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Class Suits for Back Wages

LABOR LAW

CLASS SUITS FOR BACK WAGES

Alleging that under the wage terms of an arbitration agreement 3500 of its members were entitled to $370,000 in back pay,[1] the Milk Wagon Drivers' Union of Chicago, Local No. 753, brought action in the federal district court against the Associated Milk Dealers, Inc., an organization composed of dairies. In sustaining the motion to dismiss the complaint on the ground that such a suit in behalf of others was an improper class action, the court remarked that rights to back wages were individual rights enforceable only by individual truck drivers.[2]

There is no question but that collective bargaining agreements are enforceable. They are no longer mere gentlemen's agreements.[3] It was less certain who may enforce them. The cases are numerous in which collective contracts have been held enforceable against union employees,[4] and there are many cases to support the proposition that individual union employees may enforce wage schedules,[5] seniority

[1] After negotiations for a new collective contract had broken down in the spring of 1940 for the second time, the union and the dairies on July 15 submitted their dispute to an arbitration committee. September 14 the arbitration committee awarded a new contract setting the hourly wage of milk wagon drivers at 81 cents, the new rate to be retroactive to June 1. The union asserted that during the fifteen-week period between June 1 and September 14 their members had worked 68 hours a week for $48 (slightly more than 70 cents an hour) and that they were entitled to the difference in back wages. The dairies objected to this interpretation of the arbitration award, but the court, failing to discuss the merits, decided the case upon the procedural point.

[2] Milk Wagon Drivers Union of Chicago, Local No. 753 v. Associated Milk Dealers, Inc., 39 F. Supp. 671 (N.D. Ill. 1941).

[3] 49 STAT. 449 (1935), 29 U.S.C.A. §§151, 157 (1941 Supp.); N.L.R.B. v. Sands Mfg. Co., 306 U.S. 332 (1939); N.L.R.B. v. Electric Vacuum Cleaner Co., 120 F. (2d) 611, 616 (C.C.A. 6th, 1941); Christiansen v. Local 680 of Milk Drivers and Dairy Employees of New Jersey, 126 N. J. Eq. 508, 10 A. (2d) 168 (1940), Harper v. Local Union No. 520, International Brotherhood of Electrical Workers, 48 S. W (2d) 1033 (Tex. Civ. App. 1932). *Contra*: Wilson v. Air Line Coal Co., 215 Iowa 855, 246 N.W. 753 (1933), Kessell v. Great Northern Ry., 51 F (2d) 304 (W.D. Wash. 1931).

[4] Whiting Milk Companies v. Grondin, 282 Mass. 41, 184 N. E. 379 (1933); Whiting Milk Companies v. O'Connell, 277 Mass. 570, 179 N. E. 169 (1931); Western-United Dairy v. Nash, 293 Ill. App. 162, 12 N. E. (2d) 47 (1937).

[5] McNeill v. Hacker, 21 N. Y. S. (2d) 432 (1940), Wanhope v. Press Co., 10 N.Y.S. (2d) 797 (1939); Dierschow v. West Suburban Dairies, Inc., 276 Ill. App. 355 (1934), San Antonio and A. P. Ry. v. Collins, 61 S.W. (2d) 84 (Tex. Comm. of App. 1933); Cross Mountain Coal Co. v. Ault, 157 Tenn. 461, 9 S.W (2d) 696 (1928), Blum & Co. v. Landau, 23 Ohio App. 426, 155 N. E. 154 (1926), *cf* Huston v. Washington Wood and Coal Co., 103 P. (2d) 1095 (Wash. 1940), Gary v. Central of Georgia Ry., 44 Ga. App. 120, 160 S.E. 716 (1931), Keysaw v. Dotterweich Brewing Co., 105 N.Y.S. 562 (1907).

rights,[6] and wrongful discharge clauses[7] established in such agreements. In some cases non-union employees who have "ratified" the collective contract have been permitted to recover back wages under it.[8]

The cases are equally numerous in which the unions themselves have been held to possess legal rights and duties under collective agreements. As the collective bargaining process has become the accepted method of resolving labor disputes, the courts have permitted unions, despite their voluntary and unincorporated character, to sue and be sued.[9] Unions have, for example, enforced arbitration clauses,[10] closed-shop provisions,[11] and anti-lock-out agreements,[12] and have had agreements to arbitrate before striking enforced against them.[13]

In summary, collective bargaining agreements are enforceable by or against individual members in matters affecting them specifically and individually; and such agreements are enforceable by or against the union in matters affecting all members or large classes of members. These last-named rights may be referred to as collective—in the sense that they are common to all members and that violation operates uniformly against all members.[14]

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[6] San Antonio & A.P. Ry. Co. v. Collins, 61 S.W. (2d) 84 (Tex. Comm. of App. 1933). *Cf.* West v. Baltimore and O. Ry., 103 W. Va. 417, 137 S.E. 654 (1927).

[7] St. Louis, B. & M. Ry. v. Booker, 5 S.W. (2d) 856 (Tex. Civ. App. 1928).

[8] Yazoo & M. V. Ry. v. Webb, 64 F. (2d) 902 (C.C.A. 5th, 1933); Yazoo & M. V. Ry. v. Sideboard, 161 Miss. 4, 133 So. 669 (1931).

[9] Levy v. Superior Court for Los Angeles County, 104 P. (2d) 770 (Calif. 1940); Petition of Minasian, 14 N.Y.S. (2d) 818 (1939); Meadowmoor Dairies, Inc. v. Milk Wagon Drivers Union of Chicago, No. 753, 371 Ill. 377, 21 N.E. (2d) 308 (1939); Swing v. A. F. of L., 372 Ill. 91 (1939); Kirkman v. Westchester, 24 N.Y.S. 909 (1935); Murphy v. Ralph, 299 N.Y.S. 271 (1937); United Mine Workers v. Coronado Co., 259 U.S. 344 (1922); Schlesinger v. Quinto, 194 N.Y.S. 401 (1922); Nederlandsch Amerikaansche Stoomvaart Maatachapij v. Stevedores' and Longshoremen's Benevolent Society, 265 Fed. 397 (E.D. La. 1920); Franklin Union No. 4 v. State of Illinois, 220 Ill. 355, 77 N.E. 176 (1906). *Contra*: St. Paul Typothetae v. St. Paul Bookbinders' Union, No. 37, 94 Minn. 351, 102 N. W. 725 (1905).

[10] Petition of Minasian, 14 N.Y.S. (2d) 818 (1939).

[11] Goldman v. Cohen, 227 N.Y.S. 311 (1928); Harper v. Local Union No. 520, International Brotherhood of Electrical Workers, 48 S.W. (2d) 1033 (Tex. Civ. App. 1932); Jacobs v. Cohen, 183 N.Y. 207, 76 N.E. 5 (1905); Moeschi v. Mosteller, 28 F. Supp. 613 (1939).

[12] Dubinsky v. Blue Dale Dress Co., Inc. 292 N.Y.S. 898 (1936).

[13] Uneeda Credit Clothing Stores, Inc. v. Briskin, 14 N.Y.S. (2d) 964 (1939); Preble v. Architectural Iron Workers' Union of Chicago, Local No. 63, 260 Ill. App. 435 (1931).

[14] One consistent thread running through all the cases in which unions have been permitted to enforce collective agreements is that they have been equity actions for injunctions. On principle, however, there is no reason why unions should be permitted to sue only in cases where injunction is the proper remedy. For general language implying that the union should be able to sue whenever a right common to all the members is infringed, *see* Christiansen v. Local 680 of Milk Drivers and Dairy Employees of New Jersey, 126 N. J. Eq. 508, 10 A. (2d) 168 (1940); Biller v. Egan, 290

Individual employees may sue to collect damages suffered from the violation of a collective agreement wage scale. But can the union, acting in its own name and in behalf of all members similarly situated, also enforce such wage rights? And if it can, upon what theory can such a decision be supported? In the instant case, the court took the position that such an action was impossible as a matter of "law" unless it could be called a class suit and thus woven into the traditional procedural pattern.[15] Considered solely from the narrow view to which the court limited itself, the issue is at least arguable. The general rule with respect to class suits is that members of the same class, having common rights, and whose joinder is highly impracticable, may be represented in a class action in order to avoid a multiplicity of litigation.[16] The union, by bringing this action in behalf of 3500 milk drivers allegedly damaged under the agreement, represented employees with a common right in the agreement—namely, the obtaining of wages due under it.[17] *Hansberry v. Lee*,[18] upon which the court relied to support its decision, is doubtful authority. In that case the plaintiff, asserting that he represented 95 per cent of the property owners in the area, sued to enforce a restrictive covenant in their behalf. The court ruled that the suit was not a proper class action because the plaintiff was representing people with diversified, not common, interests, some of the property owners being interested in enforcing the covenant and others being interested in defeating it. In order to apply *Hansberry v. Lee* to instant case, the court must take the position that some of the 3500 employees would object to being awarded back wages.

Even conceding that the decision in the instant case represents the "law," the case represents undesirable policy. One cannot escape the conclusion that the court's decision is, in effect, a decision for the dairy company on the merits, although it purports to be otherwise. The court, while insisting that non-suiting the union is necessary in

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Ill. App. 219, 8 N.E. (2d) 205 (1937); Carpenters' Union v. Citizens' Committee to Enforce the Landis Award, 333 Ill. 225, 164 N.E. 393 (1928). *But see*, Cole, *The Civil Suability at Law of Labor Unions* (1939) 7 FORDHAM L. REV. 29.

[15] Milk Wagon Drivers Union of Chicago, Local No. 753, v. Associated Milk Dealers, Inc. 39 F. Supp. 671 (N.D. Ill. 1941).

[16] 48 STAT. 1064 (1934), 28 U.S.C.A. § 723c, Rule 23, (1941 Supp.); McDaniel v. Board of Public Instruction for Escambia County, 39 F. Supp. 638 (N.D. Fla. 1941); National Hairdresser's & Cosmetologists' Ass'n v. Philad. Co., 34 F. Supp. 264 (D. Del. 1940); Atwood v. National Bank of Lima, 115 F. (2d) 861 (C.C.A. 6th, 1940); ILL. REV. STAT. (1941) c. 110 § 147; Weberpals v. Jenny, 300 Ill. 145, 133 N.E. 62 (1921); Groves v. Farmers' State Bank of Woodlawn, 368 Ill. 35 (1937); Leonard v. Bye, 361 Ill. 185, 197 N. E. 546 (1935); Greenburg v. City of Chicago, 256 Ill. 213, 99 N. E. 1039 (1912).

[17] The practical difficulty of determining whether or not each of the 3500 employees had done the same amount of overtime work undoubtdly influenced the court in its decision. As a matter of fact, however, the milk wagon drivers probably worked on a uniform time schedule. If not, the information could easily have been gleaned from the records of each dairy.

[18] 311 U.S. 32 (1940). *But cf.* 372 Ill. 369, 24 N. E. (2d) 37 (1940).

order to protect the employees' rights, has quite effectively emasculated those rights; for it is understood that few, if any, of the financially weak truck drivers will press their claims.[19]

Moreover, the economies to be gained from having one suit instead of hundreds strengthen the argument. For legalists who worry about how such actions may be worked into the scheme of the "law," it may be said that at least one court has taken the step,[20] and that the well-accepted doctrine that a union may enforce "collective rights" might be extended to cover such cases as the one in issue. Thus, a union would be permitted to enforce individual wage rights accruing under a collective bargaining contract, in cases where the rights were common to a large class and violated uniformly.

LABOR LAW

"LABOR DISPUTE" AND UNEMPLOYMENT COMPENSATION: A REPLY

This letter concerns the recent comment appearing in the Indiana Law Journal of February, 1942 entitled "Labor Dispute and Unemployment Compensation." To me this article is a fine example of the present day tendency found in many law schools and some courts to pervert sound legal reasoning into the legislative function of determining public policy.

Your criticism of the opinion in *Barnes v. Hall*, 285 Ky. 160, 146 S.W (2d) 929, *cert. denied* 100 U.S.L. Week 3119, resolves itself into a contention that the words "labor dispute" as used in the Unemployment Compensation Act (which deprives employees of compensation pending a labor dispute) should be given a different meaning from the same words used in the Norris-LaGuardia Act (which limits the granting of injunctive relief against employees in certain cases involving labor disputes). To me to give these words different meanings would make the court appear ridiculous. Obviously, an employee cannot have his cake under the Norris-LaGuardia Act or the National Labor Relations Act and still eat it under the Unemployment Compensation Act.

One would think that where the words "labor dispute" had been used by a legislative body in two prior acts (Norris-LaGuardia Act and N.L.R.A.) and given a definite meaning therein, that when the same words are placed in another act, without qualification, one could rely upon the assumption that the Legislature was using the words with a settled and fixed meaning. What right has the court to search for a "public policy" to upset the meaning of words used by the Legislature in such a case? These words were placed in the Unemployment Compensation Act by the Legislature for a purpose and the only way to get rid of them is for the Legislature to do so.

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[19] For an excellent discussion of the administration of justice to the highest bidder, see RODELL, WOE UNTO YOU LAWYERS (1939) 225 to 246.

[20] Barth v. Addie, 271 N. Y. 31, 2 N. E. (2d) 34 (1936) (court held that an employee could collect wages due under a collective agreement and that the union, acting in its own name, could intervene in behalf of the other employees and collect their back wages).