SECTION 301 OF TAFT-HARTLEY ACT: SUITS BY UNIONS TO VINDICATE UNIQUELY PERSONAL RIGHTS OF EMPLOYEES

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In *Humphrey v. Moore*[1] plaintiff union member brought a suit against the union alleging that (1) the joint employer-union committee had exceeded its authority under the collective bargaining agreement when it reached a grievance settlement which dovetailed seniority lists of two merged automobile transporters, and that (2) the committee decision was obtained by dishonest union conduct in breach of its duty of fair representation.[2] Although plaintiff had not specifically brought his suit under section 301 of the Taft-Hartley Act,[3] the majority decision stated that this was an action to enforce a collective bargaining contract and was therefore governed by section 301.[4]

Section 301 which authorizes suits where the collective bargaining agreement between employer and union has been breached, reads as follows:

> (a) 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.

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1. ___ U.S. ___, 84 S.Ct. 363, ___ L.Ed.2d ___ (1964).
2. Plaintiff was an employee of one of the merged companies; the union represented employees of both companies. The president of the union had suported the position of one of the companies and opposed the position of the employees in the company where plaintiff was employed. However, three stewards in the company where plaintiff was employed were at the joint hearing at union expense. The Supreme Court held it was permissible for the union to take a good faith position contrary to that of some individuals whom it represented in supporting others, and cited Ford Motor Co. v. Huffman, 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048 (1953).
3. 61 Stat. 156 (1947), 29 U.S.C. §185 (1952).
4. In three opinions four Justices concurred in part and dissented in part. One Justice dissented. Mr. Justice Goldberg concurred in the finding that plaintiff had not proved his case, but disagreed as to the nature of the suit: "I do not, however, agree that Moore stated a cause of action arising under section 301 (a) of the Labor Management Relations Act. . . . It is my view rather that Moore's claim must be treated as an individual employee's action for a union's breach of its duty of fair representation—a duty derived not from the collective bargaining contract but from the National Labor Relations Act. . . . See Syres v. Oil Workers Int'l. Union, 350 U.S. 892, . . . Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, . . . Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, . . . Steele v. Louisville & N.R. Co., 323 U.S. 192. . . ."

> (b) . . . 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. . . .

The holding in the *Humphrey* case with regard to the type of suit which may be brought under section 301 represents the second enlargement in the scope of that section within the space of about a year. In December of 1962, in *Smith v. Evening News*[5] the court had held that individual employees could sue their employer under section 301 to vindicate uniquely personal rights under a collective bargaining agreement. The *Humphrey* case now gives employees the right to sue their union under section 301 where the terms of the collective bargaining agreement between employer and union have been breached. The individual employee may now therefore bring suit under section 301 against either his employer or his union if his personal rights under a collective bargaining agreement are involved.

An important question which should be reviewed by the Supreme Court with regard to section 301 suits is whether a union may bring suit against the employer where employees' personal rights are involved, if the employees wish the union to do so. The answer to this question is in a state of uncertainty in the lower courts. While there are dicta to the effect that such a suit may be brought,[6] courts will allow such suits only when union interests are inextricably intertwined with the individual rights of the employee, or the employee personal rights sued on by the union are part of an arbitration award.[7]

A brief reference to the status of suits involving employee personal rights under the collective bargaining agreement before and after the enactment of section 301 might be helpful as a background to the problem presented in this comment.

Suits Involving Employees' Personal Rights Before the Enactment of Section 301 of the Taft-Hartley Act

Before the enactment of section 301 employees could sue employers to enforce their personal rights at common law in the state courts. An employee could bring his suit in a federal court only if there existed the

5. 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962).
6. Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962); General Drivers, Warehousemen and Helpers Local Union No. 89 v. Riss & Company, ___ U.S. ___, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963); Meat Cutters, Local 641 v. Capitol Packing Co., 32 F.R.D. 4 (D.C. Colo. 1963).
7. International Union Automobile Workers v. Textron, Inc., 312 F.2d 688 (6th Cir. 1963); Meat Cutters, Local 641 v. Capitol Packing Co., 32 F.R.D. 4 (D.C. Colo. 1963; United Construction Workers v. Electro Chemical Engraving Co., 175 F. Supp. 54 (S.D. N.Y. 1959); General Drivers, Warehousemen and Helpers Local Union No. 89 v. Riss & Company, ___ U.S. ___, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963).

requisite diversity of citizenship and a sufficient amount was involved in the suit. When an employee's rights were based on provisions in a collective bargaining agreement, courts would allow the employee to incorporate the necessary terms into his contract by the use of one of three theories: (1) the custom or usage theory, (2) the agency theory, or (3) the third-party beneficiary theory.[8]

But a union suit to enforce the union's rights against the employer under a collective bargaining agreement, or conversely an employer's suit against the union with respect to the employer's rights under a collective bargaining agreement, met with more difficulty than the suit of the employee against his employer. Congress did not include in the Wagner Act any provision for the enforcement of collective agreements. During the twelve years of the original NLRA, the National Labor Relations Board and the federal courts held to the view that the national government should not intrude in this field. In effect, this meant leaving the entire matter for the state courts to handle, except for diversity of citizenship cases. The state courts found it difficult to entertain suits by or against labor unions because these associations were not legal entities and hence could not appear as parties in litigation to sue or be sued. Several states by legislation and a few courts by judicial decision corrected this deficiency. But even then, in most instances the common law rules governing the enforcement of collective agreements proved inadequate.[9]

8. Under the first theory, the collective bargaining agreement was recognized as a crystallization of custom and usage prevailing in the plant or industry covered. In an action by an individual employee the conditions of labor provided for in the collective agreement operated to fix the terms of the individual contract of employment made by that worker with his employer. Under the second theory recognized by some courts, the union which made the collective agreement with the employer was regarded as having acted as agent for the employees it represented. Members employed after the execution of the agreement were considered to have adopted the agreement. Under the third theory, a union was considered to have entered into an agreement with an employer for the benefit of all workers in the bargaining unit. This was the most flexible of the three theories in that it permitted all of the employees in the bargaining unit covered to sue employers directly in enforcing contract terms, whether or not they were union members. The courts here were applying the third-party beneficiary contract principle that the individual beneficiaries need not all be identified, named, or even in existence at the time the contract is entered into.

9. "The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations. At common law voluntary associations are not suable as such. Wilson v. Airline Coal Company, 215 Iowa 855, 246 N.W. 753; Iron Molders' Union v. Allis-Chalmers Company, C.C.A. 7, 166 F. 45, 20 L.R.A., N.S., 315. As a consequence the rule in most jurisdictions in the absence of statute, is that unincorporated labor unions cannot be sued in their common name. Grant v. Carpenters' District Council, 322 Pa. St. 62, 185 A. 273. Accordingly, the difficulty or impossibility of enforcing the terms of a collective agreement in a suit at law against a union arises

Since most courts would not entertain suits by or against unions to enforce undertakings in a collective bargaining agreement, a fortiori courts would not entertain suits by unions when they sought to enforce terms of collective agreements on behalf of employees directly concerning working conditions, such as wages, hours, promotion, vacations, holiday pay, seniority, and the like—"uniquely personal" rights of the employee.

SUITS INVOLVING EMPLOYEES' PERSONAL RIGHTS AFTER THE ENACTMENT OF SECTION 301 OF THE TAFT-HARTLEY ACT

In 1947, when Congress created a federal forum for suits arising out of breaches of collective bargaining contracts between unions and the employer, it pointed out the problems in suing unions in state courts:[10] (1) the laws of many states made it difficult to sue effectively and to recover a judgment against an unincorporated labor union. In some states it was necessary to serve all the members before an action could be maintained against the union; (2) there was difficulty in certain states in reaching the funds of a union to satisfy a judgment against it; and (3) the Norris-LaGuardia Act and state statutes modeled after it insulated labor unions in the field of injunctions against liability for breach of contract. Strikes, boycotts, or picketing when carried on in breach of a

from the fact that each individual member of the union must be named and made a party to the suit.

"Some States have enacted statutes which subject unincorporated associations to the jurisdiction of law courts. These statutes are by no means uniform; some pertain to fraternal societies, welfare organizations, associations doing business, etc., and in some States the courts have excluded labor unions from their application.

"On the other hand, some States, including California and Montana, have construed statutes permitting common name suits against associations doing business to apply to labor unions. Armstrong v. Superior Court, 173 Cal. 341, 159 P. 1176; Vance v. McGinley, 39 Mont. 46, 101 P. 247. Similarly, but more restrictive, in a considerable number of States the action is permitted against the union or representatives in proceedings in which the plaintiff could have maintained such an action against all the associates. Such States include Alabama, California, Concenticut, Delaware, Maryland, Montana, Nevada, New Jersey, New York, Rhode Island, South Carolina, and Vermont.

"In at least one jurisdiction, the District of Columbia, the liberal view is held that unincorporated labor unions may be sued as legal entities even in the absence of statute. Busby v. Elec. Util. Emp. Union, 79 App. D.C. 336, 147 F.2d 865.

"In the Federal courts, whether an unincorporated union can be sued depends upon the procedural rules of the State in which the action is brought. Busby v. Elec. Util. Empl. Union, 323 U.S. 72, 65 S.Ct. 142, 89 L.Ed. 78." Report of the Senate Committee on Labor and Public Welfare on the Proposed Federal Labor Relations Act of 1947. S.Rep. 105, 80th Cong., 1st Sess., pp. 15-18.

10. S. Rep. 105, 80th Cong., 1st Sess., pp. 15-18.

collective agreement involved a "labor dispute" under the act so as to make the activity not enjoinable.[11]

Section 301 of the Labor Management Relations Act provided for suits by and against unions as entities where the collective contract had been breached, and these actions could be brought in the federal district courts regardless of whether or not the usual federal jurisdictional requirements (such as diversity of citizenship and the requisite amount involved in the suit) were present.

Although the act was primarily aimed at making unions more responsible with regard to their collective bargaining promises, it of course had the reciprocal effect of enabling unions to sue employers for breaches of the collective agreement.

However, even though section 301 simplified enforcement of rights in federal courts, it was not clear what kind of rights were enforceable and who could enforce them. In *Association of Westinghouse Salaried Employees v. Westinghouse Corporation,*[12] the first case requiring the Supreme Court to determine the extent of section 301, the union, as bargaining representative, brought suit under section 301 alleging that the employer had violated a collective agreement by docking the pay of salaried employees in the bargaining unit for a day on which they did no work. The Court of Appeals had dismissed the case for want of jurisdiction on the ground that only individual contracts of hire were broken. In three opinions, six Justices of the Supreme Court found that section 301 did not authorize actions brought by unions to recover wages due individual workers. Mr. Justice Douglas and Mr. Justice Black dissented, urging that the union should be permitted to sue under section 301. The opinion of Mr. Justice Frankfurter on behalf of himself and Justices Burton and Minton stated that section 301 created no substantive federal law, but merely provided a forum for litigation over alleged violations of collective bargaining agreements. As a result, he felt there was constitutional doubt whether Congress could confer this jurisdiction upon constitutional courts where there is no diversity of citizenship, for in the absence of substantive federal rights the action might not be one "arising under . . . the Laws of the United States."[13] That issue did not have to be faced at this time, however, because he concluded that there was no suggestion in section 301 that Congress "intended to open the doors of the federal courts to a potential flood of grievances based upon

11. But even in suits under §301 of the Taft-Hartley Act, injunctive relief against such strikes is precluded under the Norris-LaGuardia Act, the Supreme Court has ruled. Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1962).
12. 348 U.S. 437, 75 S.Ct. 489, 99 L.Ed. 510 (1955).
13. U.S. CONST. art. III, §2, cl. 1.

an employer's failure to comply with terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee. The employees have always been able to enforce their individual rights in the state courts. They have not been hampered by the rules governing unincorporated associations. To this extent, the collective bargaining contract has always been 'enforceable.' "[14]

As a result of *Westinghouse,* it thus appeared that whenever the contractual provision involved concerned some term or condition of employment affecting the individual employees, such as wages, hours, seniority, promotion, vacations, and the like, the union could not sue for its enforcement under section 301. The employees would have to sue as before. If the employees got into the federal courts, it would be by virtue of diversity of citizenship, and state substantive law would control. Under section 301, employees had no rights at all.[15] Furthermore, employers' promises to unions concerning terms and conditions of employment acquired legal significance as contractual undertakings only as incorporated into the individual hiring contracts of the employees.

The rapid change and broadening in the court's interpretation of section 301 after the *Westinghouse* decision provide an interesting account of statutory construction. This change and broadening are also an example of a typical process in the field of labor law—a field where the law is still in a state of flux and vast movements have been compacted and telescoped into relatively short spans of time.

Within two years, in 1957, the holding of the *Westinghouse* case, to the effect that section 301 was merely jurisdictional and not substantive, was repudiated. In *Textile Workers Union v. Lincoln Mills of Alabama,*[16] it was held that under section 301 a union could have specific performance of a bargaining agreement to arbitrate a grievance dispute, the employer having refused such arbitration. Mr. Justice Douglas who had dissented in the *Westinghouse* case delivered the opinion of the Court stating that section 301 is substantive and that it gives federal courts power to form

14. 348 U.S. 437, 460, 75 S.Ct. 489, 500, 99 L.Ed. 510, 525 (1955).

15. Derived from this holding in the Westinghouse case came a swarm of lower court decisions which dismissed suits by individuals against employers under §301. *E.g.* Copra v. Suro, 236 F.2d 107 (1st Cir. 1956), §301 gives jurisdiction only where the *suit* as well as the *contract* is between an employer and a labor organization. Dimeco v. Fisher, 185 F. Supp. 213 (D.N.J. 1960), wrongful discharge is common law action, not §301. Polnau v. Detroit Edison Co., 301 F.2d 702 (1st Cir. 1956), this statute (8301) only authorizes the employer or union to bring the suit. Many lower courts had dismissed these suits even before the Westinghouse decision. *E.g.* United Protective Workers of America v. Ford Motor Co., 194 F.2d 997 (7th Cir. 1952); Zaleski v. Local 401, 91 F. Supp. 552 (D.N.J. 1950); Disanti v. Local 53, 126 F. Supp. 747 (W.D. Pa. 1954); Square D. Co. v. United Electrical Radio and Machine Workers, 123 F. Supp. 776 (E.D. Mich. 1954).

16. 353 U.S. 448, 77 S.Ct. 923, 1 L.Ed.2d 972 (1957).

a body of federal law to enforce collective bargaining agreements. The federal law to be applied was to be fashioned from the policy of our national labor laws. Subsequent decisions established that state and federal courts have concurrent jurisdiction,[17] but the substantive law to be applied is federal law.[18] *Lincoln Mills* and these subsequent decisions thus effected an important and desired change in the law governing collective bargaining agreements. Under the *Westinghouse* interpretation of section 301, suits could be brought in either the federal or state courts, but the law to be applied was presumably state law. The present law is that section 301 suits may be brought on collective bargaining agreements in either federal or state courts, and the law to be applied is a uniform, and in many cases more progressive, federal labor law.

Then in 1962, in *Smith v. Evening News,*[19] stating that "subsequent decisions . . . have removed the underpinnings of *Westinghouse* and its holding is no longer authoritative as a precedent,"[20] the Supreme Court decided that individual employees could sue under section 301 to vindicate uniquely personal rights, such as back wages, under union contracts (even though the National Labor Relations Board may also have jurisdiction to deal with the violation because it constitutes an unfair labor practice).

Finally in the *Humphrey* case[21] decided this year, the Court found that an individual employee may sue his union under section 301 where his rights under the collective bargaining agreement between the union and the employer are involved.

We find today, therefore, that unions have the right under section 301 to sue in disputes involving union rights,[22] not only on behalf of their members, but on behalf of all employees whom they represent.[23]

17. Courtney v. Dowd Box Co., 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483 (1962).
18. Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Company, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962).
19. *Supra* n. 5.
20. *Id.* at ___, 83 S.Ct. at 269, 9 L.Ed.2d at 250 (1962).
21. *Supra* n. 1.
22. Textile Workers Union v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S.Ct. 923, 1 L.Ed.2d 972 (1957). Both before and after the Lincoln Mills case, in the lower federal courts the Westinghouse holding had been limited to those peculiarly personal rights which arise from the individual contract between the employer and employee so as to not cover a "cause of action or remedy that appropriately pertains to the union as an entity, particularly one which an individual employee may have no equal power to enforce." Local 205, Electrical Workers v. General Electric Company, 233 F.2d 85 (1st Cir. 1956), at 100, *aff'd.*, 353 U.S. 547, 77 S.Ct. 921, 1 L.Ed.2d 1028 (1957); Council of Western Electric Technical Employees-National v. Western Electric Company, 238 F.2d 892 (2d Cir. 1956); see also United Steelworkers of America v. New Park Mining Co., 273 F.2d 352 (10th Cir. 1959).
23. Council of Western Electric Technical Employees v. Western Electric Co., 238 F.2d 892 (2d Cir. 1956); Hod Carriers, Local 17 v. Mason-Hangar Co., 217 F.2d 687 (2d Cir. 1954). A district court decision in Kansas has even gone as far as holding that the union may maintain the action regardless of whether the union

We find also that individual employees can sue either their employers[24] or their union[25] under section 301 for breaches to vindicate uniquely personal rights. But there still exists some controversy as to the right of unions to sue under section 301 to enforce uniquely personal rights of employees—the specific issue in the *Westinghouse* case. So although *Westinghouse* has been greatly undermined, there is some doubt still as to whether it has actually been overruled.

The cases that hold that unions may not sue under section 301 to enforce personal rights of employees where no union right is involved have adhered to the holding in the *Westinghouse* case.[26] Other cases have held that the *Westinghouse* case is no longer authoritative as a precedent.[27] But in those cases allowing unions to maintain section 301 suits to enforce personal rights of employees one of two situations has existed. Either the claims asserted were the subject of a final and binding arbitration under the terms of a union contract, or the claims were closely related or intertwined with union rights. However, if a union's action is based upon rights that are uniquely personal to employees and these rights are not subject to arbitration under the collective agreement, the union's suit on behalf of employees would still seem to be barred by the Supreme Court's decision in the *Westinghouse* case.

As a result of these somewhat refined distinctions, the current cases are not in agreement as to whether unions may enforce employees' pension or welfare rights.[28] A suit by the union for reinstatment and back

represents all, some, or none of the employees of the employer. Truck Drivers and Helpers, Local 696 v. Grosshans & Peterson, Inc., 209 F. Supp. 164 (D. Kan. 1962).

24. Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962).

25. Humphrey v. Moore, ___ U.S. ___, 84 S.Ct. 363, ___ L.Ed.2d ___ (1964).

26. International Association of Machinists v. Servel, Inc., 268 F.2d 692 (7th Cir. 1959); United Electrical Radio and Machine Workers of America v. General Electric Co., 231 F.2d 259 (D.C. Cir. 1956); Textile Workers Union of America v. Cone Mills Corp., 166 F. Supp. 654 (M.D. N.C. 1958); Communications Workers of America v. Ohio Bell Telephone Co., 160 F. Supp. 822 (N.D. Ohio 1958), *aff'd.*, 265 F.2d 221 (6th Cir. 1959), *cert. denied* 361 U.S. 814, 80 S.Ct. 51, 4 L.Ed.2d 61 (1959); Textile Workers Union of America v. Bates Manufacturing Co., 158 F. Supp. 410 (D. Me. 1958); Burlesque Artists Ass'n. v. I. Hirst Enterprises, Inc., 134 F. Supp. 203 (E.D. Pa. 1955); United Mine Workers of America v. Ronco, 314 F.2d 186 (10th Cir. 1963); Retail Clerks, Local 122 v. Lewis, Inc., (D. Cal. 1961), 44 Labor Cases 17, 341; Chicago Newspaper Guild, Local 71 v. Chicago Daily News (D.C. Ill. 1957), 32 Labor Cases 70, 459; United Steelworkers v. Pullman-Standard Car Mfg. Co., 241 F.2d 547 (3rd Cir. 1957).

27. Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962); General Drivers, Warehousemen and Helpers Local Union No. 89 v. Riss & Company, ___ U.S. ___, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963); Meat Cutters, Local 641 v. Capitol Packing Co., 32 F.R.D. 4 (D.C. Colo. 1963).

28. International Union Automobile Workers v. Textron, Inc., 312 F.2d 688 (6th Cir. 1963); Meat Cutters, Local 641 v. Capitol Packing Co., 32 F.R.D. 4 (D.C. Colo. 1963); United Construction Workers v. Electro Chemical Engraving Co., 175 F. Supp. 54 (S.D. N.Y. 1959); pension rights held enforceable. United Steelworkers v. Pullman-Standard Car Manufacturing Co., 241 F.2d 547 (3rd Cir.

pay to certain discharged employees is permitted if it is based on a final and binding arbitration award under a union contract.[29] In a similar case,[30] the union was permitted to maintain a suit under section 301 with regard to agreements to arbitrate wages, hours, and conditions of employment and to enforce collective awards made pursuant to arbitration, but jurisdiction was held not to extend to enforcement of rights which are uniquely personal to employees, such as back wages and vacation pay resulting from violation of the collective bargaining agreement. The unsatisfactory situation that exists at present is also illustrated by *United Mine Workers of America District 22 v. Ronco*,[31] where the Court of Appeals ruled that the union as collective bargaining agent of coal mining employees has no right under 301 to enforce uniquely personal rights of workers and that the court might take jurisdiction over only those alleged contract violations which are of peculiar concern to the union as an organization. Therefore, union claims that the employer violated his contract by failure to (1) pay employees time and one-half for overtime, (2) sell house coal to employees, and (3) follow seniority rules, were all matters purely personal to individual employees, and as such, could not be entertained by the court in a suit brought by the union. However, the claim that the employer failed to check off union dues in violation of the contract provision involved matter of peculiar concern to the union as an organization and was within the court's cognizance.

A Realistic Solution

There are many reasons why the uncertainty in the lower federal courts should be resolved in favor of permitting suits by unions where employees' personal rights under the collective bargaining agreement are involved. In the first place, the distinction between employees' personal rights and union rights is difficult to apply and unrealistic. The line of demarcation is strained and artificial, not easy to maintain because of the overlapping that is certain to exist. The strict concept of "uniquely personal" rights has vanished, if it can be said to have ever existed under collective bargaining agreements. It is hard to conceive of an individual claim that does not have the double aspect of being individual and collective at the same time. Practically speaking, the distinction is

1957), pension rights held not enforceable. Meat Cutters, Local 641 v. Capitol Packing Co., 32 F.R.D. 4 (D.C. Colo. 1963); United Construction Workers v. Electro Chemical Engraving Co., 175 F. Supp. 54 (S.D. N.Y. 1959); suits under contract provisions for welfare funds permitted.

29. General Drivers, Warehousemen and Helpers Local v. Riss & Co., ___ U.S. ___, 83 S.Ct. 789, 9 L.Ed.2d 918 (1963).

30. United Steelworkers of America v. New Park Mining Co., 273 F.2d 352 (10th Cir. 1959).

31. 314 F.2d 186 (10th Cir. 1963).

illusory, and the line drawn by the cases cannot be defended except on the most formalistic grounds. Individual claims are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based.

Moreover when we consider what is actually being done in the industrial world to administer and enforce modern collective agreements, the distinction maintained by the courts between employees' personal rights and union rights seems all the more tenuous. Almost every collective bargaining agreement contains a grievance procedure with arbitration as its last step. Under such an agreement, unsettled grievances may generally be submitted to an arbitrator and a final and binding disposition is reached. In this system the union determines what grievances shall be submitted to arbitration, and finances and conducts the proceedings. Furthermore, while under section 9(a) of the Taft-Hartley Act individual employees have the right to settle their own grievances, it is normal procedure in most instances for the union to do so. And even under this section, the union has the right to be present at individual settlements, to see that they are not inconsistent with the terms of the prevailing collective agreement.

The law has not kept abreast of these developments by affording a comparable opportunity to the union to bring suits in our courts where employees' personal rights under the collective bargaining agreement are involved. So as a practical matter, these rights are usually made subject to grievance procedures and arbitration in most contracts. Thus the union is able to handle these questions under the grievance procedures of a contract with arbitration as a final step. The union may get specific performance of a bargaining agreement to arbitrate a grievance dispute, and further the arbitration award may be enforced by the courts if necessary. The defect in this system is that all questions involving employees' personal rights cannot always be anticipated and made subjects of grievance and arbitration procedures.

In the *Westinghouse* case, Mr. Justice Douglas, speaking for himself and Mr. Justice Black, vigorously disagreed with the majority. He was unable to see why the union was not allowed to do the suing for the benefit of the four thousand employees involved.

> We make mountains out of molehills in not allowing the union to be the suing as well as the bargaining agency for its members as respects matters involving the construction and enforcement of the collective bargaining agreement. . . . A lawsuit, like negotiation or arbitration, resolves the dispute and settles it. In short, the union represents the interests of the com-

> munity of employees in the collective bargaining agreement. . . . The range of its authority is the range of its interest. What the union obtains in the collective agreement it should be entitled to enforce or defend in the forums which have been provided. When we disallow it that standing, we fail to keep the law abreast of the industrial developments of this age.[32]

Section 301 is concededly vague in its language. In *Smith v. Evening News*,[33] in enlarging the scope of section 301 to include suits by employees where the collective bargaining agreement had been breached, the Court gave a broad interpretation to the language of section 301 (a), which provides for "suits for violation of contracts between an employer and a labor organization." The Court decided that the word "between" refers to "contracts" rather than to "suits," and therefore the statute does not exclude all suits brought by employees instead of unions. The Court, while not reiterating this grammatical interpretation of section 301 (a), apparently followed it in *Humphrey v. Moore*[34] when it classed the suit by an employee against the union as a section 301 suit. There does not seem to be anything in the language of 301 which would bar a suit by a union to vindicate uniquely personal rights of an employee under a collective bargaining agreement.

Finally, the distinction between employees' personal rights and union rights maintained by the courts does not fit in with the general purpose of labor legislation. In enacting section 301 of the Taft-Hartley Act Congress intended to encourage the making of collective agreements and to promote industrial peace through their faithful performance. Why then should promises in these same instruments concerning only union interests, such as union shop clauses, dues checkoff arrangements, or agreements to arbitrate unresolved grievances, be any more enforceable by unions than promises to unions concerning terms and conditions of work for employees?

One of the great drawbacks under the present distinction is that because of the time and expense required of individual workers to litigate their claims, it seems unlikely that many workers can afford to litigate unsettled questions presently termed by the courts as uniquely personal. While on the whole collective bargaining has been very successful, is it one of the failures of collective bargaining that members of a union may have certain rights that are often in practicality unprotected?[35] Are

32. 348 U.S. 437, 465, 75 S.Ct. 489, 503, 99 L.Ed. 510, 528 (1955).
33. *Supra* n. 5.
34. *Supra* n. 1.
35. Union leaders have expressed concern about protecting the rights of the unemployed and even about protecting the rights of future employees. See Keynote

the courts limiting the achievements of collective bargaining when they hold that the union cannot represent its members in litigation involving those members' personal rights? The purpose of section 301 was to make collective bargaining promises enforceable. Would not this purpose be better fulfilled by a broader interpretation of section 301, an interpretation which would permit unions to sue to vindicate the uniquely personal rights of those members who may wish the union to do so?

Address to the Fifth Constitutional Convention November 7, 1963, by Walter P. Reuther, President Industrial Union Department AFL-CIO. Yet here is a group within the present work force who might be considered unprotected in some respects.