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## Labor Relations--Union-Employer Contract--Employee's Rights

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LABOR RELATIONS—UNION-EMPLOYER CONTRACT—EMPLOYEE'S RIGHTS.—Suit by employees of a coal company for breach of contract between the labor union and the employer, by failing to allow plaintiffs a thirty-minute lunch period during each work-shift. From a decree dismissing the complaint, plaintiffs appealed. *Held*, employees could have sued on the contract, had they not been barred by a provision therein making arbitration a condition precedent to the right to sue. Judgment affirmed. *Pettus v. Olga Coal Co.*, 72 S.E.2d 881 (W. Va. 1952).

It seems that the court assumed an important labor relations result in this case by supporting the proposition that an employee can sue on the union-employer contract, without recognizing that this right once was, and still is, in some jurisdictions, refused the employee.

There seem to be three views as to the employee's right to sue on a union-employer contract:

*The first view: Employees cannot sue on contract.* In *Kessell v. Great Northern Ry.*, 51 F.2d 304 (D.C. Cir. 1931), *P* sued for wrongful discharge on the terms of the collective bargaining agreement made between *D*, the employer, and the union, of which *P* was a member in good standing. The court held the action was not maintainable, holding that the agreement was between the railway company and the brotherhood organization, and constituted no contract between any member-employee and the company. *Accord*, *Rotnofsky v. Capital Distributors Corp.*, 262 App. Div. 521, 30 N.Y. S.2d 563 (1st Dep't 1941).

In *Hudson v. Cincinnati N.O. & T.P. Ry.*, 152 Ky. 711, 154 S.W. 47, 45 L.R.A. (N.S.) 184 (1913), the court refused to allow an employee to sue on the employer-union contract, stating the employee was not bound by the contract to work for any length of time, and this being so, either party has the right to terminate it at any time with or without cause.

In *Burnetta v. Marceline Coal Co.*, 180 Mo. 241, 79 S.W. 136 (1904), the court held that the function of the union was to secure good working conditions for its members, "leaving to each of its members to determine for himself whether or for what time he will contract with reference to such usages." This reasoning was used: ". . . a labor union, in contracting with an employer with respect to wages and conditions of service for a specific period of time, does not establish contracts between its individual members

and the employer, a breach of which will sustain actions by individuals. . . . The members of the union do not labor for the organization, but each member works for himself, and whatever compensation he receives is for the benefit of himself and his family.”

The employee sued on the contract between the union and the defendant employer in *Wilson v. Airline Coal Co.*, 215 Iowa 855, 246 N.W. 753 (1933), and the court held, in refusing judgment for the plaintiff, that the contract was not a contract of employment since a contract requires consideration and the union gave nothing as consideration.

*The second view: Employees can sue on contract as principals.* Several courts follow this school of thought. However, for the employee to recover under this view, he must show either that he initially authorized the making of the contract or that he later ratified it. In *West v. B. & O. R.R.*, 103 W. Va. 417, 137 S.E. 654 (1927), the court said: “. . . the rule seems to be that individual members of a labor union are not bound by contracts between the union and employers, unless such agreements are ratified by the members of the union as individuals, and that in the absence of evidence of such ratification by a member, no rights accrue to him which he can enforce against the employer.” The court speaks in terms of agency, in that the employee-principal is not liable to the employer until he ratified the act of the union, his agent, at which time the employee can also sue on the contract.

In *Christiansen v. Local 680*, 126 N.J. Eq. 508, 10 A.2d 168 (1940), the court adopted the agency view and further held that the union had no cause of action against an employer for wrongful discharge of four union employees, in violation of a collective bargaining agreement. The action for the wrong committed could only be brought by the allegedly wrongfully discharged employees.

The court allowed the employees to recover on the contract in *Mueller v. Chicago & N.W. Ry.*, 194 Minn. 83, 259 N.W. 798 (1935), stating, “Plaintiff is entitled to sue on the contract as one made in his behalf by a duly authorized agent. That is, this suit must be considered as one by a party to, rather than by a mere beneficiary of, the contract.”

*The third view: Employees can sue on contract as third party beneficiaries.* Many courts support the view, not that the union acts as agent for the employees in negotiating collective bargaining

agreements with employers, but that the union is the principal for the benefit of its members, as illustrated by the instant case. Thus, a contract made by a labor union with an employer may be enforced by an employee even though he is not mentioned by name in the contract.

The West Virginia court, in *Gleason v. Thomas*, 117 W. Va. 550, 186 S.E. 304 (1936), permitted the employees to enforce the contract between the employer and the union, but failed to indicate the theory under which the parties were bound.

In *Yazoo & Miss. Valley R.R. v. Webb*, 64 F.2d 902 (5th Cir. 1933), the court allowed a non-union employee to recover on the union-employer contract under the third-party beneficiary theory.

The Mississippi court permitted recovery under this theory in *Gulf & S.I.R.R. v. McGlohn*, 183 Miss. 465, 184 So. 71 (1938). *Accord*, *Schlenk v. Lehigh Valley R.R.*, 74 F. Supp. 569 (D.C.N.J. 1947).

A distinction between the agency theory and the third-party-beneficiary theory is that, under the former, the union has little retained by way of direct enforcement, with whatever rights of enforcement the contract provides given the employees on whose behalf the contract was entered into; while under the third-party theory, both the union and the individual employees are able to enforce the contract.

Thus, the courts of many states, including West Virginia, have not been consistent with their reasoning in regard to the right of the employee to sue on the union-employer contract.

The third-party beneficiary theory seems the most satisfactory and just method in dealing with this problem, and the West Virginia court seems to have applied this theory in the principal case.

J. L. A.

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NEGLIGENCE--LIABILITY OF CHARITABLE HOSPITAL--INSURANCE.--*P* brought an action against *D*, a charitable hospital, for injuries sustained as a result of the negligence of its employee, alleging that *D* carried liability insurance out of which a judgment could be satisfied. *D* demurred on the basis that coverage by insurance did not create liability in instances where the policyholder was immune from liability because of its charitable character. *Held*, on certification, that *D* was not liable; that the immunity still existed even