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Labor Union Liability for Wildcat Strikes

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continue until future case law refines and elaborates on that which the *Ferry* court has begun.

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LABOR UNION LIABILITY FOR WILDCAT STRIKES

Carbon Fuel Co. v. United Mine Workers[1]

Carbon Fuel Company and the United Mine Workers of America (UMW) were parties to the National Coal Wage Agreements of 1968 and 1971. These collective bargaining agreements contained an implied no-strike clause in the form of an agreement to settle all disputes through arbitration.[2] The agreements also contained mutual promises to "maintain the integrity of the contract."[3]

In violation of the agreements, three local unions within UMW District 17 engaged in forty-eight unauthorized or wildcat strikes during the contract term.[4] All members of the local unions participated in the strikes.[5] District 17 and the International (UMW) apparently made good faith efforts to induce the members to return to work; they did not, however, take disciplinary action against any of the participants.[6]

Carbon Fuel Company, an employer of members of the three locals, filed suit in federal district court under the Labor Management Relations Act[7] seeking injunctive relief and damages. The three local unions, District 17, and the International were named as defendants.[8] The district court entered judgments against all three union defendants. Damages

1. 444 U.S. 212 (1979).

2. In finding an implied no-strike clause in another bargaining agreement, the United States Supreme Court explained: "[A] strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement." Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 105 (1962).

3. 444 U.S. at 216.

4. Seventeen of the 48 strikes were sympathy strikes which the United States Court of Appeals for the Fourth Circuit held were not in violation of the implied no-strike clause, applying the rationale of Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976). *See* note 11 *infra*.

5. 444 U.S. at 214 n.1.

6. *Id.*

7. 29 U.S.C. §§ 141-187 (1976 & Supp. II 1978).

8. 444 U.S. at 214.

were awarded, but no injunctions were issued.[9] In affirming the liability of the local unions, the United States Court of Appeals for the Fourth Circuit applied the "mass action"[10] theory, which imputes liability to unions where large numbers of members have acted in concert with or without authorization. The damage award against the three locals, however, was reduced.[11] The court of appeals vacated the judgments against District 17 and the International.[12]

The United States Supreme Court granted certiorari to resolve a conflict among the federal courts of appeals over the standard for vicarious union liability in breach of contract actions under section 301 of the Labor Management Relations Act of 1947 (the Taft-Hartley Act).[13] The Fourth Circuit, in *Carbon Fuel*, applied the common law standard for agency in determining the liability of District 17 and the International.[14] The United

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9. Jury verdicts aggregated $206,547.80 against the International, $242,103.80 against District 17, and $722,347.43 against the local unions. Carbon Fuel Co. v. UMW, 582 F.2d 1346, 1348 (4th Cir. 1978), *aff'd*, 444 U.S. 212 (1979). Injunctive relief was denied because the contracts had expired by the date of judgment entry. 444 U.S. at 214 n.2.

10. "The premise [of the mass action theory] is that large groups of men do not act collectively without leadership and that a functioning union must be held responsible for the mass action of its members." Eazor Express, Inc. v. International Bhd. of Teamsters, 520 F.2d 951, 963 (3d Cir. 1975), *cert. denied*, 424 U.S. 935 (1976). *See also* United States Steel Corp. v. UMW, 534 F.2d 1063, 1074 (3d Cir. 1976); Vulcan Materials Co. v. United Steelworkers, 430 F.2d 446, 456 (5th Cir. 1970), *cert. denied*, 401 U.S. 963 (1971); Adley Express Co. v. Highway Truck Drivers Local 107, 365 F. Supp. 769, 777-78 (E.D. Pa. 1973); United States v. UMW, 77 F. Supp. 563, 566-67 (D.D.C. 1948), *aff'd*, 177 F.2d 29 (D.C. Cir.), *cert. denied*, 338 U.S. 871 (1949).

11. The reduction was ordered because 17 of the strikes were sympathy strikes. Carbon Fuel Co. v. UMW, 582 F.2d 1346, 1348-49 (4th Cir. 1978), *aff'd*, 444 U.S. 212 (1979). Sympathy strikes generally are not a subject for arbitration. Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397, 407-08 (1976). While sympathy strikes may violate an express no-strike clause, they do not violate an implied no-strike clause created by a compulsory arbitration clause because they do not constitute a dispute between the parties to the contract. In reaching this conclusion the United States Supreme Court said, "[A] no-strike agreement is not to be implied beyond the area which it has been agreed will be exclusively covered by compulsory terminal arbitration." Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 106 (1962).

12. 582 F.2d at 1351.

13. 29 U.S.C. § 185 (1976).

14. 582 F.2d at 1351. Under the common law agency standard, the court would have imposed liability only if a union had "adopted, encouraged or prolonged the continuance of the strike." *Id.* (quoting United Constr. Workers v. Haislip Baking Co., 223 F.2d 872, 877-78 (4th Cir. 1955)). Prior to *Carbon Fuel*, several courts of appeals had adopted the common law agency standards. *See* United Constr. Workers v. Haislip Baking Co., 223 F.2d 872, 877-78 (4th Cir.

States Court of Appeals for the Third Circuit previously had applied the "best efforts" standard in *Eazor Express, Inc. v. International Brotherhood of Teamsters*,[15] imposing liability for a union's failure to use every reasonable means to end unauthorized strikes.

After analyzing congressional intent as found in the statutory language,[16] legislative history,[17] and Supreme Court precedent,[18] the Court determined that the common law agency as applied by the Fourth Circuit was to be used to determine vicarious union liability in section 301 actions. Since the strikes in question had not been authorized, the local unions' conduct was not within the scope of their agency. Therefore, neither District 17 nor the International was liable for the local unions' acts. Furthermore, the Court rejected the notion that the congressional policy favoring arbitration created a union duty to use reasonable means to end wildcat strikes.[19] The Court also rejected the company's contention that UMW had a duty to attempt to end wildcat strikes because of its commitment in the collective bargaining agreements to "maintain the integrity of the contract."[20]

1955); United States Steel Corp. v. UMW, 519 F.2d 1249, 1253 (5th Cir. 1975); Southern Ohio Coal Co. v. UMW, 551 F.2d 695, 701 (6th Cir.), *cert. denied*, 434 U.S. 876 (1977); Old Ben Coal Corp. v. Local 1487, UMW, 457 F.2d 162, 165 (7th Cir. 1972).

15. 520 F.2d 951, 965-66 (3d Cir. 1975). Other courts have applied this standard as well. *See* Wagner Elec. Corp. v. Local 1104, Int'l Union of Elec. Radio & Mach. Workers, 496 F.2d 954, 956 (8th Cir. 1974); 12th & L Ltd. Partnership v. Local 99-99A, Int'l Union of Operating Eng'rs, 396 F. Supp. 1174, 1177 (D.D.C. 1975).

16. 29 U.S.C. § 185 (1976) provides in part:

> (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 . . . .
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> (e) . . . For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

17. The Court cited Senator Taft's explanation of § 301(e) as requiring "legal proof of agency" in order to hold a union liable. 444 U.S. at 217. *See* 93 CONG. REC. 4022 (1947).

18. The Supreme Court applied the common law agency standard to unions prior to passage of the Labor Management Relations Act. *See* Coronado Coal Co. v. UMW, 268 U.S. 295, 304 (1925).

19. 444 U.S. at 218.

20. *Id.* at 218-22. The Court considered the parties' bargaining history in interpreting this phrase. In the 1950 contract, the parties agreed to use their "best

The *Carbon Fuel* decision applied specifically to the liability of an international union and a regional district union, not to the liability of the local unions involved.[21] Nevertheless, the statutory language and the legislative history are not so limited; they apply to all labor organizations.[22] This raises the problem of who, if anyone, may be held liable for damages resulting from wildcat strikes if there is no legal proof of agency. *Carbon Fuel* underscores this problem by limiting union liability while failing to determine who shall be liable outside the newly specified limits.

In the early twentieth century, the United States Supreme Court decided the *Danbury Hatters Cases*.[23] These cases revolved around a strike and accompanying primary and secondary boycotts which were found to be a conspiracy in violation of the Sherman Act.[24] In the last of these cases, *Lawler v. Loewe*,[25] the Court found that the union members, not the union itself,[26] were jointly liable for the treble damage judgment. In order to satisfy the award, many union members' homes were levied upon and taken in satisfaction of the judgment.[27]

In the 1940s when Congress formulated the Taft-Hartley Act, avoidance of the *Danbury Hatters* result was a principal reason for creating union liability under the Act.[28] Section 301 stated that a union could sue or be sued as an entity and that judgments against a union could not be enforced against individual members.[29] In a 1962 case, *Atkinson v. Sinclair Refining Co.*,[30] the Supreme Court considered union liability in conjunction with individual liability in order to construe section 301. The Court decided that when a union was liable in a section 301 suit, individual union members did not incur liability even if they were named as defendants in separate counts. The Court declined to decide whether individual mem-

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efforts" to avoid work stoppages. The union negotiated the deletion of that phrase in the 1952 contract. The 1952 language was carried forward, essentially unchanged, into the 1968 and 1971 agreements. *Id.*

21. *Id.* at 215 n.3. Review of the judgments against the local unions, affirmed but reduced by the Fourth Circuit, was not sought. *Id.*

22. No distinction is made between local, district, and international unions in § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1976). For pertinent portions of this section, see note 16 *supra*.

23. Loewe v. Lawler, 208 U.S. 274 (1908), *on remand*, 209 F. 721 (2d Cir. 1913), *aff'd*, 235 U.S. 522 (1915). *See also* Loewe v. Savings Bank, 236 F. 444 (2d Cir. 1916).

24. 235 U.S. at 534. *See* Sherman Act, 15 U.S.C. §§ 1-7 (1976).

25. 235 U.S. 522 (1915).

26. *Id.* at 535-36.

27. Sinclair Oil Corp. v. Oil, Chem. & Atomic Workers Int'l Union, 452 F.2d 49, 52 n.5 (7th Cir. 1971).

28. *See* 92 CONG. REC. 5705 (1946).

29. 29 U.S.C. § 185(b) (1976).

30. 370 U.S. 238 (1962).

bers could be held liable for damages in a section 301 suit when a union was not held liable.[31]

Thus the development of the law had not only experienced a shift away from the *Danbury Hatters* result, but had developed a steady trend to impose liability on the union to the exclusion of the individual members. The Supreme Court refocused this trend in *Carbon Fuel,* construing section 301 to limit union liability. The unresolved question is who will be liable when the union is not. Two conflicting lines of authority have developed on this issue.

In *Alloy Cast Steel Co. v. United Steelworkers,*[32] union members were held liable for breach of an implied no-strike agreement where the union could not be held liable. The court was unable to find sufficient proof of agency to support liability against either the international or the local.[33] The federal district court rejected the "mass action" theory followed by the Fourth Circuit in *Carbon Fuel.*[34] Individual member liability was based instead on the court's interpretation of three Supreme Court cases, *Atkinson,*[35] *Smith v. Evening News Association,*[36] and *Hines v. Anchor Motor Freight, Inc.*[37] *Smith* and *Hines* permitted individual union members to assert section 301 actions against employers for breach of collective bargaining agreements. Both cases contained dicta supporting the proposition that employers also have a cause of action under section 301 against individual union members.[38] The *Alloy Cast Steel* court referred to the dicta in both *Smith* and *Hines* as holdings in favor of individual union member liability. The court then said that it was "not foreclosed from hearing and deciding whether the individual members violated the contract,"[39] and proceeded to hold individual members liable for violation of the no-strike clause of a collective bargaining agreement.

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31. *Id.* at 249 n.7.

32. 429 F. Supp. 445 (N.D. Ohio 1977).

33. *Id.* at 450.

34. The district court rejected the mass action theory on the basis of Sixth Circuit precedent in Peabody Coal Co. v. Local Unions 1734, 1508, 1548, UMW, 543 F.2d 10,12 (6th Cir. 1976), *cert. denied,* 430 U.S. 940 (1977).

35. 370 U.S. 238 (1962).

36. 371 U.S. 195 (1962) (individual employees may bring § 301 damage actions against employers for breach of collective bargaining agreements).

37. 424 U.S. 554 (1976) (individual employees may bring § 301 damage action against employer for wrongful discharge).

38. The *Smith* dicta cited *Atkinson* for support. 371 U.S. at 199-200. This reliance was unjustified since the *Atkinson* Court explicitly refused to decide the issue of individual liability. 370 U.S. at 249 n.7. The dicta in *Hines* baldly stated that § 301 contemplated suits both by and against individuals, followed by a supported discussion of only the rights of individuals to sue their employers. 424 U.S. at 562.

39. 429 F. Supp. at 451.

A similar result was reached in *DuQuoin Packing Co. v. Local P-156, Amalgamated Meat Cutters*.[40] Individual union members' liability was supported under an agency theory: union officers entered into contracts as agents for the membership and the individual members became bound as principals when they ratified the contract.[41] The federal district court concluded, however, that individual members should be held liable for breach of the contract only when "acting solely and only in their own behalf and not in the behalf of the union or in furtherance of any union plan."[42]

New York State United Teachers v. Thompson[43] also allowed an employer to proceed to judgment on a section 301 damage action against employees for breach of contract. The court relied on the broad public policy of promoting "a high degree of responsibility upon the parties to such . . . [a contract to] thereby promote industrial peace"[44] as the rationale for conferring liability on individual union members.

Other federal courts have adopted the contrary position, finding that individual union members may not be held liable for breach of contract under section 301.[45] A case heavily relied on by these courts is *Sinclair Oil Corp. v. Oil, Chemical & Atomic Workers International Union*.[46] *Sinclair Oil* undertook an extensive analysis of congressional intent as derived from the legislative history of section 301. The court found that one of Congress' principal concerns in creating union liability under section 301 was "to avoid subjecting individual union members to fiscal ruin that was visited upon members as a result of the 'Danbury Hatters' decision."[47] Reference was made to congressional committee reports which discussed only suits by and against unions as entities.[48] This limitation, however, had

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40. 321 F. Supp. 1230 (E.D. Ill. 1971).

41. The federal district court wrote:

> The individual union members by their membership in the union have given their officers the power and authority to negotiate and to enter into contracts with employers, subject to their ratification. When such ratification is given by the union members, then it becomes a valid and binding contract not only upon the union but also upon the individual members of that union.

Id. at 1233.

42. *Id.*

43. 459 F. Supp. 677 (N.D.N.Y. 1978).

44. *Id.* at 684.

45. *See* General Dynamics Corp. v. Local 5, Indus. Union of Marine & Shipbuilding Workers, 469 F.2d 848, 853 (1st Cir. 1972); Sinclair Oil Corp. v. Oil, Chem. & Atomic Workers Int'l Union, 452 F.2d 49, 52-54 (7th Cir. 1971); Westinghouse Elec. Corp. v. International Union of Elec., Radio & Mach. Workers, 470 F. Supp. 1298, 1299 (W.D. Pa. 1979); Adley Express Co. v. Highway Truck Drivers Local 107, 365 F. Supp. 769, 777 (E.D. Pa. 1973).

46. 452 F.2d 49 (7th Cir. 1971).

47. *Id.* at 52.

48. *Id.* at 52-53.

already been exceeded by the Supreme Court in *Smith*, which allowed section 301 suits by employees as well as by unions.[49] During Senate debate on the Taft-Hartley Act, individual liability for wildcat strikes was discussed. The liability referred to, however, involved union fines.[50] Congress also discussed discharge and discipline as remedies for wildcat strikes, but these remedies were not enacted into law.[51] The court in *Sinclair Oil* concluded that while Congress showed "a concern for the promotion of industrial peace through making unions liable for breaches of their bargaining agreements,"[52] it "did consider the consequences of imposing financial responsibility on union members who engaged in non-tortious unprotected concerted activity as union members, in breach of a no-strike clause and rejected it."[53]

The two conflicting theories both are based on public policy arguments. The argument for individual member liability demands a remedy in damages as necessary to promote industrial peace. The argument against individual member liability relies on the protection of individuals from fiscal ruin[54] allied with the remedies of injunction, discharge and discipline, and union fines to promote industrial peace. Both positions claim the support of congressional intent: one inferred from statutory silence, the other derived from legislative debate.

At present, the best protection for both unions and employers, until the United States Supreme Court addresses and decides this issue, is the alternative provided in *Carbon Fuel*: free collective bargaining. If the parties negotiate and decide among themselves when union liability shall be incurred and how wildcat strikes shall be handled, their intentions should

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49. *See* 371 U.S. 195 (1962).

50. 452 F.2d at 53; 92 CONG. REC. 5706-07 (1946).

51. 452 F.2d at 53 n.9.

52. *Id.* at 53.

53. *Id.* at 54. In *Eazor Express*, 520 F.2d at 967, the United States Court of Appeals for the Third Circuit relied on *Sinclair Oil* to buttress its argument for the "best efforts" standard which was not imposed by the Supreme Court in *Carbon Fuel*; 444 U.S. at 218. According to the *Eazor Express* court, the combination of an agency standard of liability for unions and the holding in *Sinclair Oil* would in many instances "leave the plaintiffs without any remedy in damages if . . . the individual union members are not answerable for illegal strike activity." 520 F.2d at 967.

The court in *Sinclair Oil* also had dismissed state law claims against individual union members because of federal preemption. 452 F.2d at 55. *See* Avco Corp. v. Arco Lodge No. 735, 390 U.S. 557, 560 (1968); Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 102-03 (1962).

54. The protection against fiscal ruin argument influenced Congress in applying the common law agency standard to unions. *See* text accompanying notes 28 & 47 *supra*.