



2-1-1950

Labor Law -- U.S. Arbitration Act -- Enforceability Thereunder of Agreements to Arbitrate Labor Disputes

Leroy F. Fuller

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Leroy F. Fuller, *Labor Law -- U.S. Arbitration Act -- Enforceability Thereunder of Agreements to Arbitrate Labor Disputes*, 28 N.C. L. REV. 225 (1950).

Available at: <http://scholarship.law.unc.edu/nclr/vol28/iss2/14>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Labor Law—U.S. Arbitration Act—Enforceability Thereunder of Agreements to Arbitrate Labor Disputes

At common law, agreements to arbitrate existing or future disputes are revocable by either party at any time before an award is made, and courts will not, in the absence of statutory authority, grant specific performance of such an agreement, or allow it to be pleaded as a bar to an action.¹ In order to abrogate this common law rule, fifteen states² and the United States³ have enacted statutes which make written agreements to arbitrate existing or future disputes irrevocable and enforceable. Four other states⁴ have passed the uniform arbitration act which is applicable to existing disputes only, and does not provide for direct enforcement.

The United States Act is based on the draft state arbitration act approved by the American Arbitration Association and presented to Congress by the American Bar Association. Section 2 of the act provides that written agreements to arbitrate existing or future disputes arising out of maritime transactions or transactions involving interstate or foreign commerce shall be "valid, irrevocable, and enforceable." Section 3 provides for a stay of proceedings where suit is brought on any issue referable to arbitration, and Section 4 provides for direct compulsion of arbitration.⁵ The remaining sections provide for appointment of arbitrators by the court, entering an award as a judgment of court, vacating or modifying the award, and confirming it by order of the court.

¹ Executory arbitration agreements, while not illegal or void, would oust the courts of jurisdiction and were therefore held to be against public policy. Specific performance would not be granted since either party could revoke and make the court order useless. *Hamilton v. Home Insurance Co.*, 137 U.S. 370 (1890); *Home Insurance Co. v. Morse*, 20 Wall. 445 (U.S. 1874); *Tobey v. County of Bristol*, 3 Story 800, Fed. Case No. 14,065 (1845); *Rueda v. Union Pacific R. Co.*, 180 Ore. 133, 175 P. 2d 778 (1946); RESTATEMENT, CONTRACTS §550 (1932). See generally, Wolaver, *The Historical Background of Commercial Arbitration*, 83 U. OF PA. L. REV. 132 (1934); Simpson, *Specific Performance of Arbitration Contracts*, 83 U. OF PA. L. REV. 160 (1934).

² Arizona, California, Connecticut, Louisiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin.

³ United States Arbitration Act, 43 STAT. 883 (1925), 9 U. S. C. A. §§1-14 (Supp. 1948).

⁴ Nevada, North Carolina, Utah, and Wyoming. For an analysis of the uniform act see Sturges, *Arbitration Under the North Carolina Statute—The Uniform Arbitration Act*, 6 N. C. L. REV. 363 (1928).

⁵ Section 2, making certain written agreements to arbitrate valid, irrevocable, and enforceable is, of necessity, limited to maritime and interstate commerce transactions, since Congress has no power to legislate with respect to the validity of contracts generally. But sections 3 and 4 are broad and not limited to maritime and interstate commerce transactions, since they deal with procedure in the federal courts, over which Congressional power is complete and not limited. *Agostini Bros. Building Corp. v. U.S.*, 142 F. 2d 854 (4th Cir. 1944); *Donahue v. Susquehanna Collieries Co.*, 138 F. 2d 3 (3rd Cir. 1943).

The act has been successful in changing the common law rule as to written agreements to arbitrate in commercial and maritime contracts, and under it the federal courts now specifically enforce agreements to arbitrate and allow stay of suit until arbitration is had⁶ However, section 1 of the act, after defining "maritime transactions" and "commerce," adds a clause, ". . . but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." This clause has led to a conflict between the circuit courts of appeals, as to whether or not any part of the act applies to arbitration clauses in collective bargaining agreements.⁷

Three decisions of the third circuit⁸ have applied section 3 of the act and allowed stay of action, even though the arbitration clause involved was contained in a collective bargaining agreement. In *Watkins v. Hudson Coal Co.*⁹ that court held that the exclusion of contracts of employment in section 1 of the act did not apply to section 3, and allowed a stay of suit until arbitration was had.¹⁰ The court reasoned, Judge Goodrich writing the opinion, that the clause excluding employment contracts in section 1 is applicable only to the definitions of "maritime transactions" and "commerce" contained therein, and since these terms appear again only in section 2, section 3 and the remainder of the act are not limited by the clause.¹¹

⁶ *Agostini Bros. Building Corp. v. U.S.*, 142 F. 2d 854 (4th Cir. 1944); *Kulundis Shipping Co. v. Amtorg Trading Corp.*, 126 F. 2d 978 (2d Cir. 1942).

⁷ The great majority of collective bargaining agreements now contain a clause providing for arbitration of any disputes arising from interpretation of the contract, which have not been settled through a specified grievance procedure. Of the fifteen states which have statutes similar to the United States act, six, California, Connecticut, Louisiana, Massachusetts, New Jersey, and New York, have made their statutes applicable to labor contracts either by specific provision or court interpretation. Comment, *Arbitration of Labor Contract Disputes*, 43 ILL. L. REV. 678 (1948).

⁸ *Evans v. Hudson Coal Co.*, 165 F. 2d 970 (3rd Cir. 1947) (followed the *Donahue* case without any mention of the exclusion clause); *Watkins v. Hudson Coal Co.*, 151 F. 2d 311 (3rd Cir. 1945), *cert. denied*, 327 U.S. 777 (1946); *Donahue v. Susquehanna Collieries Co.*, 138 F. 2d 3 (3d Cir. 1943) (the court made no mention of the exclusion clause in section 1, but did apply section 3 to a collective bargaining agreement).

⁹ 151 F. 2d 311 (3rd Cir. 1945).

¹⁰ One judge dissented and followed the view of the fourth and sixth circuits that the exclusion in section 1 should apply to the entire act.

¹¹ The argument has also been advanced that collective bargaining agreements should not be excluded from the act since such an agreement should not be considered a "contract of employment" within the sense of the exception. Freiden, *Legal Status of Labor Arbitration*, NEW YORK UNIVERSITY FIRST ANNUAL CONFERENCE ON LABOR (1948) 233, 247. In *Levy v. Superior Court*, 15 Cal. 2d 692, 104 P. 2d 770 (1940), the court reached a somewhat similar result when it held that an exclusion of "contracts pertaining to labor" from the California Arbitration Act did not exclude collective bargaining agreements. A comment in 29 CALIF. L. REV. 411 (1941) indicates this case was decided on the grounds that public policy favors the settlement of labor disputes by arbitration.

Also, by bringing an action under the Federal Declaratory Judgment Act there

One case in the sixth circuit¹² and one in the fourth circuit¹³ have reached results contra to the third circuit opinions, holding that the exclusion clause in section 1 applies to the whole act. The more accurate interpretation of the exclusion clause appears to be that followed by Judge Parker of the fourth circuit in *International Union United Furniture Workers of America v. Colonial Hardwood Flooring Co., Inc.*¹⁴ Section 1, which contains the words of exclusion, is introductory only, and contains no substantive provisions of the act. Being placed in such an introductory section, the words "nothing herein contained" seem clearly to indicate that the exclusion was intended to apply to all the substantive provisions of the act, and not just to one particular section. To say, as the third circuit decisions do, that the exclusion applies only to the definition of "commerce" in section 1, and therefore only to section 2 of the substantive portions of the act, would result in the exclusion clause being completely meaningless.¹⁵ By this reasoning contracts of employment would be excluded from the class of contracts made valid, irrevocable, and enforceable in section 2, but would still be indirectly enforceable by stay of action under section 3, and directly enforceable by court order under section 4.

Since there was no consideration of the exclusion clause in the passage of the act through Congress, and no indication as to whether or not Congress intended the act to apply to collective bargaining agreements,¹⁶ none of the decisions could rely on legislative history as evidence of Congressional intention.¹⁷ However, the history of the preparation and submission of the act to Congress by the American Bar Association indicates that, while originally intended to apply to all types of arbitration agreements, it was later amended to exclude collective

may be enforcement of the agreement to arbitrate without resort to the arbitration act. In *Northland Greyhound Lines v. Amalgamated Ass'n*, 66 F. Supp. 431 (D. Minn. 1937) an action was brought by the company for a declaration of rights under a collective bargaining agreement. The declaratory judgment held that the dispute was subject to arbitration under the contract. See also *Oil Workers International Union v. Taxoma Natural Gas Co.*, 146 F. 2d 62 (5th Cir. 1944).

¹² *Gatliff Coal Co. v. Cox*, 142 F. 2d 876 (6th Cir. 1944) (defendant's motion to stay the proceedings was overruled since the agreement to arbitrate was in a labor contract).

¹³ *International Union United Furniture Workers of America v. Colonial Hardwood Flooring Co., Inc.*, 168 F. 2d 33 (4th Cir. 1948) (refused to allow a stay of proceedings under section 3 of the act).

¹⁴ *Ibid.*

¹⁵ "Unless the excepting language applies to the entire statute, it seems to me rather meaningless." *Watkins v. Hudson Coal Co.*, 151 F. 2d 311, 321 (3rd Cir. 1945), dissenting opinion by Judge McAllister.

¹⁶ In discussions of the bill the committee reports consistently referred to it as a "commercial arbitration act," and there was no consideration of the meaning of the exclusion clause.

¹⁷ The only reference to the intention of Congress was made in the *Colonial Hardwood Flooring Co.* case, in which Judge Parker said, "It is perfectly clear, we think, that it was the intention of Congress to exclude contracts of employment from the operation of all these provisions."

bargaining contracts from its operation. As first prepared by the Association's Committee on Commerce, Trade, and Commercial Law in 1921, the bill did not contain the exclusion.¹⁸ In 1923, to eliminate opposition by a leader of the Seamen's Union,¹⁹ and because of fear that additional labor opposition might threaten passage of the act through Congress,²⁰ the exclusion clause was added to the end of section 1.

While agreeing that the better reasoned interpretation of the act is that, in its present form, it does not make an arbitration clause in a collective bargaining agreement specifically enforceable, it is submitted that public policy and common sense demand that such agreements should be enforced.²¹ Arbitration has become a recognized and effective method for the settlement of industrial disputes, and refusal by courts to enforce an arbitration agreement might cause resort to unnecessary litigation or the use of force in the settlement of disputes, which is the very thing the agreement was intended to prevent.²² Enforcement would not amount to compulsory arbitration. There would be no compulsion by the courts until the parties had voluntarily agreed in writing that they would arbitrate.²³ In reality, most arbitration clauses in labor contracts are now carried out by both parties without any need for court action. But in situations where one party may now refuse to arbitrate, the knowledge that courts will enforce the agreement would greatly reduce the number of these refusals. In the federal field, an

¹⁸ XLVI A. B. A. REP. 359 (1921).

¹⁹ XLVIII A. B. A. REP. 287 (1923).

²⁰ "The proviso in it which excepts from its operation workers' agreements, while regarded by its framers as no improvement, was suggested by Herbert Hoover, Secretary of Commerce, a staunch friend of the measure, as a wise sop to the Cerberus of Labor." Gordon, *International Aspects of Trade Arbitration*, 11 A. B. A. J. 717 (1925). Labor opposition was based on a feeling that specific performance of arbitration agreements in labor contracts resembled compulsory arbitration, and a fear that it might lead to forced arbitration of disputes over new contract terms.

²¹ "In the field of industry, a chorus of deserved derision would silence declaration that a collective bargaining agreement for arbitration of future issues was violation of public policy. If there ever was public policy against agreements to arbitrate, it has disappeared." *Park Construction Co. v. Independent School District*, 209 Minn. 182, 186, 296 N.W. 475, 477 (1941). See also Simpson, *Specific Enforcement of Arbitration Contracts*, 83 U. OF PA. L. REV. 160 (1934); Fraenkel, *The Legal Enforceability of Agreements to Arbitrate Labor Disputes*, 1 ARB. J. 360 (1937).

²² This public policy view appears to be the real reason that the third circuit has applied the act to collective bargaining agreements. In *Evans v. Hudson Coal Co.*, 165 F. 2d 970, 974 (3rd Cir. 1947) the court said, "Time, energy, and money have been expended by both Mine Workers and Operators in litigation in the courts of this Circuit. We are of the opinion that these expenditures have been unrewarding. Mine Workers and Operators have made a series of valid and binding agreements for arbitration. They must submit to the arbitration upon which they have agreed."

²³ The parties could specify in the arbitration agreement exactly what type of dispute they will arbitrate, and any court order of enforcement or stay of action would be limited to those disputes only. This would eliminate any danger of forced arbitration of disputes over new contract terms.

amendment to the United States Arbitration Act extending it to embrace written agreements to arbitrate labor disputes would lead to settlement of even more industrial disputes by peaceful arbitration.²⁴

LEROY F. FULLER.

Real Property—Deeds—Requisites to a Valid Delivery in North Carolina

In the recent North Carolina case of *Ballard v. Ballard*,¹ a grantor drafted, signed, sealed, and registered an instrument which purported to convey for a consideration a tract of land to the grantee (son of the grantor), subject to a twenty-one year estate reserved by the grantor. After the grantor's death, the widow, who had married the grantor after the conveyance, filed a petition for dower claiming that the deed was not delivered, and the Superior Court granted this petition, but the Supreme Court reversed the lower court and held that registration in addition to a declaration by the grantor that he had conveyed to the grantee was sufficient evidence of an effective delivery even though it was not shown that the deed was ever physically transferred to the grantee and though the grantor apparently retained possession of the deed until his death. Although the holding of the instant case does not, in itself, change the law on the subject of delivery, there were statements in the opinion indicating, perhaps, a relaxation of the former requirements stated by the court in *Gillespie v. Gillespie*, where it said: "Whether a deed has been delivered in the legal sense is not dependent exclusively upon the question of its manual or physical transfer from the grantor to the grantee but also upon the intent of the parties. *Both the delivery of the instrument and the intention to deliver it are necessary to a transmutation of title.*"²

It is the purpose of this note to examine, in the light of past cases, the three requirements of a valid delivery as enunciated by the court in

²⁴ Such an amendment has been suggested for presentation to Congress. Sturges, *Proposed Amendment of the United States Arbitration Act*, 6 ARB. J. 227 (1942). It has been suggested that the same result could be reached by a court simply limiting the common law rule of revocability to commercial disputes and, on the basis of public policy, refusing to extend the rule into the field of labor disputes. *Latter v. Holsum Bread Co.*, 108 Utah 364, 160 P. 2d 421 (1945); Comment, *Arbitration of Labor Contract Disputes*, 43 ILL. L. REV. 678 (1948). There is very little possibility of the federal courts reaching this result, however, because of the existing line of cases which have refused to make this distinction.

¹ *Ballard v. Ballard*, 230 N. C. 629, 55 S. E. 2d 316 (1949). The court, however, held that the admission of incompetent testimony by the widow as to non-delivery of the deed under which the grantee claimed title was prejudicial error and set aside the verdict and judgment since the witness did not show that she had had an opportunity to acquire personal knowledge of the facts of delivery.

² *Gillespie v. Gillespie*, 187 N. C. 40, 41, 120 S. E. 822, 823 (1924). Italics added.