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Labor Law—Labor Management Relations Act—Section 301(a)—State Court Injunction Against Strike—Removal to Federal Court.—Avco Corp. v. Machinists Aero Lodge 735

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not know of any membership choice when they joined the union. Since it is likely, however, that litigation would eventually establish minimum standards for unions to meet in carrying the burden of proving that members knew or should have known of their membership choice, the group not subject to court-enforced fines because they were ill-informed would eventually disappear while all union members would be informed of their legal rights under a union-shop provision. It is also likely that the threat of social ostracism and the potential advantages of participation in union programs, including voting on union policy, would keep those who chose to pay only dues at a minimum. These nominal members would not be "free riders" nor would they be restrained or coerced into joining the concerted activities of the group in whose internal affairs they wished to take no part.[49]

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Labor Law—Labor Management Relations Act—Section 301(a)—State Court Injunction Against Strike—Removal to Federal Court.—*Avco Corp. v. Machinists Aero Lodge 735*.[1]—Plaintiff corporation, which is engaged in interstate commerce, had entered into a collective-bargaining agreement with defendant union. The agreement included both a no-strike clause and a binding-arbitration clause. Following a series of work stoppages which culminated in a plantwide strike, the corporation brought suit against the union in a state court, requesting both an injunction against the strike and "general relief." When the state court issued a temporary restraining order against violation of the no-strike clause, the union, pursuant to Section 1441(b) of the Removal Act,[2] removed the action to the federal district court, and there moved: (1) to dissolve the temporary injunction; and (2) to dismiss the action on the ground that the district court has no power to issue or maintain the injunction by reason of the restrictions of Section 4 of the Norris-LaGuardia Act.[3] The corporation moved to remand the action

[49] In the union answer to the rehearing petition of Allis-Chalmers at the court of appeals level, the union conceded that if the fined members had no obligation to the union beyond paying dues and fees they would not be subject to the union " 'requirement of obedience to the common cause.' " 358 F.2d at 669.

[1] 376 F.2d 337 (6th Cir. 1967), cert. granted, 88 S. Ct. 103 (1967) (No. 445).

[2] 28 U.S.C. § 1441(b) (1965).

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

[3] 29 U.S.C. § 104 (1965).

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or

to the state court on the alternate grounds that: (1) its cause of action was based solely on state law; and (2) even if the cause of action arose under federal law, Section 4 of the Norris-LaGuardia Act, by its terms, prevents removal of the action to a district court. The district court dissolved the temporary injunction,[4] but refused to dismiss the action or remand the case to the state court.

On appeal, the Court of Appeals for the Sixth Circuit affirmed the decision of the district court. HELD: An action brought in a state court to enjoin a breach of a no-strike provision in a collective-bargaining agreement in an industry affecting interstate commerce is removable to a federal district court.

The Sixth Circuit considered two separate issues in this case: (1) whether the plaintiff's cause of action arises under the laws of the United States; and (2) if it does, whether Section 4 of the Norris-LaGuardia Act, by its terms, prevents removal of the action to a federal district court. In allowing removal, the Sixth Circuit specifically rejected the holding of the Third Circuit on both of these issues in *American Dredging Co. v. Local 25, Int'l Union of Operating Eng'rs*.[5] That case involved substantially the same fact pattern as the case under discussion. The Third Circuit held that a claim seeking to enjoin the breach of a no-strike clause, if on its face based solely on state law, does not arise under federal law[6] and that section 4 withdraws from federal courts the original jurisdiction necessary for removal under Section 1441(b) of the Removal Act.[7]

The plaintiff's cause of action certainly arises under the laws of the United States if it falls within the scope of Section 301 of the Taft-Hartley Act,[8] which provides in part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

The Supreme Court has pronounced on the scope of section 301 in

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interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment. . . .

[4] "All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court." 28 U.S.C. § 1450 (1965).

[5] 338 F.2d 837 (3d Cir. 1964) (2-1 decision), cert. denied, 380 U.S. 935 (1965), noted in 6 B.C. Ind. & Com. L. Rev. 957 (1965). See Spelfogel, Enforcement of No-Strike Clause by Injunction, Damage Actions and Discipline, 7 B.C. Ind. & Com. L. Rev. 239, 248-50 (1966).

[6] 338 F.2d at 846.

[7] Id. at 840-42.

[8] 29 U.S.C. § 185(a) (1965).

Teamsters Local 174 v. Lucas Flour Co.,[9] interpreting a collective-bargaining agreement providing for compulsory arbitration. The state court had held that the case could be decided exclusively on state contract law.[10] Although the Supreme Court affirmed the result obtained under state law, it rejected the state court's holding that the case could be decided within the limited horizon of state law, and held that "suits of a kind covered by section 301" require the application of federal substantive law.[11] The Supreme Court's decision in *Textile Workers v. Lincoln Mills*[12] likewise rejects the view that state contract law may serve as an independent source of rights to enforce collective-bargaining agreements in industries affecting interstate commerce. This case concerned the breach of a compulsory-arbitration clause in a no-strike collective-bargaining contract. The Court held that section 301 authorizes the federal courts to fashion a body of federal contract law for the construction and enforcement of collective-bargaining agreements.[13] The Court ruled that although state law may be resorted to in order to find the best rule to effectuate a federal labor policy, any state laws applied "will be absorbed as federal law and will not be an independent source of private rights."[14] *Avco* did involve alleged breach of a collective-bargaining contract in an industry affecting interstate commerce; it follows, therefore, that the Sixth Circuit was correct in deciding that the corporation's cause of action arose under federal law.

The right to removal was squarely presented as the second issue. Section 1441(b) of the Removal Act authorizes removal of an action over which the district courts have original jurisdiction founded on a claim or right arising under the laws of the United States.[15] This has been construed to mean that an action is removable to a district court if the action could have been originally brought in the district court.[16] Therefore, the issue of removability in *Avco* depends on whether plaintiff corporation could have originally brought its action in the district court. But since the corporation's cause of action included a prayer for injunctive relief against a peaceful strike,[17] the *Avco* case was properly removed only if a district court has jurisdiction of an action in which an injunction against a peaceful strike is among the remedies sought. In answering this question it is necessary to consider the Norris-LaGuardia Act, focusing on its prohibition against the issuance by a federal court of certain types of labor injunctions.

Section 4 of Norris-LaGuardia denies federal courts "jurisdiction to

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[9] 369 U.S. 95 (1962).

[10] Lucas Flour Co. v. Teamsters Local 174, 57 Wash. 2d 95, 102, 356 P.2d 1, 5 (1961).

[11] 369 U.S. at 103.

[12] 353 U.S. 448 (1957).

[13] Id. at 451, 456.

[14] Id. at 457.

[15] 28 U.S.C. § 1441(b) (1965).

[16] TVA v. Tennessee Elec. Power Co., 90 F.2d 885, 888 (6th Cir. 1937), cert. denied, 301 U.S. 710 (1938); see also Minnesota v. Northern Sec. Co., 194 U.S. 48, 63-64 (1904).

[17] Plaintiff's brief seems to allege no activities which would take the strike out of the purview of Section 4 of the Norris-LaGuardia Act. See Brief for Plaintiff at 1-3, 376 F.2d 337 (6th Cir. 1967).

issue" injunctions against peaceful strikes.[18] Although Section 301 of the Taft-Hartley Act confers jurisdiction upon the district courts to enforce collective-bargaining contracts,[19] the Supreme Court has held that this grant of jurisdiction does not impliedly repeal the prohibitions of section 4.[20] Therefore, federal courts remain without jurisdicton to grant injunctions against peaceful strikes.[21] However, the question in *Avco* is not whether federal courts have jurisdiction to grant injunctive relief, but whether they have jurisdiction of an action in which injunctive relief against a peaceful strike is among the remedies requested. The Supreme Court seems to have answered this question affirmatively in *Atkinson v. Sinclair Ref. Co.*,[22] where an action brought in a federal district court by an employer requesting both to enjoin the breach of a no-strike collective-bargaining agreement and damages was considered. Having decided in a companion case that the Norris-LaGuardia Act required dismissal of the count requesting injunctive relief,[23] the Supreme Court held that the district court had jurisdiction to proceed to trial on the merits of the count requesting damages.[24] Thus, it is clear that a district court has jurisdiction to hear a case involving the breach of a no-strike collective-bargaining contract even though the prayer for relief includes a request for injunctive relief.

The *Avco* case differs from the *Atkinson* case only in that *Avco* was originally brought in a state court and "general relief" was requested instead of damages. That damages were not specifically requested in *Avco* should not prevent the district court from assuming jurisdiction. Rule 54(c) of the Federal Rules of Civil Procedure provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." The prayer for general relief in *Avco* would thus enable the district court to grant damages, if appropriate. Indeed, the rule seems to provide that a court will not be prevented from assuming jurisdiction merely by the wording of the prayer for relief. Accordingly, the prayer for "general relief" constituted no bar to the *Avco* court's assumption of jurisdiction. If the corporation in *Avco* had originally brought its action in the district court, that court, following the *Atkinson* precedent, would have been able to take original jurisdiction of the action. Since the test for removal of an action is whether the action could have been originally brought in the district court, it follows that removal was properly allowed in *Avco*.

The state court in *Avco* issued a temporary injunction against the union. The propriety, however, of such state court injunctions in section 301 actions is not settled. Most states have held that the prohibitions of Section 4 of the Norris-LaGuardia Act do not extend to state courts.[25] However, the *Avco*

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[18] 29 U.S.C. § 104 (1965).
[19] 29 U.S.C. § 185(a) (1965).
[20] Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 203, 210 (1962).
[21] Id.
[22] 370 U.S. 238 (1962).
[23] Sinclair Ref. Co. v. Atkinson, 370 U.S. at 210, 215.
[24] 370 U.S. at 239-41.
[25] See, e.g., Armco Steel Corp. v. Perkins, 411 S.W.2d 935 (Ky. 1967); McCarroll

court stated that the remedies available in section 301 actions in state courts should be limited to those available in federal courts. The court reasoned that since injunctions against peaceful strikes are not available in federal courts, they should likewise not be available in state courts. Otherwise, a uniform development of the law of labor contracts would be impaired. Such a rule would seem to be consistent with the Supreme Court's decisions construing section 301. The Court has held that section 301 commissions a federal contract law which is to be formed "from the policy of our national labor laws."[26] Moreover, in *Sinclair Ref. Co. v. Atkinson*,[27] the Court affirmed the importance of section 4 to the national labor policy by referring to section 4 as "a long-standing, carefully thought out and highly significant part of this country's labor legislation."[28] As section 4 represents a strong federal policy that peaceful strikes should not be enjoined, logic would seem to require that this policy should be incorporated into the federal contract law. State law providing for injunctions against breaches of no-strike collective-bargaining contracts would be inconsistent with this federal policy. Since the federal contract law prevails over inconsistent state laws,[29] it follows that in section 301 actions state courts should be prohibited from granting injunctions against violation of a no-strike contract. However, until the Supreme Court resolves this question, it can be assumed that state courts will continue to grant injunctions in actions involving no-strike contracts.

The holding in *Avco*, then, considered in the light of Supreme Court decisions, seems to constitute correct law. The result of the case, however, is disturbing. A strict application in *Avco* of the prohibitions of Section 4 of the Norris-LaGuardia Act does not seem to implement the purposes of that Act. Moreover, denial of injunctive relief seems to contravene a legislative purpose behind the Taft-Hartley Act—"restoring equality of bargaining power between employers and employees"[30]—by removing an effective remedy previously available to employers for enforcement of collective-bargaining contracts. It is submitted that the history of the two acts indicates that they could be accommodated to effectuate the congressional policies behind their enactment.

The Norris-LaGuardia Act was enacted in 1932 partly as a reaction to widespread injustices brought about by the excessive use of injunctions against labor in federal courts.[31] Its objective was to assure "that the government shall occupy a neutral position, lending its extraordinary power neither to those who would have labor unorganized nor to those who would organize

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v. District Council of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957), cert. denied, 355 U.S. 932 (1958).

[26] Textile Workers v. Lincoln Mills, 353 U.S. at 456.

[27] 370 U.S. 195 (1962).

[28] Id. at 203.

[29] Teamsters Local 174 v. Lucas Flour Co., 369 U.S. at 102.

[30] 29 U.S.C. § 141 (1965).

[31] "That there have been abuses of judicial power in granting injunctions in labor disputes is hardly open to discussion. The use of the injunction in such disputes has been growing by leaps and bounds." Comment, Quid Pro Quo in Federal Labor Law: Enforcement of the No-Strike Clause, 1963 Wis. L. Rev. 626, 631 n.29, citing S. Rep. No. 163, 72d Cong., 1st Sess. 9 (1932).

it."[32] It was hoped that by prohibiting federal courts from enjoining peaceful strikes, the Act would prevent employers from gaining an unfair advantage in labor disputes.[33] Thus protected by the Norris-LaGuardia Act and subsequent labor legislation, organized labor grew substantially[34] and improved its bargaining position with respect to management. However, in 1947, as the result of both an increasing frequency of labor disputes[35] and the common law rule in many states that labor unions were not legal entities,[36] Congress enacted Section 301 of the Taft-Hartley Act. One stated purpose of the Act was "to equalize legal responsibilities of labor organizations and employers."[37] Congress' statutory recognition of the collective-bargaining agreement as an enforceable contract was intended to promote greater responsibility between employers and unions and thereby to promote industrial peace.[38] The Supreme Court interpreted section 301 as expressing a federal policy that collective-bargaining agreements should be enforced "on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.[39]

The Court further stated that the legislative history of section 301 indicates that the agreement to arbitrate grievance disputes is the *quid pro quo* of a no-strike agreement.[40] Since collective-bargaining agreements should be enforced on behalf of or against labor unions, it would seem that the agreement to arbitrate and the no-strike agreement should each be enforced equally by the federal courts. However, this has not been the case. Although the employer's promise to arbitrate is specifically enforceable,[41] the Supreme Court has held that Section 4 of the Norris-LaGuardia Act prevents specific enforcement in federal courts of the union's no-strike promise.[42]

It is submitted that the prohibitions of Section 4 of the Norris-LaGuardia Act should not be applicable in the case of an express no-strike agreement. Breaches of no-strike contracts were probably not a major incentive in 1932 to passage of the Act, as there were at that time few labor agreements to breach.[43] Instead, the legislative history of the Norris-LaGuardia Act indicates that the act was designed to allow unions to bargain without hindrance from federal courts.[44] But there is a vast difference between protecting unions from judicial interference that might hinder their bargaining power and permitting unions effectively to breach their agree-

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[32] 75 Cong. Rec. 4915 (1932) (remarks of Senator Wagner).

[33] Witte, The Federal Anti-Injunction Act, 16 Minn. L. Rev. 638, 657 (1932).

[34] See Comment, supra note 31, at 631.

[35] 93 Cong. Rec. 3534 (1947) (remarks of Representative Hardy).

[36] See, e.g., Allis-Chalmers Co. v. Iron Molders Union 125, 150 F. 155 (E.D. Wis. 1906); see also Cleland v. Anderson, 66 Neb. 252, 92 N.W. 306 (1902).

[37] 61 Stat. 136 (1947).

[38] Textile Workers v. Lincoln Mills, 353 U.S. at 453 n.4.

[39] Id. at 455.

[40] Id.

[41] Id. at 451.

[42] Sinclair Ref. Co. v. Atkinson, 370 U.S. at 203.

[43] See Stewart, No-Strike Clauses in the Federal Courts, 59 Mich. L. Rev. 673, 678 (1962).

[44] Id. at 677-78.

ments once reached.[45] That damages are an available remedy for breaches of the no-strike contract[46] should not diminish an employer's right to effective enforcement of the no-strike promise. Moreover, the remedy of damages does not adequately compensate an employer for the incalculable harm caused by the loss of goodwill to his enterprise.[47] Additionally, the knowledge of this loss of good-will may motivate an employer to make concessions to the union to end the strike; concessions which need not be made if an injunction were available.[48]

Seemingly, then, the federal contract law should provide injunctive relief for the breach of a no-strike collective-bargaining agreement. To accomplish this result, commentators have urged either: (1) the Supreme Court accommodate section 301 and section 4 so as to allow injunctions in federal courts;[49] or (2) Congress amend Section 4 of the Norris-LaGuardia Act to permit federal courts to enjoin strikes in violation of the duty to arbitrate.[50]

It must be recognized, however, that neither of these solutions is likely to occur soon. In 1962, the Supreme Court in *Sinclair* specifically rejected the view that cases construing section 301 undermine the anti-injunction provisions of Norris-LaGuardia.[51] Although the Court spoke of the beneficial results to employers of allowing an injunction to bar breach of their collective-bargaining agreements, the Court stated that the legislative history of section 301 clearly indicated that Congress intended that the prohibitions of section 4 remain applicable.[52] The Court concluded that if any change in the law was to take place, Congress must initiate it.[53] Likewise, it seems improbable that Congress will amend Section 4 of the Act—five years have now passed since *Sinclair* without amendment. It can be hoped, however, since *Avco* now effectively denies *all* injunctive relief, that either the Supreme Court or Congress will deem it necessary to reconsider the problem.

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45 Id. at 678.

46 See Atkinson v. Sinclair Ref. Co., 370 U.S. 238 (1962).

47 See Comment, supra note 31, at 634.

48 Id.

49 See, e.g., Aaron, The Labor Injunction Reappraised, 10 U.C.L.A.L. Rev. 292, 345 (1963); Rice, A Paradox of Our National Labor Law, 34 Marq. L. Rev. 233, 253-54 (1951).

50 See, e.g., Aaron, supra note 49, at 345.

51 Sinclair Ref. Co. v. Atkinson, 370 U.S. at 213-15.

52 Id. at 205-08, 214.

53 Id. at 215.