APPLYING THE "CONTRACTS BETWEEN LABOR ORGANIZATIONS" CLAUSE OF TAFT-HARTLEY SECTION 301: A PLEA FOR RESTRAINT*

Taft-Hartley section 301(a)'s 1 reference to contracts between labor organizations, if construed to include charters granted to locals by internationals, possibly could be used to extend federal jurisdiction over the entire field of internal union affairs. Section 301 enabled unions to sue and be sued in federal courts 2 by clearly granting them entity status 3 and providing federal question jurisdiction 4 over "suits for violation of contracts between

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1. "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." Labor-Management Relations Act (Taft-Hartley Act) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958). [Hereinafter cited as Taft-Hartley Act § 301.]

2. Taft-Hartley Act § 301(b). Prior to § 301, unions' capacity to be sued as entities under diversity jurisdiction in federal courts was solely dependent upon the status of unincorporated associations under state law. Fed. R. Civ. P. 17(b); see 3 Moore, Federal Practice ¶ 17.25 (2d ed. 1948). The common law viewed unions, not as entities, but as aggregations of individuals. See United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 385 (1922) (dictum); Kaplan, Suits Against Unincorporated Associations Under the Federal Rules of Civil Procedure, 53 Mich. L. Rev. 945 (1955). The common-law rule required joinder of all members, and thus often prevented suits by and against unions. See Kaplan, supra at 946; Sturges, Unincorporated Associations as Parties to Actions, 33 Yale L.J. 383, 384-87 (1924). See generally Forkosch, The Legal Status and Suability of Labor Organizations, 28 Temple L.Q. 1, 8-27 (1954) (surveying state law on union status). Diversity jurisdiction might still be obtained, of course, by carefully choosing representatives for a suit under the provisions of Fed. R. Civ. P. 23(a). See, e.g., Local 192, Am. Fed'n of Teachers v. American Fed'n of Teachers, 44 F. Supp. 345 (E.D. Pa. 1942). In such a case, however, the doctrines of real party in interest and indispensable party can often be used to destroy jurisdiction. See note 33 infra.

3. Any . . . 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. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. Taft-Hartley Act § 301(b).

an employer and a labor organization . . . or between any such labor organizations." The term "contracts" in the employer-union clause encompasses only collective-bargaining agreements. On the other hand, a paucity of judicial interpretation and legislative history has left unclear the nature of the agreements envisioned by Congress as contracts between labor organizations.

The meaning of this clause was the central issue in the recent case of *Burlesque Artists Ass'n v. American Guild of Variety Artists*. There, a branch union, suing in federal court, alleged violations of that part of its international's constitution which provides that membership in any branch entitles a union artist to work under the auspices of any other local. Burlesque maintained that this constitution was a contract among the parties to the suit, and that 301 between-labor-organizations jurisdiction thus existed. Defendants' motion to dismiss for failure to state a claim was based on the ground that 301 embraced only collective-bargaining agreements, and that a union constitution does not come within this characterization. They further maintained that the controversy was intraunion, rather than a suit between labor organizations.

5. See 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 421-24, 873 (1948); 2 id. at 1074, 1133, 1145-46, 1483, 1654; cf. 1 id. at 297, 336-37, 569-70, 873; 2 id. at 1497 (referring only to employer-union contracts).


7. See notes 17, 18 infra and accompanying text.


9. See Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, p. 4; Defendants' Memorandum of Law in Support of Motion To Dismiss, p. 2; *Associated Actors and Artistes of America Const.* p. 9 (1935) ("Membership, and cards evidencing the same, shall be interchangeable among Branches . . . .")

The complaint also alleged illegal revocation of the local's charter. See Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, pp. 4, 5; Defendants' Memorandum of Law in Support of Motion To Dismiss, p. 2; note 29 infra.

10. Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, p. 5.

11. The defendants in the case are the American Guild of Variety Artists, and the parent international of both locals, *Association of Actors and Artistes of America*. The international was joined on the ground that it had violated its constitution by failing to remedy the alleged violations. See Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, p. 4. "[T]he relation of the Branches to each other in matters of jurisdictions, infringement of territory, and all other matters of like nature, shall be determined by the International Board." *Associated Actors and Artistes of America Const.* p. 2 (1935).

12. Defendants' Memorandum of Law in Support of Motion To Dismiss, pp. 8-10

13. *Id.* at 7, 8.
The court held that section 301 was not restricted to collective-bargaining agreements, and that whether the parties were separate organizations presented a triable issue of fact. Defendants' motion was denied.\(^4\)

The court correctly refused to import the collective-bargaining restriction on union-employer contracts into the between-labor-organizations clause, in spite of a prior decision of another district court,\(^5\) which had done so on the basis of the employer clause's legislative history.\(^10\) In fact, no legislative history exists which would aid interpretation of the "between . . . labor organizations" language.\(^17\) This clause was first introduced at the House-Senate conference;\(^18\) consequently, references to 301 in congressional reports and debates are solely to the union-employer provision. Moreover, the same conference, by eliminating a provision which would have limited section 301 to contracts "concluded as a result of collective bargaining,"\(^19\) may have indicated that other agreements were to be included.\(^20\) Indeed, restricted to collective-bargaining agreements, the between-labor-organizations clause would be meaningless.\(^21\) Arguably, any

\(^4\) 42 L.R.R.M. at 2819.


\(^6\) Id. at 53. Distinguishing Sun Shipbuilding, the Burlesque court argued that before § 301 was sent to the conference committee, provision had been made only for "contracts concluded as the result of collective bargaining," and that the legislative history, which was concerned with this form of the provision alone, was not conclusive. 42 L.R.R.M. 2819.

\(^7\) "Legislative history of § 301 is obscure and little help in our search for an answer to the question whether Congress intended to give unions such status that they could sue, and respond in a district court, in an inter-union piece of litigation." United Textile Workers v. Textile Workers Union, 258 F.2d 743, 748 (7th Cir. 1958).

\(^8\) The only specific mention of the between-labor-organizations clause in the legislative history is in a summary by Senator Taft of the changes made by the conference committee: "Section 301 differs from the Senate bill in . . . [that it] provides that suits for violation of contracts between labor organizations, as well as between a labor organization and an employer, may be brought in the Federal courts." 2 NLRB, op. cit. supra note 5, at 1535, 1543 (1948).

\(^9\) Section 301(a) of the bill, which originally passed the Senate, provided for jurisdiction in "suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce . . . ." H.R. 3020, 80th Cong., 1st Sess. (1947) (Senate version) Section 302(a) of the bill which originally passed the House provided for jurisdiction in "Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees . . . ." H.R. 3020, 80th Cong., 1st Sess. (1947) (House version). Both bills are set out in 1 NLRB, op. cit supra note 5, at 158, 226.

\(^10\) See 42 L.R.R.M. at 2819.

\(^11\) The defendants in Burlesque Artists, who contended that the between-labor-organizations provision referred only to collective bargaining agreements, attempted to solve this problem by asserting that "the phrase . . . was inserted for the purpose of permitting enforcement of collective bargaining agreements where more than one union was party thereto." Defendants' Memorandum of Law in Support of Motion To Dismiss, p. 10. The...
contract between unions could be viewed as a collective-bargaining agreement—the result of bargaining between collective entities. But "collective-bargaining agreements" is a term of art: it covers only employment contracts negotiated between management and labor.\textsuperscript{22}

While the \textit{Burlesque} court did not explain why 301 applied to the facts before it, its holding could have been based on state law. Treating the international's constitution as a contract\textsuperscript{2} accords with many decisions thus characterizing such constitutions.\textsuperscript{24} Indeed, several of these cases were suits
difficulty with this solution is that any such contract is, by definition, also a contract between an employer and a labor organization. Consequently, such agreements can be enforced in any case under the union-employer clause.

22. "Collective bargaining broadly defined is an agreement between an employer and a labor union which regulates the terms and conditions of employment . . .," \textit{Railway Mail Ass'n v. Murphy}, 180 Misc. 868, 873, 44 N.Y.S.2d 601, 605-06 (Sup. Ct. 1943). See also the legislative history cited in note 5 supra.

23. Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, p. 5. The court must have agreed with plaintiff's allegation since no other contract between the parties was alleged.


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between locals and internationals. But employment of such state precedents as a basis for 301 jurisdiction would bring federal courts into internal union affairs. Thus, these cases involved such matters as: revocation of a local’s charter; disposition of local assets upon disaffiliation, disbandment, or receivership; and election or appointment of officials, members, or trustees.


Landrum-Griffin Act will, of course, require federal courts to hear disputes concerning trusteeships and elections. Unlike suits brought under section 301, however, in which federal courts must fashion a new body of substantive law, cases under the recent legislation will be governed by detailed statutory provisions which accompany the jurisdictional grant. In the absence of such a comprehensive legislative scheme, courts generally have evinced a reluctance to intervene in internal union affairs. Federal courts have utilized the real-party-in-interest and indispensable-party doctrines to destroy diversity, and thus deny jurisdiction. Even state courts of general jurisdiction require both that all internal remedies have been exhausted, and that the “contract” viol-
tion involves either loss of property rights or deprivation of due process before granting relief.

Judicial attitudes aside, analysis of Taft-Hartley's legislative history demonstrates that 301 was not intended to reach internal union affairs. Thus, in debate on the anti-closed-shop provision, proponents of the bill replied to charges that unions' status as independent self-governing organizations was threatened by stressing that any interference in internal matters would be restricted to the narrow area of employment opportunities. Consequently, *Burlesque Artists*, if read to include internal affairs within the ambit of 301, should be rejected. Admittedly, exclusion of internal matters would reduce the possible scope of the between-labor-organizations clause. The only other type of contract between unions which has been litigated under 301 is the jurisdictional agreement between independent internationals. If the labor-organizational remedies; *Local 373, Int'l Ass'n of Ironworkers v. International Ass'n of Ironworkers*, 120 N.J. Eq. 220, 184 Atl. 531 (Ct. Err. & App. 1936) (dictum); *Walshe v. Sherlock*, 110 N.J. Eq. 223, 159 Atl. 661 (Ch. 1932) (dictum).


36. It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

37. See 2 NLRB, *op. cit. supra* note 5, at 1095-97, 1176, 1514-16.

38. See 2 id. at 1097, 1139, 1141-42, 1420.

39. See United Textile Workers v. Textile Workers Union, 258 F.2d 743 (7th Cir. 1958). See also *Copra v. Suro*, 236 F.2d 107 (1st Cir. 1956). This case denied § 301
zations clause means anything, therefore, it must apply at least to such arrangements.

Thus, the Seventh Circuit, in *United Textile Workers v. Textile Workers Union*, 40 upheld 301 jurisdiction in a suit between two internations based on violations of the AFL-CIO sponsored no-raiding pact. 41 This holding accords with apparent congressional intent. While these agreements were not specifically mentioned during the debates on 301, much of the discussion on the bill was devoted to the problem of jurisdictional strikes. 42 Furthermore, by providing a ten-day period before the arbitration powers of the National Labor Relations Board are invoked to resolve such disputes, 43 Congress seemingly contemplated union reliance on their own agreements. Section 301 jurisdiction makes these agreements more effective, by providing a ready means of enforcement. 44

But extending *Textile Workers* to jurisdictional provisions in constitutions granted to locals by internations could expand 301 to internal disputes. 45 Further, the pact involved in *Textile Workers*, unlike the usual union constitution, was a consensual agreement among quasi-independent internations of relatively equal bargaining power. 46 The typical local charter is, on the

jurisdiction in a dispute involving a welfare fund agreement among several unions and an employers' association. In a dictum, the court seemed to indicate that, even in a suit on a contract between labor organizations, an employer would be an indispensable party for purposes of 301 jurisdiction. *Id.* at 113. In fact, however, the court was treating the contract at issue as one "between the union and the employer association." *Ibid.*

40. 258 F.2d 743 (7th Cir. 1958).

41. Both unions had signed the AFL-CIO no-raiding pact, which was treated as the contract involved, in spite of the fact that the Textile Workers Union had not renewed its signature after December 31, 1957, when the original agreement expired. *Id.* at 747. The case involved an arbitrator's award which was violated by the defendant union. There may soon be considerable litigation of this type in the federal courts as the recent AFL-CIO convention has adopted a new compulsory arbitration scheme in jurisdictional disputes. See N.Y. Times, Sept. 23, 1959, p. 1, col. 2 (city ed.).

For the text of the no-raiding pact, see 32 L.R.R.M. 42 (1953).

42. See 1 NLRB, op. cit. supra note 5, at 414, 615; 2 id. at 950-51, 995-97, 1056, 1654. See also Labor-Management Relations Act (Taft-Hartley Act) § 8(b) (4) (D), 61 Stat. 142 (1947), 29 U.S.C. § 158(b) (4) (D) (1958).


44. "If we struck down § 301, the aim of the No-Raiding agreement would be nullified and it would be the same old familiar story where men enter agreements one party to which either knows in advance, or later seeks to escape because, there is no enforcing apparatus." United Textile Workers v. Textile Workers, 258 F.2d 743, 749 (7th Cir. 1958).


46. The relatively equal bargaining power of internations involved in disputes among themselves and with federations is illustrated in the disputes described in Jaffe, *Inter-Union Disputes in Search of a Forum*, 49 YALE L.J. 424 (1940) and 2 NLRB, op. cit.
other hand, a codification of the rules appurtenant to a specific status, and not a "contract." Textile Workers should be precedent, therefore, only for consensual agreements between autonomous unions.

The unusual organizational structure of the international union involved in Burlesque Artists might bring it within even this narrow construction of Textile Workers. Thus, the international merely coordinates the activities of branches. As a result, the constitution at bar might be regarded as similar to the AFL-CIO no-raiding pact. But such an approach to deciding the consensual nature of a local's charter would be ineffectual, in view of the numerous and interrelated factors—e.g., control over finances, strikes, collective bargaining; individual personalities; the local's influence—upon which a court would have to base its determination of a given local's autonomy.


47. In the "normal" international-local relationship, the international is by far the more powerful party. Rose, Relationship of the Local Union to the International Organization, 38 Va. L. Rev. 843, 863, 869-70 (1952). Given this fact, the characterization of a local's charter as a "contract" may seriously be questioned. Summers, Union Schism in Perspective: Flexible Doctrines, Double Standards, and Projected Answers, 45 Va. L. Rev. 261, 264 (1959); see Restatement, Contracts § 497 (1932) (undue influence); 3 Corbin, Contracts § 559 (1951) (interpretation against the party choosing the contract terms); 1 Williston, Contracts § 222 (rev. ed. 1936) (parties of limited capacity); 5 id. § 1625 (undue influence); Kessler & Sharp, Cases on Contracts ch. 1 (1953) ("From Status to Contract"); Kessler, Contracts of Adhesions—Some Thoughts About Freedom of Contract, 43 Col. L. Rev. 629 (1943).

48. Plaintiff's Memorandum of Law in Opposition to Motion To Dismiss, pp. 7-8.

49. See ibid. For example, no provision exists for the establishment of trusteeships over locals in the Association of Actors and Artistes of America constitution.


51. Id. at 45.

52. Id. at 49-51 (situations vary from those where the international negotiates the agreement, to those where international approval is required, to where no approval is required). See also Shister, The Locus of Union Control in Collective Bargaining, 60 Q.J. Econ. 513 (1946).

53. See Lester, As Unions Mature 89-104 (1958).


55. Some courts, relying on such external factors as the dates when the international and local were founded and the organizational structure of the international, have attempted to distinguish between dependent and independent locals. See, e.g., Moyer v. Butte Miners' Union, 232 Fed. 788 (D. Mont. 1916), aff'd on other grounds, 246 Fed. 657 (9th Cir.
These difficulties may dictate that the between-labor-organizations clause of 301 be limited to contracts between internationals.

1917, cert. denied, 245 U.S. 671 (1918); Vilella v. McGrath, 136 Conn. 645, 74 A.2d 187 (1950); Local 1140, United Elec. Workers v. United Elec. Workers, 232 Minn. 217, 45 N.W.2d 408 (1950); Harker v. McKissock, 7 N.J. 323, 81 A.2d 480 (1951); International Brewery Workers v. Becherer, 142 N.J. Eq. 561, 61 A.2d 16 (Ch. 1948), aff'd, 4 N.J. Super. 456, 46 A.2d 900 (App. Div. 1949); Alexion v. Hollinsworth, 289 N.Y. 91, 43 N.E. 2d 825 (1942); Steinmiller v. McKeon, 21 N.Y.S.2d 621 (Sup. Ct. 1940), aff'd without opinion, 261 App. Div. 891, 26 N.Y.S.2d 491 (1941), aff'd per curiam, 288 N.Y. 508, 41 N.E.2d 925 (1942); Local 13013, UMW v. Cikra, 86 Ohio App. 41, 90 N.E.2d 154 (1949); Federation of Ins. Employees v. United Office Workers, 77 R.I. 210, 74 A.2d 446 (1950). But such attempts have been severely criticized by commentators. See Rose, supra note 47; Summers, supra note 47, at 264 & n.16:

Looking to the entire parent-local relationship has a first impression appeal. However, it ultimately leads the courts deep into the thickets of union structures. Furthermore, it provides no intelligible guide as to how independent a local union must be, and in what respects, to be entitled to walk out with assets in hand.10

10. . . [O]ne New Jersey judge held that a local of the union was independent . . . but . . . another New Jersey judge held that a different local of the same union did not come within the [independence] doctrine.

For an analysis which concludes that locals possess no meaningful autonomy in the "usual" local-international relationship, see Rose, supra note 47, at 843, 869-70. See also Shister, Trade-Union Government: A Formal Analysis, 60 Q.J. Econ. 78, 108-09 (1946).