

# NOTES

## UNION ENFORCEMENT OF EMPLOYEE RIGHTS UNDER §301(a) OF THE TAFT-HARTLEY ACT\*

JUDICIAL enforcement of collective bargaining agreements is one of the unsettled areas of labor law.<sup>1</sup> Such agreements are now generally held to be valid and enforceable as contracts,<sup>2</sup> and both unions and employees have been permitted, in some instances, to enforce them. Usually, employees may enforce those provisions which are primarily for their benefit,<sup>3</sup> either on an

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\**Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623 (3d Cir. 1954), *cert. granted*, 22 U.S.L. Week 3325, No. 725 (U.S. June 8, 1954).

1. See, generally, 1 TELLER, *LABOR DISPUTES AND COLLECTIVE BARGAINING* §154 *et seq.* (1940); Anderson, *Collective Bargaining Agreements*, 15 ORE. L. REV. 229 (1936); Christenson, *Legally Enforceable Interests in American Labor Union Working Agreements*, 9 IND. L.J. 69 (1933); Hamilton, *Individual Rights Arising from Collective Labor Contracts*, 3 MO. L. REV. 252 (1938); Kaye and Allen, *Union Responsibility and the Enforcement of Collective Bargaining Agreements*, 30 B.U.L. REV. 1 (1950); Lenhoff, *The Present Status of Collective Contracts in the American Legal System*, 39 MICH. L. REV. 1109 (1941); Rice, *Collective Labor Agreements in American Law*, 44 HARV. L. REV. 572 (1931); Wallace, *The Contract Cause of Action under the Taft-Hartley Act*, 16 BROOKLYN L. REV. 1 (1949); Witmer, *Collective Labor Agreements in the Courts*, 48 YALE L.J. 195 (1938).

2. Collective bargaining agreements are generally treated as contracts. Witmer, *supra* note 1, at 195; Gregory, *The Collective Bargaining Agreement: Its Nature and Scope*, 1 LAB. L.J. 451, 455 (1950). Congress apparently considered them as such when it passed the Labor Management Relations Act of 1947. Section 301(a) begins, "Suits for violation of contracts between an employer and a labor organization. . ." 61 STAT. 156 (1947), 29 U.S.C. §185(a) (Supp. 1952), and the House and Senate committee reports refer to collective bargaining agreements as contracts. SEN. REP. No. 105, 80th Cong., 1st Sess. 17 (1947); H.R. REP. No. 245, 80th Cong., 1st Sess. 45 (1947).

As contracts, they are generally held to be valid and enforceable. 1 TELLER, *op. cit. supra* note 1, §163; Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 274, 305 (1948); Witmer, *supra* note 1, at 199.

However, it is still uncertain whether collective bargaining agreements are enforceable in all states either as contracts or otherwise. See 2 TELLER, *op. cit. supra*, at 176 (Supp. 1950); MATHEWS, *LABOR RELATIONS AND THE LAW* 309 (1953); Cox, *supra*, at 304. Some recent cases have held that collective bargaining agreements are not enforceable because they are "lacking in mutuality." *Roberts v. Thompson*, 107 F. Supp. 775 (E.D. Ark. 1952) (applying Arkansas law); *Petty v. Missouri & Arkansas Ry.*, 205 Ark. 990, 167 S.W.2d 895 (1943).

3. Employees have not been permitted to enforce those provisions deemed to be for the benefit of the union. *MacKay v. Loew's, Inc.*, 182 F.2d 170 (9th Cir.), *cert. denied*, 340 U.S. 828 (1950) (employee may not enforce closed shop provision); *Volquardsen v. Southern Amusement Co.*, 156 So. 678 (La. App. 1934) (employee "is limited to enforcement of his individual rights under the contract"); *cf. Milk Wagon Drivers Union v. Associated Milk Dealers, Inc.*, 42 F. Supp. 584, 585 (N.D. Ill. 1941).

agency<sup>4</sup> or a third party beneficiary<sup>5</sup> theory.<sup>6</sup> However, courts have generally had more difficulty with suits by or against the union. This is due in part to the prevalent common law idea that unions, as unincorporated associations, are not legal entities and can neither sue nor be sued.<sup>7</sup> And even when the union has capacity to sue, it has not been established precisely how much of the collective bargaining agreement it can enforce. It seems clear that the union may enforce provisions which are primarily for its own benefit, such as closed shop and check-off clauses.<sup>8</sup> But it is still uncertain whether the union may sue on behalf of employees whom it represents to enforce those terms of

4. See, e.g., *Mueller v. Chicago & N.W. Ry.*, 194 Minn. 83, 259 N.W. 798 (1935); *Christiansen v. Local 680*, 126 N.J. Eq. 508, 10 A.2d 168 (1940); see *Meltzer v. Kaminer*, 131 Misc. 813, 815, 227 N.Y. Supp. 459, 461 (Sup. Ct. 1927). See also 1 TELLER, *op. cit. supra* note 1, § 167; Warns, *The Nature of the Collective Bargaining Agreement*, 3 MIAMI L.Q. 235, 237 (1949).

5. See, e.g., *Moore v. Illinois Cent. R.R.*, 24 F. Supp. 731 (S.D. Miss. 1938); *Yazoo & M.V.R.R. v. Sideboard*, 161 Miss. 4, 133 So. 669 (1931); *Gulla v. Barton*, 164 App. Div. 293, 149 N.Y. Supp. 952 (3d Dep't 1914); cf. *Amalgamated Meat Cutters v. Safeway Stores, Inc.*, 23 L.R.R.M. 2525 (D. Colo. 1949). See also 1 TELLER, *op. cit. supra* note 1, § 168; Warns, *supra* note 3, at 237-9; but cf. *Joint Council Dining Car Employees Local 370 v. New York Central R.R.*, 7 F.R.D. 376 (N.D. Ill. 1946); *Milk Wagon Drivers Union v. Associated Milk Dealers, Inc.*, 42 F. Supp. 584, 585 (N.D. Ill. 1941). This theory seems to be predominant today. Note, 18 A.L.R.2d 352, 361 (1951).

6. A third theory, the usage theory, was formerly used by many courts to allow suits by employees. Under this theory, the terms of the collective bargaining agreement established usages which were incorporated by reference into the individual hiring contracts. Employees sued on these individual contracts to enforce their rights, not on the collective agreement. 1 TELLER, *op. cit. supra* note 1, § 159; Rice, *supra* note 1, at 581 *et seq.*; Anderson, *supra* note 1, at 236.

7. 2 TELLER, *op. cit. supra* note 1, §§ 462-7.

In *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344 (1922), the Supreme Court held that an unincorporated labor union could be sued in its own name for violation of the Sherman Act. FED. R. CIV. P. 17(b) codified the *Coronado* case and provided that, despite an unincorporated association's lack of capacity to sue and to be sued in state courts, it could sue and be sued in the federal courts for the purpose of enforcing a federal substantive right. Finally, under § 301(b) of the Labor Management Relations Act of 1947, see note 12 *infra*, FED. R. CIV. P. 17(b) was extended by making unions which represent employees in an industry affecting commerce legal entities with capacity to sue and to be sued in the federal courts. *Rock Drilling Local Union v. Mason & Hanger Co.*, 90 F. Supp. 539, 542 (S.D.N.Y. 1950). See 3 MOORE, FEDERAL PRACTICE ¶ 17.25 (2d. ed. 1948); Witmer, *Trade Union Liability: The Problem of the Unincorporated Association*, 51 YALE L.J. 40 (1941).

Most states now allow suits by or against unions, either by statutory revision of the common law rule or by use of the class suit device. 2 TELLER, *supra*, §§ 464-7. However, there are still some states in which the common law rule has not been changed, and it is therefore difficult for a union to sue or to be sued, and to recover a judgment from union funds. SEN. REP. No. 105, 80th Cong., 1st Sess. 15-17 (1947); H.R. REP. No. 245, 80th Cong., 1st Sess. 108-110 (1947) (minority report).

8. *Textile Workers Union v. American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953) (arbitration provision); *Durkin v. John Hancock Mutual Ins. Co.*, 11 F.R.D. 147 (S.D.N.Y. 1950) (check-off provision); *Dubinsky v. Blue Dale Dress Co.*, 162 Misc. 177, 292 N.Y. Supp. 898 (Sup. Ct. 1936) (lock out and run away shop); see *MacKay v.*

the collective bargaining agreement which are primarily for the employees' benefit.<sup>9</sup>

To assure the enforceability of collective bargaining agreements by and against unions,<sup>10</sup> Congress, in § 301(b) of the Labor Management Relations Act of 1947,<sup>11</sup> provided that unions representing "employees in an industry affecting commerce" could sue and be sued in the courts of the United States.<sup>12</sup> Section 301(a) gave the federal courts jurisdiction over suits brought by unions or employers to enforce collective bargaining agreements.<sup>13</sup> And lower federal courts have held that § 301(a) created a federal substantive right to enforce such agreements.<sup>14</sup> However, these subsections have been of little help in clarifying the issue of whether or not unions may sue to enforce the individual rights of employees whom they represent.

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Loew's, Inc., 182 F.2d 170, 172 (9th Cir.), *cert. denied*, 340 U.S. 828 (1950); Milk Wagon Drivers Union v. Associated Milk Dealers, Inc., 42 F. Supp. 584, 585 (N.D. Ill. 1941).

9. MATHEWS, *op. cit. supra* note 2, at 445; 1 TELLER, *op. cit. supra* note 1, at 105 (Supp. 1947); Gregory, *The Enforcement of Collective Labor Agreements by Arbitration*, 13 U. OF CHI. L. REV. 445, 462 (1946).

Some cases have allowed the union to enforce rights of employees. American Federation of Labor v. Western Union Tel. Co., 179 F.2d 535 (6th Cir. 1950) (pension benefits); Food & Service Trades Council v. Retail Associates, Inc., 115 F. Supp. 221 (N.D. Ohio 1953) (wages); Barth v. Addie Co., 271 N.Y. 31, 2 N.E.2d 34 (1936) (wages and wrongful discharge). Other cases refused union enforcement. Joint Council Dining Car Employees v. New York Central R.R., 7 F.R.D. 376 (N.D. Ill. 1946) (allegedly unwarranted deductions for meals); Milk Wagon Drivers Union v. Associated Milk Dealers, Inc., 42 F. Supp. 584 (N.D. Ill. 1941) (wages).

10. SEN. REP. No. 105, 80th Cong., 1st Sess. 15-18 (1947); 93 CONG. REC. 4141 (1947) (remarks by Senator Taft).

11. 61 STAT. 156 (1947), 29 U.S.C. § 185 (Supp. 1952).

12. Section 301(b) provides in part:

"Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agent. 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." 61 STAT. 156 (1947), 29 U.S.C. § 185(b) (Supp. 1952).

13. Section 301(a) provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, 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." 61 STAT. 156 (1947), 29 U.S.C. § 185(a) (Supp. 1952).

14. Because of the wording of § 301(a), some question exists as to whether or not it creates a federal *substantive* right. If it does not, the section might be unconstitutional. See Wallace, *The Contract Cause of Action under the Taft-Hartley Act*, 16 BROOKLYN L. REV. 1 (1949); Note, 57 YALE L.J. 630 (1948). Although the Supreme Court has not yet passed on the question, the great weight of authority holds that § 301(a) does create such a right and is therefore constitutional. See, *e.g.*, United Electrical Radio & Machine Workers v. Oliver Corp., 205 F.2d 376 (8th Cir. 1953); Shirley-Herman Co. v. Hed Carriers, 182 F.2d 806 (2d Cir. 1950); Schatte v. International Alliance, 182 F.2d 158 (9th Cir.), *cert. denied*, 340 U.S. 827 (1950); Colonial Hardwood Flooring Co. v. Interna-

In *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*,<sup>15</sup> the union contended that § 301 of the LMRA gave the federal courts jurisdiction over a suit brought by it to enforce the right of 4000 employees to receive wages allegedly due them under the collective bargaining agreement. It argued that the employees were third party beneficiaries of the agreement entered into by the employer and the union. Therefore, it claimed, the employees' rights to wages arose out of this contract and the union could sue to vindicate such rights on behalf of the employees.<sup>16</sup> Since breach of the

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tional Union, 76 F. Supp. 493 (D. Md.), *aff'd*, 168 F.2d 33 (4th Cir. 1948); Note, 57 YALE L.J. 630 (1948); *cf.* Textile Workers Union v. American Thread Co., 113 F. Supp. 137 (D. Mass. 1953). But see 2 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING 45-6 (Supp. 1950); Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 274, 305 (1948).

15. 210 F.2d 623 (3d Cir. 1954). The case is noted in 67 HARV. L. REV. 1430 (1954) and 102 U. OF PA. L. REV. 815 (1954).

16. The union contended that it was the proper party plaintiff to sue on either of two theories. First, the union said that § 301(b), *itself*, authorized it to sue on behalf of the employees to enforce their rights. Section 301(b) provides that ". . . [a]ny such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents." The union contended that, *aside from* FED. R. CIV. P. 17(a), this provision authorized it to sue on behalf of the employees. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 625 (3d Cir. 1954); Reply Brief for Appellant, pp. 27-8, *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623 (3d Cir. 1954). However, the union seems to have put a rather strained interpretation on § 301(b). It interpreted "any such labor organization" in that section as referring to the labor organization identified in § 301(a), *i.e.*, one authorized to sue for violations of collective bargaining agreements. This would limit § 301(b) so that only unions involved in suits concerning violation of collective bargaining agreements would be given capacity to sue and be sued. If this were the scope of § 301(b) it would be superfluous since FED. R. CIV. P. 17(b) gives unincorporated associations the capacity to sue in their own names when they seek to enforce federal substantive rights, such as that created by § 301(a). A more reasonable interpretation of § 301(b) is that "any such labor organization" refers to the sentence in § 301(b) immediately preceding these words, *i.e.*, "Any labor organization which represents employees in an industry affecting commerce. . . ." Section 301(b) seems to be a *general* capacity provision which gives all labor unions representing employees in an industry affecting commerce the capacity to sue and be sued. This is the interpretation given to this section in *Rock Drilling Local Union v. Mason & Hangar Co.*, 90 F. Supp. 539, 541-2 (S.D.N.Y. 1950). See *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F.2d 183, 187-8 (4th Cir. 1948). But see Kaye and Allen, *Union Responsibility and the Enforcement of Collective Bargaining Agreements*, 30 B.U.L. REV. 1, 16 n.118 and accompanying text. When § 301(b) is given this broad scope, it would seem clear that it does not, *in itself*, constitute the union a real party in interest to sue on behalf of employees. To hold so would give the union much broader powers than Congress intended. See *Rock Drilling Local Union v. Mason & Hangar Co.*, *supra*.

The union's alternative theory was that it was the real party in interest to sue on behalf of the employees to enforce their rights under FED. R. CIV. P. 17(a) which provides that "[e]very action shall be prosecuted in the name of the real party in interest; but . . . a party with whom or in whose name a contract has been made for the benefit of another . . . may sue in his own name without joining with him the party for whose benefit the action is brought." This theory is sound and was accepted by the dissent in *Westinghouse*, *supra* at 631. FED. R. CIV. P. 17(a) and similar state provisions have been interpreted to

collective bargaining agreement was involved, § 301(a) would provide federal jurisdiction.

The Third Circuit rejected this interpretation of the collective bargaining agreement and dismissed the complaint for lack of jurisdiction.<sup>17</sup> It divided the provisions of the agreement into two groups—those provisions for the benefit of the union and those for the benefit of the employees—and stated that only the former create rights which the union can enforce in the federal courts under § 301. The latter merely state the terms under which the employees will labor. These terms of employment must be included in the individual hiring contracts between the employer and the employees because “the collective contract plus the National Labor Relations Act binds the employer” to do so.<sup>18</sup> Thus, the employee’s right to wages does not arise out of the col-

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allow a party to a contract to sue on behalf of the party for whose benefit the contract was made in situations other than those involving collective bargaining contracts. See, e.g., *Dixey v. Federal Compress & Warehouse Co.*, 132 F.2d 275 (8th Cir. 1942); *Valentine v. Powers*, 85 F. Supp. 732 (D. Neb. 1948); *Shellberg v. McMahon*, 98 Kan. 46, 157 Pac. 268 (1916); see *Millers Nat. Ins. Co. v. Bunds*, 158 Kan. 662, 665, 149 P.2d 350, 352 (1944); cf. *Linnemann v. Kirchner*, 189 Iowa 336, 339, 178 N.W. 899, 900 (1920). An older code provision, similar to FED. R. CIV. P. 17(a), exists in many states. It provides that “. . . a trustee of an express trust . . . may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom or in whose name a contract is made for the benefit of another is a trustee of an express trust within the meaning of this section.” 3 MOORE, FEDERAL PRACTICE 1306 n.5 (2d ed. 1948). There is no important difference between the two provisions; and the cases which are decided under one are good authority for cases under the other. 3 MOORE, *op. cit. supra* at 1370-2. Under this older provision, parties to a contract have been permitted to enforce the rights of third party beneficiaries. See, e.g., *Cove Irrigation District v. American Surety Co.*, 42 F.2d 957 (9th Cir. 1930); *Steen v. Neva*, 37 N. Dak. 40, 163 N.W. 272 (1917); cf. *Jordan & Phillips v. Dixie Culvert & Metal Co.*, 146 Ga. 284, 91 S.E. 68 (1916).

In many of the cases in which unions were allowed to sue to enforce employee rights arising out of the collective bargaining agreement, see note 21 *infra*, the courts did not make clear the “theory” on which they were relying. In some, the courts held that the union was the real party in interest under FED. R. CIV. P. 17(a). *Local 793, UAW-CIO v. Auto Specialties Mfg. Co.*, 15 F.R.D. 261 (W.D. Mich. 1951); cf. *Amalgamated Meat Cutters and Butchers, Local 634 v. Safeway Stores, Inc.*, 23 L.R.R.M. 2525 (D. Colo. 1949). In others, the courts indicated that § 301, *itself*, was sufficient authorization to allow a suit by the union. *UAW (AFL) v. Wilson Athletic Goods Mfg. Co.*, 26 L.R.R.M. 2383 (N.D. Ill. 1950); cf. *Studio Carpenters Local Union v. Loew’s, Inc.*, 84 F. Supp. 675, 676 (S.D. Cal. 1949). In *Westinghouse*, the court recognized the existence of the problem of whether or not the union is the real party in interest but did not decide the question. It based its decision, instead, on jurisdictional grounds. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 625 (3d Cir. 1954).

17. The district court had held there was jurisdiction but found that the complaint did not state a cause of action and dismissed without prejudice to the plaintiff. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 107 F. Supp. 692 (W.D. Pa. 1952). Three dissenting judges on the Third Circuit agreed with the lower court. 210 F.2d 623, 630 (3d Cir. 1954).

18. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 626-7 (3d Cir. 1954).

The court’s test is far from clear and will only lead to needless confusion. The terms

lective contract but from the individual hiring contract between the employer and the employee. If any contract was breached, said the court, it was merely the individual hiring contract.<sup>19</sup> Since § 301(a) creates federal jurisdiction only for breach of collective bargaining agreements, the court concluded that there was no federal jurisdiction.<sup>20</sup> By giving the collective bargaining agreement this restrictive interpretation, the court severely limited the scope of federal jurisdiction under § 301, rejecting the weight of authority.<sup>21</sup>

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of a collective bargaining agreement cannot be so easily divided into those that are "for the benefit of the employee" and those that are "for the collective benefit." See Lenhoff, *The Present Status of Collective Contracts in the American Legal System*, 39 MICH. L. REV. 1109, 1134 (1941). For example, a provision in the collective contract prohibiting discharge of an employee would seem to be for the benefit of the employee. See, e.g., *Marranzano v. Riggs Nat. Bank*, 184 F.2d 349 (D.C. Cir. 1950). Yet, in *Milk Wagon Drivers Union v. Associated Milk Dealers, Inc.*, 42 F. Supp. 584, 585 (N.D. Ill. 1941), a case heavily relied on by the majority in *Westinghouse*, the court stated that such a provision was of consequence to the union as an organization and was enforceable by it. See also *Simon v. Stag Laundry, Inc.*, 259 App. Div. 106, 18 N.Y.S.2d 197 (1st Dep't 1940).

19. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 627 (3d Cir. 1954).

20. *Id.* at 625.

As authority for its interpretation of the collective bargaining agreement, the court relied primarily upon three cases: *Milk Wagon Drivers Union v. Associated Milk Dealers, Inc.*, 42 F. Supp. 584 (N.D. Ill. 1941); *Joint Council Dining Car Employees v. New York Central R.R.*, 7 F.R.D. 376 (N.D. Ill. 1946); and *J.I. Case v. NLRB*, 321 U.S. 332 (1944). The first two cases involved suits by unions for money due employees (wages in *Milk Wagon Drivers* and allegedly unwarranted deductions for meals in *Joint Dining Car Council*). The courts, in holding that the right to wages arose not out of the collective contract, but out of the individual hiring contract, concluded that the union was not the real party in interest and could not sue. Under such an interpretation of the collective bargaining agreement, this result seems proper, because the union is not a party to the individual hiring contract and therefore is not a real party in interest under FED. R. CIV. P. 17(a). Neither of these opinions cites any authority for its holding, nor does either court discuss any of the policy considerations involved. However, both decisions concede that the union does have some interest in the interpretation of the collective contract and that the union can seek a declaratory judgment to construe that agreement. The court in *Westinghouse* concluded that it had no jurisdiction over the subject matter of the suit and that therefore the union was not even entitled to declaratory relief. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 630 (3d Cir. 1954).

The majority in the Third Circuit used Justice Jackson's dictum in *J. I. Case*, *supra* at 335, to support its interpretation of the nature of the collective bargaining agreement. However, Justice Jackson's language, *id.* at 336, can easily be used to support the union's position. Indeed, it was so used by the dissent in *Westinghouse*, and also in *Food & Service Trades Council v. Retail Associates, Inc.*, 115 F. Supp. 221, 227 (N.D. Ohio 1953). *Cf. Marranzano v. Riggs Nat. Bank*, 184 F.2d 349, 351 (D.C. Cir. 1950). In addition, the court's interpretation of the collective contract in *Westinghouse* seems to place undue importance on the individual hiring contract, contrary to the spirit and language of *J. I. Case*.

21. Most federal cases hold that the union can sue on behalf of employees to enforce their individual rights arising out of the collective bargaining agreement. *Milk and Ice Cream Drivers v. Gillespie Milk Prod. Corp.*, 203 F.2d 650 (6th Cir. 1953) (arbitration award ordering reinstatement with pay); *United Protective Workers of America v. Ford*

The *Westinghouse* case is one of the few decisions under § 301 based explicitly upon policy considerations.<sup>22</sup> The court was primarily motivated by a concern for the right of the individual employee to his wages.<sup>23</sup> It indicated two ways in which a contrary result might deprive the employee of this right. First, the court thought that there was a possibility that § 301 might be interpreted in such a way as to deny employees all means of enforcing their rights.<sup>24</sup> However, this would result only if the Supreme Court should hold that § 301(a) preempts the field of enforcement of collective bargaining agreements, thereby providing for the exclusive application of federal substantive law and allowing only those parties authorized by § 301(a) to sue. Since

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Motor Co., 194 F.2d 997 (7th Cir. 1952) (wrongful discharge); Mercury Oil Refining Co. v. Oil Workers Int'l Union, 187 F.2d 980 (10th Cir. 1951) (arbitration award ordering reinstatement with pay of a discharged employee); American Federation of Labor v. Western Union Tel. Co., 179 F.2d 535 (6th Cir. 1950) (pension benefits); Bakery & Confectionery Workers' Int'l Union v. National Biscuit Co., 177 F.2d 684 (3d Cir. 1949) (wrongful discharge); Food & Service Trades Council v. Retail Associates, Inc., 115 F. Supp. 221 (N.D. Ohio 1953) (rate of salesmen's commissions under the collective bargaining agreement); Local 793 UAW-CIO v. Auto Specialties Mfg. Co., 15 F.R.D. 261 (W.D. Mich. 1951) (holiday pay); UAW (AFL) v. Wilson Athletic Goods Mfg. Co., 26 L.R.R.M. 2383 (N.D. Ill. 1950) (vacation pay).

Several state cases have allowed unions to sue on behalf of employees for damages for breach of collective bargaining agreements. See, e.g., *Barth v. Addie Co.*, 271 N.Y. 31, 2 N.E.2d 34 (1936) (wrongful discharge and wages); *Dubinsky v. Blue Dale Dress Co.*, 162 Misc. 177, 292 N.Y. Supp. 898 (Sup. Ct. 1936) (damages caused employees by lockout and "run away" shop). Also, some state cases have granted injunctions to the union to prevent infringement of the rights of employees in violation of the collective bargaining agreement. See, e.g., *Schlesinger v. Quinto*, 201 App. Div. 487, 194 N.Y. Supp. 401 (1st Dep't 1922) (wages); *Farulla v. Ralph A. Freundlich, Inc.*, 155 Misc. 202, 279 N.Y. Supp. 223 (Sup. Ct. 1935). And see *Witmer, Collective Labor Agreements in the Courts*, 43 *YALE L.J.* 195, 201-03 (1938). All but two of the many federal cases which have permitted the union to sue were summarily dismissed by the court in *Westinghouse* on the ground that either they did not consider the jurisdictional question at all, or they did so merely perfunctorily. The two cases which the court could not distinguish were *American Federation of Labor v. Western Union Tel. Co.*, *supra* and *Food & Service Trades Council v. Retail Associates, Inc.*, *supra*. These two cases held that the employees' right to wages arose out of the collective bargaining agreement and that therefore the court had jurisdiction over a suit brought by the union to recover wages on behalf of employees under § 301(a). The court in *Westinghouse*, admitting that these cases were in conflict with its holding, nevertheless felt compelled to disagree with them.

22. In only one other case did a court consider the consequence of not allowing the union to sue to enforce the rights of employees which arise out of the collective bargaining agreement. In *Local 793 UAW-CIO v. Auto Specialties Mfg. Co.*, 15 F.R.D. 261, 265 (W.D. Mich. 1951), the court, quoting from a prior case, pointed out that ". . . [i]f a labor union is unable to protect its membership in the courts, then its very existence is at stake. Its power is utterly dissipated. If it can do nothing for its members but each one must protect itself, the employee is no better off now than he was before Congress clothed him with the legal right to organize, to choose bargaining agents and to bargain collectively."

23. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 629 (3d Cir. 1954).

24. *Ibid.*

cases have generally held that this section does not authorize suits by employees to enforce such agreements,<sup>25</sup> employees would be deprived of all opportunity to vindicate their rights.<sup>26</sup> But most cases hold that § 301(a) does not preempt the field.<sup>27</sup> It therefore seems unwise to base an important decision on such an improbable hypothesis.

The court's other major concern is more substantial but equally unconvincing. It pointed out that if it allowed the union to obtain judicial determination of employee rights, the employees would be barred by the doctrine of *res judicata*.<sup>28</sup> If the collective bargaining agreement is analogized to a third party beneficiary contract, the union is a proper party to bring suit on behalf of employees under Rule 17(a) of the Federal Rules of Civil Procedure.<sup>29</sup> And

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25. Although the Supreme Court has not yet passed on the question, the cases generally hold that only the union and the employer can sue under § 301(a). See, e.g., *United Protective Workers of America v. Ford Motor Co.*, 194 F.2d 997 (7th Cir. 1952); *Schatte v. International Alliance*, 84 F. Supp. 669 (S.D. Cal. 1949), *aff'd on other grounds*, 182 F.2d 158 (9th Cir.), *cert. denied*, 340 U.S. 827 (1950); see *Local 793 UAW-CIO v. Auto Specialties Mfg. Co.*, 15 F.R.D. 261, 265 (W.D. Mich. 1951); cf. *Ketcher v. Sheet Metal Workers' Int'l Ass'n*, 115 F. Supp. 802, 809 (E.D. Ark. 1953).

26. Cf. *Fay v. American Cystoscope Makers, Inc.*, 98 F. Supp. 278 (S.D.N.Y. 1951).

However, cases have impliedly negated such preemption by holding that if the requirements of diversity and jurisdictional amount are met, employees may sue individually or by use of a class suit for violation of their rights arising from collective bargaining agreement. *United Protective Workers of America v. Ford Motor Co.*, 194 F.2d 997 (7th Cir. 1952); *MacKay v. Loew's, Inc.*, 182 F.2d 170 (9th Cir. 1950); cf. *Marranzano v. Riggs Nat. Bank*, 184 F.2d 349, 350 (D.C. Cir. 1950); *Kiriloff v. Bendix Aviation Corp.*, 17 L.R.R.M. 759 (E.D. Pa. 1945). *But cf.* *Schatte v. International Alliance*, 84 F. Supp. 669, 672 (S.D. Cal. 1949); *UAW (AFL) v. Wilson Athletic Goods Mfg. Co.*, 26 L.R.R.M. 2383, 2384 (N.D. Ill. 1950). See also note 27 *infra* and accompanying text. A class suit to enforce individual rights, such as wages, would be a "spurious class suit." *Pentland v. Dravo Corp.*, 152 F.2d 851, 853 (3d Cir. 1945); *Knudsen v. Chicago & Northwestern Ry.*, 106 F. Supp. 48 (N.D. Ill. 1952). Although the original parties to the class action must each meet the requirements of diversity and jurisdictional amount, later parties can intervene without meeting these requirements. 3 MOORE, FEDERAL PRACTICE 3443.

27. *Castle & Cooke Terminals, Ltd. v. Local 137*, 110 F. Supp. 247 (D. Hawaii 1953); *General Electric Co. v. International Union*, 93 Ohio App. 139, 108 N.E.2d 211 (1952); *Masetta v. National Bronze & Aluminum Foundry Co.*, 107 N.E.2d 243 (Ohio App. 1952); cf. *Ketcher v. Sheet Metal Workers' Int'l Ass'n*, 115 F. Supp. 802, 809-10 (E.D. Ark. 1953); *General Building Contractors' Ass'n v. Local Unions*, 370 Pa. 73, 87 A.2d 250 (1952). See also Comment, 5 STAN. L. REV. 358 (1953); Note, 51 MICH. L. REV. 604 (1953). *Contra*: *Fitzgerald v. Dictograph Products, Inc.*, 28 L.R.R.M. 2611 (Sup. Ct., N.Y. 1951); *Fay v. American Cystoscope Makers, Inc.*, 98 F. Supp. 278 (S.D.N.Y. 1951).

Although the Supreme Court has held that the Taft-Hartley Act partially preempted the field of unfair labor practices cases, *United Construction Workers v. Laburnum Construction Corp.*, 22 U.S.L. WEEK 4289 (U.S. June 8, 1954); *Garner v. Teamsters Union*, 346 U.S. 485 (1953), it has never passed on the question here involved. Indeed, the fears expressed by the court in *Westinghouse* would seem to be a convincing reason for the court to hold that § 301(a) does not preempt the field of enforcement of collective bargaining agreements.

28. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 629 (3d Cir. 1954).

29. See note 16 *supra*.



since the union would seem to be acting as trustee for the employees,<sup>30</sup> the principles of *res judicata* relating to representative suits would presumably be applicable and would bar the employees from later suing to enforce their rights.<sup>31</sup> But it is difficult to see how a suit by the union to enforce employees'

30. The cases which allow a party to the contract to sue on behalf of the party for whose benefit the contract was made, *supra* note 16, are not entirely clear as to the relationship between these two parties. However, they seem to indicate that the party to the contract sues as trustee for the third party beneficiary and holds the proceeds of the suit in trust for such beneficiary.

The older type code provision which authorizes the party to the contract to sue (see note 16 *supra*) clearly makes the party to the contract a "trustee of an express trust." The cases interpreting these older code provisions have not given the term, "trustee of an express trust," a restricted and technical interpretation, but have liberally construed it to include a large class of formal and informal trusts. CLARK, CODE PLEADING 183 (2d ed. 1947); 3 MOORE, FEDERAL PRACTICE 1368-9; and see, e.g., *Chew v. Brumagen*, 13 Wall. 497 (U.S. 1872) (construing the old New York code provision); *Considerant v. Brisbane*, 22 N.Y. 389 (1860). Cases under this provision indicate that the party to the contract sues as "trustee" or "for the use of" the party who has the beneficial interest. *Ibid.*; *Steen v. Neva*, 37 N.D. 40, 163 N.W. 272 (1917); cf. *Jordan & Phillips v. Dixie Culvert & Metal Co.*, 146 Ga. 284, 91 S.E. 68 (1916); *Symmers v. Carroll*, 207 N.Y. 632, 101 N.E. 698 (1913).

The more modern code provision, similar to FED. R. CIV. P. 17(a), does not expressly provide that the party to a contract for the benefit of another sues as "trustee of an express trust." However, cases interpreting this provision have held that the party to the contract who sues to vindicate the rights of the beneficiary sues as trustee and holds the proceeds of the suit in trust for the beneficiary. *Dixey v. Federal Compress & Warehouse Co.*, 132 F.2d 275, 278-9 (8th Cir. 1942); *Valentine v. Powers*, 85 F. Supp. 732, 735 (D. Neb. 1948); see *Millers National Ins. Co. v. Bunds*, 158 Kan. 662, 665, 149 P.2d 350, 352 (1944). The difference in wording between the old and the new provisions is immaterial. 3 MOORE, *op. cit. supra* at 1372. Therefore, it would seem that the cases under both the old and the new provisions are general authority for the proposition that the party to the contract sues as trustee on behalf of the party for whose benefit the contract was made. See also 1 BOGERT, TRUSTS AND TRUSTEES 98-9 (1948).

The exact nature of this trustee relationship is not clear. It does not seem to be the same as that between a technical trustee and his cestui. In at least one respect there is an important difference. Where there is a formal trust arrangement, the cestui cannot sue unless he can show that the trustee refuses to sue in his behalf. 4 BOGERT, *op. cit. supra* § 870; 3 MOORE, *op. cit. supra* at 1365-7. However, under FED. R. CIV. P. 17(a) and analogous code provisions, the beneficiary, as well as the "trustee," can sue to enforce the contract where substantive law gives him a right of action. 3 MOORE, *op. cit. supra* at 1371; 4 BOGERT, *op. cit. supra* at 460; CLARK, *op. cit. supra* at 189-90; *Millers National Ins. Co. v. Bunds, supra*; see *Valentine v. Powers, supra* at 735.

It would seem desirable that the trustee under FED. R. CIV. P. 17(a) and similar code provisions be held to the same strict fiduciary duty as a technical trustee and be held liable for negligence and lack of fidelity in prosecuting the suit. See *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 632 (3d Cir. 1954) (dissenting opinion).

31. See RESTATEMENT, JUDGMENTS § 85 (1942); 1 FREEMAN, JUDGMENTS §§ 435, 500 (5th ed., Tuttle, 1925). Also see *Cove Irrigation District v. American Surety Co. of New York*, 42 F.2d 957, 964 (9th Cir. 1930) (dissenting opinion).

One writer has suggested that unions be permitted to sue on behalf of employees upon analogy to cases permitting a bailee to recover from a wrongdoer for the value of the

rights would in any way work to the disadvantage of the employees. The union is elected by a majority of the employees, and it is the exclusive agency through which their rights to wages, seniority, and the like are obtained.<sup>32</sup> Assuming that the union stands in a trustee relationship to employees for whom it is suing, it presumably would be liable to them for negligence or lack of fidelity in prosecuting the suit.<sup>33</sup> The employee would also have a right to intervene in the suit, an additional guaranty that his case will be adequately presented.<sup>34</sup> Finally, by bearing the cost of the suit, the union makes possible enforcement of the very rights which the court seeks to protect; in many cases the amount in question is so small that many employees either cannot afford to enforce their rights or will not bother to do so.<sup>35</sup>

Unions should be permitted to sue to enforce employee rights contained in the collective bargaining agreement. Employees would save the expense and inconvenience of maintaining their own suits.<sup>36</sup> Employers would not be

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chattel damaged or destroyed. The bailee then holds the proceeds from the suit in excess of his own interest in trust for the bailor. By analogy, the union would recover a judgment on behalf of the employees and hold it in trust for them. 1 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING 106 (Supp. 1947). Under this theory, also, the judgment in the suit instituted by the union would bind the employees. See RESTATEMENT, JUDGMENTS § 88 (1942); FREEMAN, *op. cit. supra* § 482.

32. Section 9(a) of the National Labor Relations Act, 1947 makes unions "the exclusive representatives of all employees . . . for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . ." 61 STAT. 143 (1947), 29 U.S.C.A. § 159(a) (Supp. 1952).

33. See 2 SCOTT, TRUSTS, § 177 (1939); 3 BOGERT, TRUSTS AND TRUSTEES, § 592. See also note 30 *supra*.

The court in *Westinghouse* expressed concern over the possibility that an employee might inadvertently be omitted from the reckoning of damages in the union's suit and thereby barred from all relief. *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 629 (3d Cir. 1954). However, if the employee is omitted due to negligence on the part of the union, the union will presumably be liable for breach of fiduciary responsibility. See SCOTT, *op. cit. supra*; BOGERT, *op. cit. supra*; and see note 30 *supra*. If the employee was omitted due to excusable neglect, relief usually will be available under FED. R. CIV. P. 60(b)(1).

34. If the judgment in the suit brought by the union is binding on the employees represented by the union (see note 31 *supra*), then an employee has an absolute right to intervene under FED. R. CIV. P. 24(a)(2) if he can show that his interest "is or may be" inadequately represented by the union. See 4 MOORE, FEDERAL PRACTICE ¶ 24.03; Note, 63 YALE L.J. 408 (1954).

If the employee has a right to intervene under FED. R. CIV. P. 24, he can do so even though he does not satisfy the requirements of diversity and jurisdictional amount. See 4 MOORE, *op. cit. supra* ¶ 24.18; Note, 55 HARV. L. REV. 264 (1941).

35. See Gregory, *The Enforcement of Collective Labor Agreements by Arbitration*, 13 U. OF CHI. L. REV. 445, 462 (1946). In *Westinghouse*, for example, only one day's pay was involved.

36. Employees rarely will be able to sue in federal courts since § 301(a) is not available to them. See note 25 *supra*. Although FED. R. CIV. P. 20 provides for liberal joinder, all plaintiffs must meet jurisdictional requirements (diversity and claim for more than \$3,000). 3 MOORE, FEDERAL PRACTICE 2725-6. Difficulties raised by these requirements may sometimes be avoided by use of a spurious class suit under FED. R. CIV. P. 23(a)(3).

forced to defend many small actions.<sup>37</sup> Above all, the union could protect its interest in enforcing the agreement which it bargained for and secured.<sup>38</sup> Uniform interpretation of the agreement is essential to effective collective bargaining. Yet, this would be impossible if employees brought separate suits, each requiring interpretation of the contract.<sup>39</sup> Also, the union's prestige among the employees is lessened to the extent that employee rights under the collective bargaining agreement are not enforced. Such a situation encourages splinter groups, threatens union security, and discourages the kind of responsible unionism that the LMRA was supposed to foster.<sup>40</sup>

In such a suit, only parties of record need have diversity and the requisite jurisdictional amount. 3 MOORE, *op. cit. supra* at 3443. However, in many cases, even this limited requirement cannot be met. See, *e.g.*, note 35 *supra*; Long v. Dravo Corp., 6 F.R.D. 226 (W.D. Pa. 1946); *cf.* Knudsen v. Chicago & Northwestern Ry., 106 F. Supp. 48 (N.D. Ill. 1952).

Other difficulties will be encountered in state courts. Some states still require that parties seeking to join have a community of interest in the subject of the action and in the relief demanded. CLARK, CODE PLEADING 365-7. Employees might thus find it impossible to join in a single suit to recover individual damages for lost wages. In addition, even if such states allow spurious class actions, such suits may be limited to those cases where the members of the class could have joined. See Blume, *The "Common Questions" Principle in the Code Provision for Representative Suits*, 30 MICH. L. REV. 873, 893-9 (1932); Note, 51 MICH. L. REV. 604, 606 (1953).

37. In those states which have liberal consolidation rules similar to FED. R. CIV. P. 42(a), this problem will be minimized. However, most states provide for consolidation only when the actions are pending in the *same court* between the *same parties* and on causes of action *which might originally have been joined*. See CLARK, CODE PLEADING 491 n.193.

38. Most writers agree that the union has an interest in the interpretation and enforcement of the collective bargaining agreement. See Anderson, *Collective Bargaining Agreements*, 15 ORE. L. REV. 229, 237 (1936); Lenhoff, *The Present Status of Collective Contracts in the American Legal System*, 39 MICH. L. REV. 1169, 1123-5 (1941); Witmer, *Collective Labor Agreements in the Courts*, 48 YALE L.J. 195, 200 (1938). See also Gregory, *The Enforcement of Collective Bargaining Agreements by Arbitration*, 13 U. OF CHI. L. REV. 445, 459 (1946). *Cf.* Elgin, J. & E.R.R. v. Burley, 325 U.S. 711, 737 n.35 (1945), *on rehearing*, 327 U.S. 661 (1946). Mr. Justice Frankfurter's dissents to these decisions are particularly illuminating on this point.

39. See, *e.g.*, Gregory, *The Enforcement of Collective Bargaining Agreements by Arbitration*, 13 U. OF CHI. L. REV. 445, 459-61 (1946).

40. "Union security is also important to labor organizations because it enables them to assume the added responsibilities which they must undertake if they are to share, through collective bargaining, in the government of industry—not only responsibility for the soundness of the agreements they negotiate, but also an obligation to control the employees they represent, to discipline those who attempt to undermine sound plant relationships, to discourage the prosecution of frivolous grievances, and to hold in line wildcat strikers and hotheads. When the union is insecure, it can scarcely be expected to assume this burden; such a course would lead to disaffection, the development of splinter groups, and increased competition from rival organizations. Conversely, it has been long observed that the more secure the union's status, the greater the likelihood that the aggressive and more irresponsible men who play so large a part in organizing unions will be supplanted by wiser, more responsible leaders." Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 274, 292 (1948).

Congressional policy with respect to union enforcement of employees' rights under collective bargaining agreements is indicated by Congress' treatment of an analogous situation, the settlement of employee grievances. In § 9(a) of the LMRA,<sup>41</sup> Congress authorized unions to represent employees in the private settlement of grievances as part of their function as collective bargaining agents. By giving the union an important role in the settlement of employee grievances, Congress recognized the union's interest in the interpretation and construction of the collective bargaining agreement.<sup>42</sup> This interest was completely ignored by the Third Circuit in *Westinghouse* when it categorized certain provisions of the collective contract as intended for the individual rather than for the collective benefit of the employees.<sup>43</sup>

In passing § 301, Congress sought to "vitalize" collective bargaining agreements and to promote their effectiveness.<sup>44</sup> To do so, Congress created a right

41. 61 STAT. 143 (1947), 29 U.S.C. § 159(a) (Supp. 1952).

This provision has been interpreted to authorize unions to settle grievances on behalf of employees whom they represent as part of their collective bargaining function. MATHEWS, *LABOR RELATIONS AND THE LAW* 445-6 (1953). Cf. *NLRB v. Bachelder*, 120 F.2d 574 (1941), *modified on rehearing*, 125 F.2d 387 (7th Cir. 1942) (refusal to discuss grievances of employees with union is a refusal to bargain and, therefore, an unfair labor practice); *Service Metal Industries*, 96 N.L.R.B. 10 (1951) (same); *Bethlehem Steel Co.*, 89 N.L.R.B. 341 (1950) (refusal to sign collective bargaining agreement without limiting union's right to take part in adjustment of grievances unless requested by employee violates union's rights under § 9(a)).

Although an employee may settle his grievance with the employer personally if he chooses, such settlement may not be inconsistent with the collective bargaining agreement, and the union must be given an opportunity to be "present." As to the meaning of "present" see Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 274, 301 (1948); Dunau, *Employee Participation in the Grievance Aspect of Collective Bargaining*, 50 COL. L. REV. 731, 746-8 (1950); Sherman, *The Individual and His Grievance—Whose Grievance Is It?*, 11 U. OF PITTS. L. REV. 35, 51 (1949).

42. "Congress in enacting the provisos to § 9(a), must have recognized the bargaining representative's interest in the administration of its contract, as well as in the general disposition of grievances. For not only did Congress require that the adjustment conform with the terms of the collective agreement, but also expressly provided in the second proviso that the bargaining representative be given an opportunity to attend the adjustment." *Bethlehem Steel Co.*, 89 N.L.R.B. 341, 344-5 (1950). See also *Hughes Tool Co.*, 104 N.L.R.B. No. 33, 32 L.R.R.M. 1010, 1011-12 (1953).

43. Collective bargaining agreements are more analogous to industrial constitutions than ordinary contracts and should not be dealt with in terms of traditional legal categories. See, e.g., Cox, *supra* note 41, at 275-7, 305; Gregory, *The Enforcement of Collective Bargaining Agreements by Arbitration*, 13 U. OF CHI. L. REV. 445, 449-50 (1946). The Third Circuit indicated partial acceptance of this approach by pointing out "the functional difference between a collective bargaining contract and a contract to buy and sell a horse. . . ." *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 210 F.2d 623, 627 (3d Cir. 1954). However, the majority apparently completely ignored the political realities of collective bargaining by overlooking the union's vital interest in all provisions of the "trade agreement" negotiated with the employer. See note 38 *supra*. Cf. Justice Jackson's approach in *J. I. Case v. NLRB*, 321 U.S. 332, 334-9 (1943).

44. SEN. REP. No. 105, 80th Cong., 1st Sess. 17 (1947). 2 TELLER, *LABOR DISPUTES*

to enforce such contracts in the federal courts regardless of citizenship and jurisdictional amount.<sup>45</sup> It also gave unions capacity to sue and to be sued to assure that these contracts could be enforced effectively.<sup>46</sup> Nowhere in the legislative history is it intimated that Congress intended to limit the union's enforcement of the collective contract to those provisions which are "primarily for the union's benefit." Courts should construe § 301 so as to strengthen rather than to weaken the process of collective bargaining upon which we rely to achieve industrial peace.<sup>47</sup> If litigation is to be utilized at all in the construction and application of collective bargaining agreements,<sup>48</sup> unions should be allowed to enforce all of the rights contained therein.

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AND COLLECTIVE BARGAINING 175 (Supp. 1950); Kaye and Allen, *Union Responsibility and the Enforcement of Collective Bargaining Agreements*, 30 B.U.L. REV. 1, 6-7 (1950).

45. See notes 13 and 14 *supra*.

46. See notes 7, 10, and 12 *supra*.

47. See Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 HARV. L. REV. 1, 1-2 (1947).

48. Most commentators agree that "[i]t would be unfortunate if there should develop any strong tendency to look to the federal courts to settle questions concerning the interpretation and application of collective bargaining agreements. . . . The determination of disputes arising during this process is more a matter of creating new law than of construing the provisions of a tightly drawn document. Few judges are equipped for this task by experience or insight; in addition, they would be hampered by the restrictions and delays of legal doctrine and court procedure." Cox, *supra* note 41, at 305.