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Labor Law--Arbitration--Court Determination Whether Grievance Is Within Agreement To Arbitrate

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Several employees of a company left their jobs for a portion of a day and the company dismissed them. The union alleged that the dismissal was without "proper cause" and sought to have the grievance submitted to arbitration under the arbitration clause in the contract. The company contended that the union breached the contract by violating the no-strike provision and therefore they did not have to submit to arbitration. The district court granted the order to arbitrate. *Held,* in affirming the lower court, although there is an alleged violation of the contract by a union this does not relieve a company from its responsibility to arbitrate the dismissal of the employees. Whether the leaving was justified is a question for an arbitrator and even if it were not, there is an additional question for the arbitrator as to whether the discharge of these men was proper under the contract. *Molders Union v. Susquehanna Casting Co.,* 283 F.2d 80 (3d Cir. 1960).

The decision in the instant case is a reflection of the impact of two recent Supreme Court decisions, *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564 (1960), and *United Steelworkers v. Warrior & Gulf Nav. Co.,* 363 U.S. 574 (1960). In these two cases, the Supreme Court indicated that federal courts should be extremely reluctant to deny arbitration to a party seeking it under a collective bargaining agreement. The court in the instant case in a very short opinion followed the decisions of these two cases by refusing to look to the merits of the case. The court stated that since there was a provision in the contract for the arbitration of disputes, and since a dispute had arisen, the case was proper for arbitration.

The decision in the instant case, which applies the doctrine set forth in the *American Manufacturing* and *Warrior* decisions, *supra,* is a product of the attempt to properly interpret a collective bargaining agreement and provide an adequate remedy for an alleged breach of contract. The basic problem was created by the fact that at common law a contract to arbitrate was not specifically enforcable. With the decision in *Textile Workers v. Lincoln Mills,* 353 U.S. 448 (1957), which interpreted section 301 of the Taft-Hartley Act, 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1952), the court solved this problem. The *Lincoln Mills* decision authorized the federal courts to specifically enforce executory agreements to arbitrate

and to develop a federal substantive law applicable to collective bargaining agreements affecting interstate commerce.

After the *Lincoln Mills* decision the federal courts were confronted with a barrage of cases concerning the arbitrability of a particular labor dispute, again presenting the age-old problem of the respective roles of the courts and arbitrators in labor dispute cases. A.B.A., *Labor Relations Law* 161 (Sec. Proc. 1960). The courts were confronted with determining whether the particular alleged violation of the collective bargaining agreement was one which the parties had agreed to arbitrate. "To resolve the question the court must make (a) an analysis of the nature of the controversy and (b) an interpretation of the arbitration clause." Cox, *Current Problems in The Law of Grievance Arbitration,* 30 ROCKY MT. L. REV. 247, 258 (1958). To determine whether the parties had agreed to arbitrate a particular dispute would seem to be an easy task, requiring simply a reading of the agreement and then a decision thereon. Although this seems to be a simple task, the courts had great difficulty with it and the various courts had different standards which they applied to arrive at their decisions. Some courts would look to the merits of the case to make their determination as to whether the alleged violation was arbitrable. This was the view that was taken in the courts which followed the so called *Cutler-Hammer* doctrine. *Local* 402, *Int'l Ass'n of Machinists v. Cutler-Hammer Inc.,* 271 App. Div. 917, 67 N.Y.S.2d 317 (1947). Some federal courts allied themselves with this doctrine by holding that frivolous claims were not subject to arbitration. See *Davenport v. Proctor & Gamble Mfg. Co.,* 241 F.2d 51 (2d Cir. 1957); *Local* 205, *United Elec. Workers v. General Elec. Co.,* 233 F.2d 85 (1st Cir. 1956).

The *Cutler-Hammer* doctrine was rejected in the *American Manufacturing* and *Warrior* decisions, *supra.* In the *American Manufacturing* case, where there was an agreement in the collective bargaining contract to submit all grievances to arbitration, the court held: "The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious." *American Mfg. Co., supra* at 536. The Court stated that even the processing of frivolous claims might have therapeutic values. The Court in taking this position affirmed the philosophy expressed in Cox, *Current Problems in The Law of Grievance Arbitration,* 30 ROCKY MT. L. REV. 247, 261 (1958).

The *Warrior* case presented a more difficult problem for the consideration of the Court. The collective bargaining contract contained an agreement to arbitrate differences as to the meaning and application of provisions of the contract, but excluded from arbitration matters which were strictly a function of management. The employees protested when the company contracted-out work which they had previously done. When the employer refused to arbitrate this grievance the union brought suit to compel arbitration. The Court held that the employer must submit this grievance to arbitration. The *Warrior* case seems to suggest that a court must find that the parties have agreed to arbitrate every alleged breach of the collective bargaining agreement unless, (1) an express provision excludes the dispute from arbitration, or (2) in the absence of an expressed provision of exclusion, the most forceful evidence of such an intention is present. *United Steelworkers v. Warrior & Gulf Nav. Co., supra* at 584. Doubts as to arbitrability of a grievance should be resolved in favor of arbitration. *United Steelworkers v. Warrior & Gulf Nav. Co., supra* at 583.

The full impact of the *American Manufacturing* and *Warrior* decisions has not yet reached the courts, but in those cases which have been before the courts the decisions in general seem to follow a pattern similar to the instant case. See *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.,* 283 F.2d 93 (3d Cir. 1960); *Textile Workers Union v. Cone Mills,* 188 F. Supp. 728 (M.D. N.C. 1960), in which the court refused to review the merits of an arbitrators award relying on the *American Manufacturing* and *Warrior* decisions. In *Local* 201, *Int'l Union of Elec. Workers v. General Electric Co.,* 283 F.2d 147 (1st Cir. 1960), the court, following the *American Manufacturing* and *Warrior* decisions looked to the contract and decided that the parties by express provision had contracted not to arbitrate the disagreement in question. In *Maryland Tel. Union v. Chesapeake & Potomac Tel. Co. of Md.,* 187 F. Supp. 101 (D. Md. 1960), the court followed the decisions in *American Manufacturing* and *Warrior* but seemed to do so with some reluctance.

The theory or guide lines set down by the Supreme Court in the *American Manufacturing* and *Warrior* decisions seem to have been followed in the instant case. The collective bargaining agreement called for the arbitration of any disputes which might arise during the life of the contract. Thus when the court was presented

with making a decision as to whether an alleged violation of the contract should go to an arbitrator for his decision, it only looked as far as the face of the contract, and decided that the parties must submit to arbitration. The court did not consider whether the claim was meritorious or frivolous, as it could have done before if it had followed the *Cutler-Hammer* doctrine.

The self-restraint that the courts have placed on themselves in the arbitration process by these decisions has wide and varied ramifications. The collective bargaining agreement has been taken from the courts and placed in the hands of an arbitrator for his construction. The merits of this situation are of course subject to many varied opinions. It has long been recognized that a collective bargaining agreement is a hybrid type of contract, and it has been argued that its construction should be left to a person who is more familiar with the workings of industry and labor relations, rather than to the average judge who has little time to familiarize himself with these conditions. This is discussed in Cox, *Reflections on Labor Arbitration,* 72 HARV. L. REV. 1482 (1959). Although this self-restraint imposed by the courts seems to be new, it is only new to the judicial process. For many years several large companies have in effect contracted to stay out of court, by providing that all alleged breaches of the contract will go to arbitration. What these companies have done for years by specific provisions in their contracts is in effect what the courts have done by their interpretation of the arbitration clause in these cases. The only way the companies or unions can now keep a particular grievance from going to arbitration, if the spirit of these decisions is followed, is to specifically provide this in the contract. This leads to a number of very important considerations as to what will be the impact of these decisions in arriving at a workable collective bargaining agreement. See Wallen, *Recent Supreme Court Decisions on Arbitration: An Arbitrator's View,* 63 W. VA. L. REV. 295.

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