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Labor Law—Railway Labor Act—Procedure for Settlement of Minor Disputes.— Brotherhood of Locomotive Eng'rs v. Louisville & N.R R

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section 14(b) deals *only with the actual negotiation and execution* of agreements proscribed by state law, whereas the enjoining of any conduct which the State finds *has a tendency* to bring about the execution of a union-security contract remains exclusively in the federal domain.[41] This interpretation would result in the incongruous possibility that a State might enjoin an employer from executing a union-security contract proscribed by state law, yet the State would be powerless to prevent a union from exercising economic pressures, such as picketing, to compel the employer to violate the state court's decree.[42]

The Court's line separating federal and state power is a tenuous one, at best, and it may take several more decisions before the demarcation line is clearly and conclusively established. In defense of the Court, it is submitted that, by enacting section 14(b), Congress did not intend to allow states *only* to enact substantive law prohibiting union-security contracts while reserving the enforcement of such laws to a federal agency; thus, the Court was correct in ruling that states may enforce their right-to-work laws. On the other hand, if the Court concluded that states *also* had the power to enjoin activity such as picketing, which might eventually *lead* to a violation of a state's right-to-work law, then it would have had to overrule the many cases in which it had previously held that a state cannot interfere with the exercise of the federal right to engage in strikes, peaceful picketing or other concerted activities.[43] Consequently, the line of demarcation drawn by the Court, while tenuous, is perhaps a most practical one.

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Labor Law—Railway Labor Act—Procedure for Settlement of Minor Disputes.—*Brotherhood of Locomotive Eng'rs v. Louisville & N.R.R.*[1]— Injunctive relief was sought by the railroad to enjoin a strike threatened by the union to enforce an award granted to the union by the National Railroad Adjustment Board under the provisions of the Railway Labor Act.[2] An employee of the railroad had been fired for misconduct and his union protested. Confronted with a strike, the railroad submitted the dispute to the Adjustment Board,[3] which rendered an award ordering the railroad to rein-

[41] Ibid.

[42] Reply Brief for Petitioner on Reargument, Retail Clerks Int'l Ass'n, Local 1625 v. Schermerhorn, supra note 16, p. 21.

[43] E.g., Farnsworth & Chambers Co. v. Local Union 429, 201 Tenn. 329, 299 S.W.2d 8 (1957), rev'd, 353 U.S. 969 (1957); Local Union 438, Constr. & Gen. Laborers' Union v. Curry, 371 U.S. 542 (1963).

[1] 373 U.S. 33 (1963).

[2] 44 Stat. 587 (1934), 45 U.S.C. §§ 153-159 (1958). Section 151(a) provides: The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; . . . (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

[3] 44 Stat. 587 (1934), 45 U.S.C. § 153 First(i):

state the employee with pay for time lost.[4] A further dispute developed when the railroad refused to accede to the union's demand for full back pay without deduction of outside income of the employee, and the union threatened to strike. The union insisted that the provisions of the Norris-LaGuardia Act[5] militated against the issuance of an injunction to enjoin the threatened

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> The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

Section 153 First relates only to so-called "minor" disputes, to be distinguished from major disputes.

> The [latter] present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic that the Act sought to avoid. Because they more often involve those consequences and because they seek to create rather than to enforce contractual rights, they have been left for settlement entirely to the processes of noncompulsory adjustment.
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> The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of employment.

Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 723-24 (1945). See Comment, 60 Colum. L. Rev. 381 (1960).

[4] 44 Stat. 587 (1934), 45 U.S.C. § 153 First(m) and (o).

> (m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award . . . .
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> (o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

[5] 47 Stat. 70 (1932), 29 U.S.C. §§ 101-115 (1958). The public policy of the Act is declared in § 102:

> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing; to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

Section 101 states:

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with

strike, that the mechanism for judicial enforcement of such awards provided under the RLA[6] was not mandatory, and that it did not preclude resort to economic self-help. The district court[7] granted the injunction and the court of appeals affirmed.[8] On certiorari to the Supreme Court, HELD: The issuance of the injunction was proper. The legislative history of the RLA indicates a clear purpose that the statutory grievance procedure of section 153 First was to provide a "mandatory, exclusive, and comprehensive system for resolving grievance disputes." The grievance procedures were designed as a compulsory substitute for self-help, and not merely as a voluntary alternative to it. To prevent emasculation of the grievance procedure, the general provisions of the Norris-LaGuardia Act must be accommodated to the later and more specific provisions of the RLA.

The dissenting opinion of Mr. Justice Goldberg contended that since money awards of the Adjustment Board are expressly not final and binding, they are not within the compulsory arbitration scheme of the grievance procedure. Injunctions against strikes protesting a denial of a money award, or attempting to enforce the allowance of a money award, should not be granted in view of the imbalance thereby created in the operation of the grievance procedure. There is no provision for judicial review of a denial of a money award to an employee while the carrier is given another opportunity to challenge the validity of an adverse money award in a de novo proceeding.[9] He concluded that to deprive the unions of the right to strike in these instances deprives them of their most vital weapon without substituting a fair and adequate grievance procedure.[10]

Section 153 First does not expressly provide for the repeal of incon-

the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

[6] 44 Stat. 587 (1934), 45 U.S.C. § 153 First(p):

If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings . . . .

[7] 190 F. Supp. 829 (W.D. Ky. 1961).

[8] 297 F.2d 608 (6th Cir. 1961).

[9] Section 153 First(p), supra note 6. The reasoning here is that since the carrier can refuse to comply with the money award of the Adjustment Board, the employee or union is forced to invoke judicial enforcement of the award under (p). Thus, the carrier can actually instigate judicial review in a de novo proceeding.

[10] The decision in Brotherhood of R.R. Trainmen v. Chicago River & I.R.R., 353 U.S. 30 (1957), relied on heavily by the Court in the principal case, had affirmed the allowance of an injunction against a threatened strike on the ground that the grievance machinery provided by section 153 First was a reasonable substitute for the union's right to strike.

sistent provisions of the Norris-LaGuardia Act[11] if such provisions would hinder the effectiveness of the policy supporting the RLA. A number of injunctions have been issued under the RLA to effectuate the design of that Act, although the injunctions granted were not to restrain a strike as in the principal case, but were granted to prevent the enforcement of discriminatory agreements between unions and carriers,[12] and to compel a carrier to deal with a union as the carrier's employees' accredited representative.[13]

Apparently, the first case in which an injunction was issued to enjoin a threatened strike where section 153 was applicable was *Brotherhood of R.R. Trainmen v. Chicago River & I.R.R.*[14] An injunction was granted restraining the union from proceeding with a threatened strike pending a decision of the Adjustment Board on a grievance submitted to it by the railroad. The Court ruled that in the light of the legislative intent in creating the Adjustment Board, the more general provisions of the Norris-LaGuardia Act should be accommodated to the specific grievance procedure of section 153.[15]

While there had been a paucity of cases dealing with injunctive relief against threatened strikes under section 153 prior to the decision in *Chicago River*,[16] the decisions of the courts in this area evidence a single-mindedness in giving maximum effect to section 153's capacity to settle minor disputes, exclusive of other methods available to the parties. Thus, a carrier has been denied the right to bring a suit for declaratory judgment nullifying an award of the Adjustment Board,[17] and suits brought by employees or unions after a denial of an award by the Adjustment Board on the same controversy have been dismissed, either on the ground that the decision of the Board was res judicata, or on principles of election of remedies.[18] The courts would

[11] See Hearings on S. 3266 before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934). The Court relied on the hearings on the 1934 Amendment to the Railway Labor Act, creating the National Adjustment Board, to support its contention that the grievance machinery was intended as an exclusive means of settling minor disputes, and that injunctions could issue to this end. However, nowhere in the Hearings was Norris-LaGuardia specifically mentioned.

[12] Brotherhood of R.R. Trainmen v. Howard, 343 U.S. 768 (1952); Graham v. Brotherhood of L.F. & E., 338 U.S. 232 (1949); Steele v. Louisville & N.R.R., 323 U.S. 192 (1944); Turnstile v. Brotherhood of L.F. & E., 323 U.S. 210 (1944). These cases did not arise under section 153 First, but under sections 154-155 dealing with the National Mediation Board.

[13] Virginia Ry. v. Federation No. 40, Ry. Employees, 300 U.S. 515 (1937) (provisions of RLA supersede those of Norris-LaGuardia). Here also, the injunction was not issued under section 153 First.

[14] Supra note 10.

[15] Id. at 41-42.

[16] There have been a number of cases after *Chicago River* in which the courts have stated that injunctions to restrain strikes could be granted. See e.g., Brotherhood of Locomotive Eng'rs v. Missouri-Kan.-Tex. R.R., 363 U.S. 528 (1960); Order of R.R. Tel. v. Chicago & Nw. Ry., 362 U.S. 330 (1960) (dictum); Rutland Ry. v. Brotherhood of Locomotive Eng'rs, 307 F.2d 21 (2d Cir. 1962) (dictum).

[17] Washington Terminal Co. v. Boswell, 124 F.2d 235 (D.C. Cir. 1941).

[18] Barnett v. Pennsylvania R. Seashore Lines, 245 F.2d 579 (3d Cir. 1957); Bower v. Eastern Airlines, 214 F.2d 623 (3d Cir. 1954); Michel v. Louisville & N. Ry., 188 F.2d 224 (5th Cir. 1951); Nashville, C. & St. L. Ry., 75 F. Supp. 737 (E.D.

not allow collateral proceedings to challenge the jurisdiction of the Board.[19]

The creation of the Adjustment Board and the grievance procedures established in section 153[20] are peculiar with regard to general labor-management relations. The RLA, and the courts' interpretation of it, were in response to the importance of settling minor disputes without disruptive strikes and work stoppages in this vital national industry.[21] It has been only in the railway industry that anti-strike injunctions have been allowed contrary to the provisions of the Norris-LaGuardia Act. There has been a general policy development[22] that labor disputes arising under interpretation of existing collective bargaining agreements, be settled through conference and negotiation by the parties. The apparent judicial development of this federal policy in relation to the court enforced arbitration provisions of collective bargaining agreements was arrested, however, by the decision in *Sinclair Ref. Co. v. Atkinson*.[23] In *Sinclair*, the Court ruled the Norris-LaGuardia

Tenn. 1948); Ramsey v. Chesapeake & O.R.R., 75 F. Supp. 740 (N.D. Ohio 1948); Berryman v. Pullman Co., 48 F. Supp. 542 (W.D. Mo. 1942).

[19] But see, Moore v. Illinois Cent. R.R., 312 U.S. 630 (1941), where the Court upheld a suit for wrongful discharge brought by an employee in a federal district court, since the procedures of section 153 First had not been invoked. Accord, Manion v. Kansas City Terminal Co., 353 U.S. 927 (1957) (per curiam).

[20] Supra notes 3, 4, 6.

[21] The legislative history of the RLA is covered in the *Elgin* case, supra note 3, and in *Chicago River*, supra note 10.

[22] United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); Textile Workers of America v. Lincoln Mills, 353 U.S. 448 (1957). (The Steelworker cases are hereinafter referred to as the Trilogy.) These suits were brought under the Labor Management Relations Act (Taft-Hartley Act) 61 Stat. §§ 156-158 (1947), 29 U.S.C. §§ 185-187 (1958), specifically under sections 301(a) and (b) which provide:

> (a) 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.
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> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

The Court in these cases granted injunctions to the unions to compel the employers to arbitrate disputes as provided for in the collective bargaining agreements, and refused to review the merits of the controversies. The agreement to arbitrate was found to be the quid pro quo for the unions' "no strike" clause in the agreement. *Lincoln Mills*, supra, at 455. See generally, 14 Lab. L.J. 564 (1963); 18 Arb. J. 65 (1963).

[23] 370 U.S. 195 (1962). The Court affirmed the denial of an injunction against a strike by the employees, alleged to be in violation of the collective bargaining agreement containing a "no strike" clause and providing a grievance procedure culminating in final and binding arbitration of any differences regarding wages, hours or working

Act to be still applicable, indicating that while Norris-La Guardia may be detrimental to the success of the Labor Management Relations Act (hereinafter LMRA), the history of LMRA showed an intent that Norris-LaGuardia was not to be repealed thereby.[24]

The Court in *Sinclair* distinguished *Chicago River* on the ground that in the latter there was an exclusive method of settling disputes under Section 153 of the RLA, while in the former there was no such machinery provided that would be inconsistent with the Norris-LaGuardia Act's proscription of federal labor injunctions against strikes and peaceful picketing.[25] The Court indicated in *Sinclair*, however, that there were weighty arguments in favor of modifying Norris-LaGuardia to accommodate Section 301 of LMRA, but that such modifications were properly a subject of congressional action.[26]

It has been suggested,[27] and it is submitted here, that the policies which the Court has promoted under the RLA, and the accommodation of Norris-LaGuardia which that policy has necessitated could be equally applied to disputes coming before the courts under Section 301 of LMRA. The decision in the principal case lends credence to this proposition. The case follows the trend of the Court regarding the settlement of minor disputes arising under Section 153 of the RLA. The scope and explicitness of the grievance machinery and the finality accorded to the awards of the Adjustment Board under section 153 have been the foundation on which the Court has premised its power to grant injunctions restraining strikes in applicable situations, and conversely, the lack of such explicit machinery has been the alleged obstruction to the Court acting in an analogous manner under Section 301 of LMRA. However, Section 153 First(m) of the RLA expressly indicates that money awards are not final and binding. Therefore, these awards should not be within the compulsory arbitration scheme of the statute. The Court still allowed the injunction in the principal case, even though a money award was involved, on the basis that the enforcement machinery of section 153 First(p) was available to the union, and to allow a strike at this juncture would contravene the settlement process which Congress expressly required to be followed. It may be contended that Section 301 of LMRA also provides a settlement process[28] for disputes concerning interpretation of collective bargaining agreements, and strikes allowed when section 301 has been invoked equally contravene the settlement process provided by Congress.

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conditions. The Court distinguished *Lincoln Mills* and the *Trilogy* since the injunctions to compel the employer to arbitrate did not enjoin conduct which Norris-La Guardia specifically withdrew from the jurisdiction of federal courts as in this case.

[24] Id. at 213. See NLRB Legislative History of the Labor Management Relations Act, 1947. It should be noted, however, that in the debates on LMRA, section 301 was not expressly considered in relation to Norris-LaGuardia.

[25] Id. at 211.

[26] Id. at 213-14. For criticism of the *Sinclair* decision see Kovarsky, Unfair Labor Practices, Individual Rights and Section 301, 16 Vand. L. Rev. 595 (1963); Note, 63 Duke L.J. 189 (1963).

[27] Comment, 70 Yale L.J. 70 (1961).

[28] Supra note 22.

It is admitted that the legislative history of the RLA provides a firmer basis for accommodating Norris-LaGuardia, since no preference was shown therein either for allowing or denying the issuance of injunctions. The legislative history of LMRA indicates at least a reluctance to allow injunctions in the face of Norris-LaGuardia. However, the unavoidable inference of the decision in the principal case is that the Court was determined to effect a sweeping compulsory arbitration process under Section 153 of the RLA, despite the statutory language as to the non-finality of money awards. Under similar circumstances and statutory provisions, the Court in *Sinclair* refused to make a parallel policy determination on the ground that such determinations were properly a legislative matter.

The Court's decision in the principal case amounts to judicial legislation in the area of railway labor-management relations, which the Court has refused to exercise in other areas of labor-management relations. This contention is further substantiated by the Court's interpretation of section 153 First(m) and (p). Until the decision in the principal case, it appears that both courts and commentators had not differentiated between money and non-money awards of the Adjustment Board.[29] The Court in the principal case ruled inferentially that subsection (p) referred only to enforcement of money awards. The dissent expressly stated this to be the proper construction.[30] Such being the case, a further problem is precipitated as to what method is provided for enforcement of non-money awards which would be final and binding. There is no provision in section 153 for enforcing such awards on the summary basis that would apparently be required.[31]

Evidently, the Court was so concerned with preserving the integrity of section 153's compulsory arbitration scheme that it failed to see the dilemma it was creating.[32] The status of the grievance machinery after the decision

[29] Brotherhood of Ry. & S.S. Clerks v. Atlantic Coast Line R.R., 253 F.2d 753 (4th Cir. 1958); Boos v. Railway Express Agency, 253 F.2d 896 (8th Cir. 1958); Thomas v. New York Cent. & St. L.R.R., 185 F.2d 614 (6th Cir. 1950); Dahlberg v. Pittsburg & L.E.R.R., 138 F.2d 121 (3d Cir. 1943); Hanson v. Chesapeake & O. Ry., 198 F. Supp. 325 (S.D. W. Va. 1961). Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L.J. 567 (1937); Note, 72 Harv. L. Rev. 354 (1958). See Brief for Petitioner Union, p. 12; Brief for Respondent Railroad, p. 16.

[30] This construction is in keeping with the prior decisions of the Court that non-money awards are final and binding, and effectuates an adequately sanctioned compulsory arbitration scheme, since, if a de novo proceeding was required to enforce all awards, litigation would likely be endless and prompt settlement of disputes virtually impossible.

[31] Compare 44 Stat. 587 (1934), 45 U.S.C. § 159 First, Second and Third (a), (b) and (c) (1958) which provide for summary enforcement of an arbitrator's decision; such arbitration resulting from the parties' own agreement as to the settlement of disputes.

[32] Mr. Justice Goldberg's dissent indicated that he thought that enforcement of non-money awards would be accomplished summarily and not in a de novo proceeding. He referred to International Ass'n of Machinists, AFL-CIO v. Central Airlines, 372 U.S. 682 (1963) to support this proposition. However, that case did not provide for summary enforcement of awards. It simply held that a federal district court had jurisdiction to hear a suit for enforcement of an award granted by a system board, created on parallel lines to adjustment boards, to hear airline labor disputes. The Court suggested that the decisions of the system board be given great weight in the enforcement proceedings in the district court, but did not definitively indicate what weight.

of the principal case would appear to be as follows: (1) The decisions of the Adjustment Board regarding non-money grievances are final and binding on both parties;[33] (2) disputes involving money grievances are final and binding if the union's claim is denied;[34] but (3) if the union is granted a money award, the railroad can expect judicial review in a de novo proceeding, by failing to comply with the order of the Board.[35] The principal case completes the scheme by prohibiting strikes at any stage of the proceedings once the grievance machinery has been invoked.

There is an obvious imbalance in the grievance procedure accruing to the benefit of the railroads. It has been contended that this imbalance raises questions of constitutional magnitude,[36] and as the dissent in the principal case indicates, deprives the union of a valuable weapon—the threat of a strike—in the settlement of minor disputes, without substituting an equitable grievance procedure.

It may be granted that the policy which the Court has pursued under section 153 is a salutary one, since to allow a strike at this stage of the grievance procedure would effectively defeat the value of the section by removing a compelling incentive to the settlement of minor disputes on the property, notwithstanding the Court's reluctance to act in an analogous manner in similar disputes arising under Section 301 of LMRA. Yet, the Court has, in effect, attempted to judicially legislate in the area of railway labor-management relations. This attempt, developing as it must on a case to case basis, has resulted in inconsistencies and imbalances, and has created rights without remedies. This result appears to have been caused by vague and indefinite legislation on the one hand, and a too purposeful endeavor on the part of the Court to promote its scheme of labor-management relations in this limited area. It would appear that the RLA should be reviewed by the Congress and amended in order to effectuate its policy in an orderly and equitable manner.

JOSEPH L. DE AMBROSE

Labor Law—Secondary Boycotts—Hot Cargo Clauses—*Local 48, Sheet Metal Workers v. Hardy Corp.*[1]—Plaintiff Union brought an action in the district court for damages and injunctive relief to require defendant construction company to comply with the terms of the hot cargo clause contained in the collective bargaining agreement.[2] In arbitration proceedings

[33] Supra notes 17, 18.

[34] Union Pac. R.R. v. Price, 360 U.S. 601 (1959) (Adjustment Board's denial of a money award was not a money award within the meaning of the statute and was not therefore final and binding).

[35] Supra notes 6, 9.

[36] See Pennsylvania R.R. v. Day, 360 U.S. 548 (1959) (dissenting opinion); Union Pac. R.R. v. Price, supra note 34 (dissenting opinion).

[1] 218 F. Supp. 556 (D.C. Ala. 1963).

[2] Article II, Section 1 of the collective bargaining agreement reads:
No employer shall subcontract or assign any of the work described herein which is to be performed at the job site to any contractor, subcontractor or other