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What Happens to Unresolved Grievances When the Grievance Procedure Does Not Provide for Binding Arbitration?

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What happens to unresolved grievances when the grievance procedure does not provide for binding arbitration?

by Jay E. Grenig

Arthur Groves, Bobby J. Evans and Local 771, International Union UAW
v.
Ring Screw Works, Ferndale Fastener Division
(Docket No. 89-1166)

Argument Date: Oct. 10, 1990

ISSUE

In this case the Supreme Court is asked to determine whether a discharged employee can seek to enforce a collective bargaining agreement in court under Section 301 of the Federal Labor Management Relations where the collective bargaining agreement does not provide for final and binding arbitration.

FACTS

In 1985, Arthur Groves and Bobby Evans were discharged by Ring Screw Works. Both were represented by Local 771 of the UAW. The union and the employer had negotiated a collective bargaining agreement that included a five-step grievance procedure. The grievance procedure provided that the parties would attempt to settle their differences in the first four steps. If the grievance remained unresolved at the conclusion of the fourth step, the union and the employer could call in an outside representative to assist in settling the difficultly. This could "include arbitration by mutual agreement in discharge cases only." If the dispute was not resolved at step five, the parties agreed that the union's no-strike pledge and the employer's no-lockout pledge in the agreement would not be applicable.

After Evans and Groves were discharged, discussions were conducted under the collective bargaining agreement's grievance procedure. The discussions did not result in settlement of the grievances, and the employer refused the union's offer to take both cases to binding arbitration.

Evans, Groves, and the union then filed suit, claiming that the employer had breached the collective bargaining agreement by discharging Evans and Groves without just cause. In an unreported opinion, the U.S. District Court for the Eastern District of Michigan, Southern Division, entered summary judgment in favor of the employer on the ground that the plaintiffs were bound by the result of the grievance procedures and could not seek judicial enforcement of the collective bargaining agreements in the absence of proof that the union had violated its duty of fair representation. The U.S. Court of Appeals for the Sixth Circuit affirmed the decision. (822 F.2d 1061.) Groves, Evans, and the union then sought review by the U.S. Supreme Court.

BACKGROUND AND SIGNIFICANCE

Section 301(a) of the Labor Management Relations Act (29 U.S.C. § 185(a)) provides that "[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States." Section 203(d) of the LMRA states that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

In *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), the U.S. Supreme Court held that the substantive law to be applied in suits brought under Section 301(a) was federal law, which the courts must fashion from looking at the policy of the legislation. The Court later held that the national labor policy embodied in Section 203(d) could be effectuated only if the means chosen by the parties for settlement of their differences under the collective bargaining agreement was given full play.

The Court in *Vaca v. Sipes*, 386 U.S. 171 (1967), recognized two exceptions to this finality rule. First, an employee can bring an action for breach of a collective bargaining agreement against the employer, provided the employee can prove the union breached its duty of fair representation in the handling of the grievance. Second, the finality rule is inapplicable when the grievance procedure has been repudiated by the employer.

Arbitration clauses are the most common provisions in labor agreements for final adjustment of grievances. The strike/lockout provision included by the parties here is less common. The Supreme Court is now called upon to determine whether the finality rule applies to a grievance procedure that does not culminate in final and binding arbitration.

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The federal courts of appeals have not agreed on the applicability of the finality rule to grievance procedures that do not culminate in final and binding arbitration. In *Associated General Contractors v. Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), the Seventh Circuit held that, while it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable, it is quite a different matter to construe a contract provision reserving the union's right to resort to economic recourse as an agreement to divest the courts of jurisdiction to resolve whatever dispute may arise. The Ninth Circuit followed the lead of the Seventh Circuit in *Dickeson v. DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987).

However, in *Fortune v. National Twist Drill*, 684 F.2d 374 (6th Cir. 1982), the Sixth Circuit stated that in the absence of a contractual provision for arbitration there is no authority for the proposition that the federal courts have the power to break a deadlock dispute over a grievance. The court relied on the policy of Section 203(d) that, in settling grievances, the method chosen by the parties should be adhered to. It also held that an employee is bound by the remedies that are bargained for by his or her representative.

If the Supreme Court rules in favor of the employer, then a union's ultimate recourse will be a test of economic strength when an agreed-upon grievance procedure does not culminate in final and binding arbitration. If the Supreme Court rules in favor of the union and the employees, then the courts may be called upon to resolve grievances where the parties have not agreed to final and binding arbitration.

ARGUMENTS

For Arthur Groves, Bobby J. Evans, and Local 771, International Union UAW *(Counsel of Record, Laurence Gold, 815 16th Street, N.W., Washington, D.C. 20006; telephone (202) 637-5290):*

1. It should be wholly antithetical to the policies underlying Section 301 to construe an agreement that simply permits the use of economic force as precluding judicial enforcement.
2. The principal purpose of Section 301(a) is to give the federal courts the power to enforce collective bargaining agreements.
3. In contrast to arbitration, the strike and lockout are wholly unlike judicial enforcement of a contract and cannot be implied to be a substitute for it.
4. The principle that an employee is bound by the remedies that are bargained for by his or her representative does not apply, where the agreement does not, expressly or by fair implication of fact or law, bar the judicial remedy provided by Section 301(a).

For Ring Screw Works, Ferndale Fastener Division *(Counsel of Record, Terence V. Page; Clark, Hardy, Lewis, Pollard and Page, P.C., 401 South Woodward Ave., Suite 400, Birmingham, MI 48009; telephone (313) 645-0800):*

1. Section 301 was never intended to provide an aggrieved employee and his or her union the opportunity to resurrect the grievance before the court if the end result of the bargained-for dispute resolution contained in the collective bargaining agreement is not to his or her liking.
2. The method of dispute resolution contained in the collective bargaining agreement is the final, binding and exclusive remedy of the parties, whether or not the agreement contains explicit finality language.
3. Any collective bargaining agreement containing a dispute resolution process culminating in the right to strike evinces the intent of the parties to reject outside adjudication absent qualifying language to the contrary.

AMICUS BRIEFS

In Support of Ring Screw Works, Ferndale Fastener Division

1. The Motor Vehicle Manufacturers Association of the United States, Inc. *(Counsel of Record, James D. Holzhauer; Mayer, Brown & Platt; 2000 Pennsylvania Ave., Washington, DC 20006; telephone (202) 463-2000).*
2. The Chamber of Commerce of the United States *(Counsel of Record, Robin S. Conrad; National Chamber Litigation Center, Inc., 1615 H St., N.W., Washington, DC 20062; telephone (202) 463-5337).*