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Labor Relations—Arbitration—Condition Precedent to an Action for Damages for Wrongful Discharge.—Woodward Iron Co. v. Ware.

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in that the nature and properties of the added ingredient would be tested by reference to the particular ingredient alone, and not in its emperic context.

This absolute construction of "harmless" has the effect of establishing a standard in which the analysis will concentrate on the color per se, rather than an examination of the effect of the use of color on the article itself.

That a legal principle, which had reigned from the earliest days of the Food and Drugs Act, would be modified by Congress without the barest explanation, that the court would change the test of adulteration by a construction based on semantics and not on economic practicalities and the history of the orange economy, and that even tolerances of "harmful ingredients" would not be allowed because of § 402(c)'s flat prohibition against the use of non-certified colors, display once again the danger of being trapped in the mire of literal ideology, and not basing a decision on a traditional rule that stands on the facts of the matter.

EDWARD F. HARRINGTON

Labor Relations—Arbitration—Condition Precedent to an Action for Damages for Wrongful Discharge.—*Woodward Iron Co. v. Ware.*[1]— A discharged employee brought an action at law for breach of his employment contract. He had not submitted his grievance to the union within five days, as provided by the collective bargaining agreement. He alleged that his discharge violated terms of the collective bargaining agreement which were incorporated into his employment contract. Judgment was rendered for the plaintiff. On appeal, affirmed; primary resort to grievance procedure is unnecessary where the employee elects to consider his discharge as final and he seeks damages rather than reinstatement.

Courts are divided on the question whether exhaustion of grievance machinery is a condition precedent to an action at law in discharge cases. At common law contracts to arbitrate were revocable.[2] Seemingly, courts which do not require exhaustion of grievance procedures are perpetuating this common law rule in the field of labor relations.[3] Other courts have adopted the view that public policy favors the arbitration device and therefore, where the right to damages for wrongful discharge is dependent upon a collective bargaining agreement, contractual remedies must be exhausted before judicial remedies will be available.[4] Under the latter view judicial relief is available, however, when the union is hostile to the claim of an

1 261 F.2d 138, 142 (5th Cir., 1958). The case had been removed from the Alabama courts on the basis of diversity of citizenship.

2 Simpson, Specific Enforcement of Arbitration Contracts, 83 U. Pa. L. Rev. 160 (1934).

3 Lammond v. Aleo Manufacturing Co., 243 N.C. 749, 92 S.E.2d 143 (1956).

4 Jorgenson v. Pennsylvania R.R. Co., 25 N.J. 541, 138 A.2d 24 (1958); Payne v. Pullman Co., 13 Ill. App. 2d 105, 141 N.E.2d 83 (1957); Williams v. Pacific Electric R.R. Co., 147 Cal. App. 2d 1, 304 P.2d 715 (App. Div. 2d D 1956).

aggrieved employee, since the employee is unable to prosecute his own claim under the usual collective bargaining agreement.[5]

While no Alabama decisions have been found in direct conflict with that of the principal case, yet dictum in *Alabama Power Co. v. Haygood*,[6] not cited in the principal case, indicates that the Alabama courts would require exhaustion of the grievance procedure. It seems unfortunate that the federal court did not follow that decision. It is submitted that union security is promoted by requiring union members to process their grievances through the union, and that this security generally leads to better union-company relations. The danger of a union's arbitrarily refusing to process grievances is minimized by dispensing with the requirement when the union is hostile to the employee's claims.

CHARLES C. WINCHESTER, JR.

Landlord and Tenant—Payment of Increased Taxes on Lessee's Improvements—Doctrine of Waste—*The Crew Corp. v. Feiler*.[1]—The plaintiff leased premises for a term of fifteen years with an option to buy in the lessee. By the terms of the lease, the lessor agreed to pay municipal real estate taxes. There was no express provision authorizing the lessee to make alterations or improvements. Soon after the execution of the lease, the lessee made certain improvements to the building, changing its characteristics from an industrial to an office building, as a result of which the valuation of the property was increased, resulting in increased taxes in the amount of $2,700. The lessor brought suit against the lessee to recover the amount paid in increased taxes. The Trial Court granted summary judgment for the lessee. The Appellate Division of the Superior Court affirmed and on appeal the Supreme Court of New Jersey reversed and remanded. HELD: That while the parties are free to make whatever agreement they please, an unqualified covenant to pay real estate taxes means that the covenantor is required to make tax payments based on (1) the value of the leased premises as they existed at the time of the lease, and (2) such increases in value as reflect improvement made by the lessee under the authority of the lease or authority of law. Since as a matter of construction the improvements were not authorized by the lease, the question was whether they were authorized by law. In answering this question in the negative the court found that the lessee's acts constituted waste and, therefore, were not performed under authority of law.

In reaching its decision, the first problem with which the court was faced was to ascertain the intent of the parties through a construction of the covenant to pay taxes. In this respect where the lease is silent as to

[5] Alabama Power Co. v. Haygood, 266 Ala. 194, 95 So.2d 98 (1957); Jorgenson v. Pennsylvania R.R. Co., supra note 4; Pattenge v. Wagner Iron Works, 275 Wis. 495, 82 N.W.2d 172 (1957); United Protective Workers of America v. Ford Motor Co., 194 F.2d 997, 1002 (7th Cir., 1952).

[6] 266 Ala. 194, 95 So.2d 98 (1957).

[1] 28 N.J. 316, 146 A.2d 458 (1958).