, uniformity of rights throughout the country is a desirable goal. However, it is a goal which is difficult to attain unless Congress has provided for it. The court in the principal case has struck a blow for uniformity, but whether that is the war or merely a battle will probably depend on subsequent acts of Congress, or whether this decision will be readily accepted by other courts which are faced with the same problem.

Robert Glenn Steele

Municipal Corporations — Power to License Plumbers Denied

Ps sought a writ of mandamus to compel the city of Wheeling to grant them a license to engage in the occupation of plumbing in that city. A city ordinance required a license of any person who engaged in plumbing within the corporation limits. There was no provision in the city charter authorizing the enactment of such an ordinance. *Held*, the ordinance was invalid. The city of Wheeling was not authorized by its special charter or general statute to enact an ordinance requiring a license of persons engaged in the trade or occupation of plumbing. *State ex rel. Sheldon v. City of Wheeling*, 122 S.E.2d 427 (W. Va. 1961)