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Labor Law - Labor Management Relations Act - Compensatory and Punitive Damages for Breach of Collective Bargaining Agreement

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it may be felt that the testator never recognized the problem at all, in which case the court might feel free, under the guise of construction, to reach a just result.[14]

It should not be assumed, so far as "justice" is concerned, that an equal sharing of the gain between the widow and the other beneficiaries would be more advantageous to the family. The widow is entitled to interest on her legacy from the time of the testator's death, and this is a charge on the residue.[15] She is also entitled to take against her husband's will if his scheme of disposition has actually proved injurious. From the standpoint of passing the maximum amount of property to the family with the smallest attrition through unnecessary estate taxation, the testator here has probably made the wiser choice, since the substantial gain in this case will not again be taxed at the death of the widow. More serious, however, may be the income tax consequences. Whether the executor sells appreciated assets to make distribution or the trustee elects to take in kind, capital gains will have been realized at a time when it might have been better to avoid them. Skillful management on the part of the executor, however, including the use of the optional valuation date, can keep the loss within reasonable bounds.[16]

Gerald P. Lally

LABOR LAW—LABOR MANAGEMENT RELATIONS ACT—COMPENSATORY AND PUNITIVE DAMAGES FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT.

Local 127, United Shoe Workers v. Brooks Shoe Mfg. Co. (3d Cir. 1962).

The instant case arose out of the breach of a collective bargaining agreement by the defendant company.[1] Plaintiff labor union brought suit

14. SIMES AND SMITH, THE LAW OF FUTURE INTERESTS, § 467 (1956).
15. Fiduciaries Act of 1949, § 753, PA. STAT. ANN., § 320.753 (1950).
16. Smith, *Marital Deduction in Estate Planning,* 32 TAXES 15 (1954).

1. It is clear from the lower court opinion, 183 F. Supp. 568, 570 (E.D. Pa. 1960), that the breach was the result of a deliberate scheme to gradually decrease, and ultimately to end, production at the Philadelphia plant. The secret scheme, executed in April, 1954, was between defendant and the Carmen Shoe Mfg. Co. of Hanover, Pa. It read as follows: "As soon as possible after May 1, 1954, Brooks shall restrict its manufacturing activities, but shall continue the ownership of the capital stock of Carmen." This arrangement was in violation of two provisions of the collective bargaining agreement between Brooks and plaintiff union. Paragraph 14 of the agreement provided: "[N]o contract work shall be given out and no contract work shall be performed in the shop or factory on shoes known as better grade work . . . . It is agreed that the firm will continue to make

under Section 301(a) of the Labor Management Relations Act,[2] alleging violations of a contracting out provision and a guarantee against a runaway shop. The district court found that a breach had occurred and awarded the union both compensatory and punitive damages.[3] The compensatory damages were computed by projecting the foreseeable duration of the company's relationship with the union,[4] a measure based on principles first pronounced in the famous case of *Hadley v. Baxendale*.[5] It was decided that, had the breach not occurred, the union would have remained the certified representative of the company's employees for a period of at least twenty years. On this basis, the union was awarded approximately twenty-eight thousand dollars compensatory damages, this equalling the dues lost under the current contract plus the dues that would have accrued to the union if the status quo had continued for the projected twenty year period. In addition, the district court awarded the union fifty thousand dollars in punitive damages. The Court of Appeals for the Third Circuit affirmed, by an equally divided court, the award of compensatory damages, but reversed, with three judges dissenting, the district court's award of punitive damages as being beyond the scope of remedies available to the district courts under Section 301(a) of the Labor Management Relations Act. *Local 127, United Shoe Workers v. Brooks Shoe Mfg. Co.*, 298 F. 2d 277 (3d Cir. 1962).

This analysis is intended to demonstrate that, while Section 301(a) was only used as a jurisdictional device, the expanding aims of the national labor policy require a broader, substantive interpretation, and that all reasonable remedies devised by the courts to effectuate those aims should be allowed under Section 301(a). It is submitted, furthermore, that judicial precedent has not dealt a death-blow to punitive damages under that section and that, in the proper circumstances, punitive damages would seem an appropriate remedy for the courts to exercise under Section 301(a).

The three primary considerations in determining the nature and extent of the remedies available to a district court under Section 301 must be the language of the statute, its legislative history, and its interpretation in the courts. Clearly, a literalist would have to read Section 301 as

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the better grade shoes in their present plant [the Philadelphia plant]." Paragraph 21 of the agreement reads: "It is agreed by the Employer that the shop or factory shall not be removed from the County of Philadelphia during the life of this agreement."

2. Labor Management Relations Act (Taft-Hartley Act) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958), provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . 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 respect to the citizenship of the parties."

3. In separate proceedings, the district court found that the company breached the agreement, as alleged by the union. Local 127, United Shoe Workers v. Brooks Shoe Mfg. Co., 183 F. Supp. 568 (E.D. Pa. 1960). The damages were awarded in a later proceeding. 187 F. Supp. 509 (E.D. Pa. 1960).

4. 187 F. Supp. at 511 (E.D. Pa. 1960).

5. 9 Ex. 341, 156 Eng. Rep. 145 (1854).

simply granting a new, federal forum to the parties to a collective bargaining agreement in the event of a breach. The entire section,[6] on its face, is oriented toward eliminating the jurisdictional and procedural obstacles which previously had frustrated suit in a federal court by a party to a collective bargaining agreement. Significantly, the section does not refer at all to substantive rights of any description. The legislative history of Section 301 leaves little room for doubt as to the intent of the legislature; the section was understood as a jurisdictional grant, necessary to effectuate the broad policies of the Act. It appears that the sole concern of Congress, to the extent that it is reflected in legislative history, was to surmount the practical difficulties involved in obtaining a satisfactory forum for the settlement of disputes stemming from collective bargaining agreements.[7] Increased availability of existing remedies in a federal court was the goal.[8] The courts were split between two interpretations of Section 301(a) for nearly a decade. One view construed the section as merely giving federal district courts jurisdiction in controversies that involved labor organizations in industries affecting commerce, without regard to diversity of citizenship or the amount in controversy.[9] Those holding the other view understood Section 301(a) as authorizing the federal courts to fashion a body of federal law for the enforcement of collective bargaining agreements.[10] It was not until 1957, in the much-noted *Lincoln Mills* decision,[11] that the Supreme Court resolved this conflict over the meaning of Section 301 in favor of the broader view and laid the foundation for a new body of federally created substantive law. From this decision, it appears that the legal significance

6. The other subsections of Section 301 are exclusively concerned with jurisdictional and procedural matters. Subsection (b) treats of responsibility for acts of an agent, entity for purposes of suit, and enforcement of money judgments; subsection (c) deals directly with the subjects of the district courts' jurisdiction; subsection (d) provides for service of process; and subsection (e) lays down exceptions to the usual rules for determining questions of agency.

7. 93 Cong. Rec. 4141 (1947) (remarks of Senator Taft). On April 28, 1947 Senator Taft raised this rhetorical question before the Senate: "What is the purpose of Title 3 [Section 301]?" In answer to his own question, he went on, "The purpose of Title 3 is to give the employer and the employee the right to go to the federal courts to bring a suit to enforce the terms of a collective bargaining agreement."

8. S. Min. Rep. No. 105, 80th Cong., 1st Sess. 14 (1947). The Senate minority report contains the following statement: "This section [301] does not, therefore, create a new cause of action but merely makes the existing remedy available to more persons by removing the requirements of amount in controversy and of diversity of citizenship where interstate commerce is affected." (The Senate minority was in agreement with the majority as to this particular section.)

9. United Steelworkers v. Galland-Henning Mfg. Co., 241 F.2d 323 (7th Cir. 1957); Intl. Ladies Garment Workers v. Jay-Ann Co., 228 F.2d 632 (5th Cir. 1956) *(semble)*; Mercury Oil Refining Co. v. Oil Workers, 187 F.2d 980 (10th Cir. 1951).

10. Signal-Stat. Corp. v. Local 475, U.E.W. 235 F.2d 687 (2d Cir. 1956); Rock Drilling Union v. Mason and Hanger Co., 217 F.2d 687 (2d Cir. 1954); Assn. of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 210 F.2d 623 (3d Cir. 1953), *aff'd on other grounds*, 348 U.S. 437, 75 S. Ct. 489 (1955); Schatte v. International Alliance of Theatrical Stage Employees, 182 F.2d 158 (9th Cir. 1950).

11. Textile Workers v. Lincoln Mills, 353 U.S. 448, 77 S. Ct. 912 (1957).

of collective bargaining agreements had assumed new proportions in the eyes of the Court. In holding that federal substantive law must be applied in cases arising under Section 301, and that the federal courts must fashion this law according to the dictates of national labor policy,[12] the Court was, in effect, recognizing the need for better-adapted law and remedies to replace the archaic contrivances of an age gone by. In dissent, Mr. Justice Frankfurter revealed the fruitless void which exists in the legislative history of Section 301 as far as evidence to support the *Lincoln Mills* interpretation is concerned.[13] This view, however, fails to take account of the fact that the proper interpretation to be given a particular section is very often best determined by the policy behind the Act as a whole. Judge Wyzanski persuasively advocated a broad interpretation of Section 301 in these words:

> The legislative purpose in enacting §301 was obviously to prescribe an "effective method of assuring freedom from economic warfare for the term of the agreement" and "to encourage the making of agreements and to promote industrial peace through faithful performance of the parties of collective agreements . . . enforceable in the federal courts."[14]

Implicit in this position is a belief that the over-all purpose of the Act so permeates its every part as to control the interpretation of a given part when a close case arises. It is from such a viewpoint that the limitations of language and particular legislative history can be surmounted and the *Lincoln Mills* decision seen in the favorable light of conformity with legislative purpose.

Given then that *Lincoln Mills* did authorize the creation of a new body of federal law, can the remedies administered under Section 301(a) be extended beyond the ordinary devices, such as compensatory damages, injunction,[15] and specific enforcement of arbitration agreements?[16] Con-

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12. *Id.*, 353 U.S. at 456, 457, 77 S. Ct. at 918: "We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . Other problems will lie in the penumbra of express statutory mandates. *Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem.* (Emphasis supplied).

13. See the exhaustive appendix to Mr. Justice Frankfurter's dissent, 353 U.S. at 485-546, 77 S. Ct. at 936-963 (1957). In delivering the majority opinion, Mr. Justice Douglas admitted that the legislative history of Section 301 is somewhat cloudy and confusing. He then went on to point out a few "shafts of light" that illuminate the problem, but they do not seem capable in the least of overcoming the ocean of conflicting legislative history which Mr. Justice Frankfurter cited.

14. Textile Workers v. American Thread Co., 113 F. Supp. 137 (D. Mass. 1953).

15. Farrand Optical Co. v. Local 475, Intl. Union of Electrical Workers, 143 F. Supp. 527 (S.D. N.Y. 1956). This case points up some of the interesting problems resulting from an apparent overlapping of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. § 101 (1958) and the Labor Management Relations Act, 61 Stat. 156 (1947), 29 U.S.C. § 185 (1958).

16. Within the federal law to be fashioned by the federal courts under the *Lincoln Mills* case is included specific performance of promises to arbitrate grievances

sistent reasoning suggests that the *Lincoln Mills* decision, by giving effect to the broad dictates of our national labor policy in the particular instance of Section 301, at the same time made available all reasonable remedies known or to be devised,[17] provided only that they operate to advance the same broad aims. Apparently, it was in this light that the district court approached the instant case and decided to award unusual compensatory damages and punitive damages to the injured union. The appellate court questioned that decision in two respects: (1) the measure applied in determining the amount of compensatory damages due the union; (2) the the correctness of allowing any punitive damages whatsoever. The former would seem to present the simpler problem. To measure the extent of the injury done to a union by calculating the amount of dues lost is not a practice unknown to the federal courts.[18] The error in the instant case, if any, lies in the extension of the loss period beyond the term of the particular contract breached. When the loss was projected for a substantial period into the future, the measure allegedly became unfit because of its speculativeness. This, however, ignores the fact that all awards of consequential damages, awarded under the well-established rule of *Hadley v. Baxendale*,[19] must of their nature involve a greater or lesser degree of speculation. Indeed, in the instant case the district court appears to have done everything possible to minimize the margin of guesswork by limiting the projected damage period to twenty years, by basing the assessment on the status quo without allowance for reasonable increases, and by inquiring very deeply into the past and present financial stability of the company.[20] Furthermore, even if the compensatory damages were not computed at the minimum point of foreseeability, certainly the award was not clearly erroneous.[21] No sound argument has been advanced, nor does it seem that one could be contrived, for requiring that a lesser degree of foreseeability be used in determining the damages for breach of a collective

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under collective bargaining agreements. See Mendelsohn, *Enforceability of Arbitration Agreements Under Taft-Hartley Section 301*, 66 YALE L.J. 167 (1956-57).

17. Mr. Justice Douglas suggests this in saying, 353 U.S. at 448, 77 S. Ct. at 918 (1957): "[W]e see no justification in policy for restricting § 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act [The Norris-LaGuardia Act]." Granted that Justice Douglas' words must be limited by their context, it still seems that he was opposed to a restrictive interpretation of Section 301(a) in a broader sense.

18. Burlesque Artist's Assn. v. Hirst Enterprises, Inc., 267 F.2d 414 (3d Cir. 1959).

19. 9 Ex. 341, 354, 156 Eng. Rep. 145, 151 (1854): ". . . such as may fairly and reasonably be considered either arising naturally, *i.e.*, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

20. The court considered the following facts in its determination: that the same family had controlled the company for forty years; that the union had represented the employees at the Philadelphia plant since it was first organized in 1937; that the present owner had shown a persistent interest in the continuation of the operation; and, that there was no present prospect of liquidation, but, on the contrary, evidence of vigorous growth.

21. See FED. R. CIV. P. 52(a).

bargaining agreement than that employed in ordinary breach of contract actions. The only argument against the measure used in the instant case that displays any degree of plausibility was introduced by Judge Kalodner in his dissent, which maintained that the majority had overlooked the fact that, upon expiration of the present agreement, the company would have been free to move away for a "number of legitimate business reasons."[22] This, however, appears to confuse possibility with probability or foreseeability, when the latter notion is the keyword to consequential damages.[23] Under all the circumstances, it is *probable or foreseeable* that the company would not remove its operations from Philadelphia, if only for fear that it would constitute an unfair labor practice under Section 8(a)(5)[24] of the National Labor Relations Act. Thus it would be subject to either an injunction or an order from the Board that the operations be moved back, for if such a move is motivated not by economic reasons but rather by anti-union animus or an intent to avoid legal responsibilities, it is a violation of the law.[25] Valid economic reasons for a move in the instant case simply did not exist. At best, it was a remote possibility, in view of the financial state of the business, that legitimate economic reasons would develop within twenty years whereby injury to the union would be merely an unavoidable incidental.

A wholly new concept in the enforcement of collective bargaining agreements under Section 301 is presented by the district court's action in awarding punitive damages. The cornerstone of the argument against such an award is the Supreme Court's decision in *Republic Steel Corp v. NLRB*.[26] It is submitted that that case does not contain the holding that has been attributed to it by the court in the instant case. There the situation was unique; the damages awarded were not punitive in the ordinary sense of the word, rather, they were more akin to criminal penalties or fines in that they did not proceed directly to the injured party, the employees, but instead to the government. Further, the damages were not awarded to effectuate the policies of the National Labor Relations Act but rather to

22. 298 F.2d 277 (1962).

23. Hadley v. Baxendale, 9 Ex. 341, 354, 156 Eng. Rep. 145, 151 (1854).

24. National Labor Relations Act of 1935, § 8(a)(5), 49 Stat. 453, 29 U.S.C. § 158(a)(5) (1958). "It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees. . . . "

25. Mount Hope Finishing Co. v. NLRB, 211 F.2d 365 (4th Cir. 1954). Even where an employer has valid economic reasons for moving, he still must confront the union with his plans so that the union can consider representation of the employees in the new shop. Brown Truck and Trailer Mfg. Co., 106 N.L.R.B. 999 (1953).

26. 311 U.S. 7, 61 S. Ct. 77 (1940). Having found that the company had engaged in unfair labor practices by reason of its domination of the union, the Board did more than order the company to cease and desist from these practices, to withdraw recognition from the union, and to reinstate those employees discriminatorily discharged with back pay. In providing for back pay, the Board directed the company to deduct from the payments to the reinstated employees the amounts they had received for work performed upon "work relief projects", and to pay over such amounts to the appropriate governmental agencies. This latter aspect of the Board's order is the punitive measure referred to here. *But see,* Virginia Electric and Power Co. v. NLRB, 319 U.S. 533, 63 S. Ct. 1214 (1943).

preserve the integrity of the Works Project Administration. In this very unusual situation, the Court expressed some very broad views with respect to the extent of the Board's authority under its mandate to effectuate the policies of the Act,[27] labelling its function as being purely remedial and not punitive. In a recent case,[28] wherein the union was ordered to reimburse its members for dues paid, the union was found to have committed an unfair labor practice by enforcing an agreement which established closed-shop preferential hiring conditions. As a result, two applicants were refused work by the employer. In this context the Court reiterated the same broad statements it had made in *Republic Steel Corp.*, as to the non-punitive, remedial nature of the Board's function. Here again, though, there is no clear language relating directly to punitive damages. The Court merely condemned an attempt by the Board to impose a penalty-like burden on the union where it was clear that the union had not been unlawfully created and the employees had not been coerced to join the union or to remain members. Support is lent to the view that advocates a broad interpretation of the Board's powers by Justice Whittaker's dissent in that case which urges that the remedy invoked by the Board was within its power under the clause "necessary . . . to effectuate the policies of the Act."[29] All that seems to be required of the Board by the Act is that it "fashion and enforce a remedy which it deems adequate to that end."[30] While the Court may have been justified in striking down an action of the Board that was not purely remedial, it does not necessarily follow that Justice Whittaker's approach would not have a more persuasive influence in a case where the facts presented a need for stronger measures by the Board.

The more reasonable approach to the award of punitive damages in cases such as the instant case would seem to be by way of the traditional inquiry into whether such damages are appropriate where the cause of action arises from a breach of contract and not from a tort.[31] Admittedly, it has only been in a few instances that the actual breach itself has been deemed so inexcusable as to be deserving of punishment as a wanton or wilful tort.[32] But it seems that many of the isolated cases where punitive damages have been allowed in connection with a breach of contract possessed qualities that are found compounded in the instant case. The

27. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 235, 236, 59 S. Ct. 206, 219 (1938); NLRB v. Pennsylvania Greyhound Lines, 303 U.S. 261, 267, 268, 58 S. Ct. 571, 574, 575 (1938).

28. Local 60, United Bhd. of Carpenters v. NLRB, 365 U.S. 651, 81 S. Ct. 875 (1961).

29. 365 U.S. 651, 662, 81 S. Ct. 875, 881 (1961).

30. *Ibid.*

31. See 5 CORBIN, CONTRACTS 1077 (1951); McCORMICK, DAMAGES § 81 (1935); 5 WILLISTON, CONTRACTS 1340 (rev'd ed. 1937); RESTATEMENT, CONTRACTS § 342 (1932).

32. Hood v. Moffett, 109 Miss. 757, 69 So. 664 (1915) (physician's refusal to attend woman at childbirth); Addis v. Gramophone Co., Ltd., [1909] A.C. 488, (abrupt dismissal of employee without cause and before expiration of employment contract).

element of fraud (evidenced here by the secret agreement wherein the subsequent breach was planned) has given rise to punitive damages in some contract situations.[33] Breach of a public duty, imposed by law, occasioned an imposition of punitive damages in several instances, especially in cases involving public utilities.[34] Thus there does exist an exceptional area where a breach of contract may support an award of punitive damages, that is, "where a breach of contract merges with and assumes the character of a wilful tort, calculated rather than inadvertant, flagrant, and in disregard of obligations of trust."[35] It is submitted that conduct which would amount to an unfair labor practice under the Act in the absence of a collective bargaining agreement should fall into this classification, as being, if not a tort, at least tantamount to a tort. In the absence of precedent, it is especially important to scrutinize the behavior in question before concluding that it is gravely tortious in nature. The company's conduct in the instant case amounted to this: pursuant to a preconceived scheme,[36] the company did an act (decreased production, finally moving away in avoidance of its contract) which it knew or should have known would virtually certainly result in a substantial pecuniary loss to an innocent party, the union. Bearing this conduct in mind, it is well to consider the traditional aims warranting an award of punitive damages, in relation to the case at hand. Such an award would bring to punishment oppressive conduct, contrary to public policy, which otherwise would go unpunished. The deterrent value of Section 301, in its application to such conduct, would be greatly increased. Further, the injured party would be provided with an additional incentive to prosecute his claims; the financial burden faced by impecunious parties to a collective bargaining agreement in bringing suit would be defrayed or eliminated. Thus, while a wilful breach of a collective bargaining agreement may not constitute conduct heretofore considered gravely tortious, it seems both reasonable and proper to treat it as such for the purpose of awarding punitive damages, especially if it is clear that the same conduct would constitute an unfair labor practice under the Act, had the contract been absent. If the practice of arbitrarily breaching collective bargaining agreements is even tacitly condoned by judicial inaction, a pillar of our national labor policy will have been undermined.

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33. Brown v. Coates, 253 F.2d 36 (D.C. Cir. 1958); Hobbes v. Smith, 27 Okla. 830, 115 Pac. 347 (1911).

34. Louisville and N. R. Co. v. Ritchel, 148 Ky. 701, 147 S.W. 411 (1912); Carmichael v. Southern Bell Tel. and Tel. Co., 157 N.C. 21, 72 S.E. 619 (1911); Williams v. Carolina and N.W. R. Co., 144 N.C. 498, 57 S.E. 216 (1907); Ft. Smith and W. R. Co. v. Ford, 34 Okla. 575, 126 Pac. 745 (1912); Pittsburgh, C. and St. L. Ry. Co. v. Lyon, 123 Pa. 140, 16 Atl. 607 (1889).

35. Brown v. Coates, 253 F.2d 36, 39 (D.C. Cir. 1958).

36. See note 1 *supra*.