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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

W. E. BARNARD, K. W. ROTTMAN, E. C. KERN, O. L. ALITZ, E. L. WALTER, J. E. O'CONNELL, W. C. KRAPFL, I. F. PRIMROSE, K. I. ALBIN, E. S. HERMAN, L. E. TOMPKINS, R. E. SHEPARD, B. D. PAGEL, R. L. HAMMILL, H. A. SHEPARD and C. S. JONES,

Appellants,

v.

CARGILL INCORPORATED,

Appellee.

Filed June 24, 1977

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2-57789

Appeal from Linn District Court - August F. Honsell, Judge.

Appeal from trial court ruling which denied appellants' action for judgment on written contract by upholding defendant's affirmative defense of reformation based upon mutual mistake. Affirmed.

Michael H. Irvine and John J. Shea, Shea & Jackson, of Cedar Rapids, for appellants.

Ralph W. Gearhart, Shuttleworth & Ingersoll, of Cedar Rapids, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell and Oxberger, JJ.; Carter, J., not participating.

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ALLBEE, C.J.

Plaintiffs appeal trial court's ruling which denied their action for judgment on written contract with defendant by upholding defendant's affirmative defense of reformation based upon mutual mistake.

Plaintiffs were members of the American Federation of Grain Millers Local No. 9 (hereafter referred to as Local 9) affiliated with the American Federation of Grain Millers International (hereafter referred to as International). Through authorization of the NLRB, Local 9 was recognized as the exclusive bargaining representative for the employees of the Cargill Nutrena feed mill in Cedar Rapids, Iowa.

In the spring of 1970, Cargill decided to close the feed mill for economic reasons unrelated to this appeal. Gilbert Bakeberg, director of labor relations for Cargill, called Roy Wellborn, president of the International, and informed him of the closing. Wellborn requested a meeting with Bakeberg on April 27, 1970, to discuss the effects of the closing and negotiate severance benefits for the members of Local 9. Wellborn contacted Joe Rajcevich, a vice-president of the International and the International's representative for Iowa, discussed the situation and the upcoming meeting. Rajcevich in turn called Ken Rottman, president of Local 9, and informed him of the meeting over the plant's closing. It is uncontroverted that Local 9 did not give any express authority to Rajcevich to negotiate for them. However, Cargill adequately demonstrated that because of the relatively small size of Local 9, Rajcevich had acted as business agent for Local 9 in previous contract negotiations with Cargill.

At the April 27 meeting in Minneapolis, Bakeberg, Rajcevich and Wellborn attended. Bakeberg proposed that Cargill would follow similar procedures in providing benefits for the members

of Local 9 as it had in 1965 when a Cargill plant in Kansas City was closed. The 'Memorandum of Understanding' concerning the closing of the Kansas City plant - the so-called 'Kansas City Agreement' - provided that workers with ten years of seniority were to receive eight weeks of severance pay. Rajcevich and Wellborn both desired substantial increases in the amount of severance. After some discussion, Bakeberg agreed to try to convince his company superiors to provide ten weeks severance pay for senior employees. However, in all other respects, the tentative agreement reached between the three men paralleled that of the Kansas City agreement earlier negotiated. Bakeberg subsequently contacted Wellborn and communicated Cargill's approval of the plan.

Apparently because he planned to be out of town, Bakeberg delegated the duty of drafting the agreement to a subordinate. Bakeberg gave the subordinate a copy of the Kansas City Agreement to use as the model and explained what differences should be in the new agreement. In drafting the proposal on severance pay, however, the subordinate added the phrase "for each year of continuous service" - a difference between ten weeks and in excess of 200 weeks pay for many members of Local 9.

When Bakeberg returned, he scanned or speed-read the document but did not notice the error. Consequently, he signed the document for defendant and transmitted copies of it to Wellborn and Rajcevich.

Rajcevich took a copy of the agreement to a union meeting on May 7 at the company plant to obtain ratification of the agreement by members of Local 9. At the meeting, Rajcevich read the entire agreement to the membership but did not notice the error. In fact, he apparently stated that the senior employees of the plant would only receive approximately $1000. The members of the Local 9 who testified, however, did not hear Rajcevich state this,

apparently because many of them were trying to calculate the amount they would receive. Rajcevich stated that the agreement was all that could be gotten under the circumstances. Rottman stated that the agreement looked good to him and urged ratification. Local 9 ratified the agreement. Only later when Rottman and Rajcevich discussed the agreement did Rajcevich learn of the 'mistaken' term. Cargill tendered ten weeks salary as severance to plaintiffs which they refused. The International took the position the Local was bound by the terms of the agreement as negotiated on April 27.

The members of the union brough suit to recover under the written terms of the agreement. Cargill counterclaimed for reformation alleging mutual mistake. After hearing the evidence, trial court sustained Cargill's counterclaim and reformed the instrument by striking the phrase "for each year of continuous service" from paragraphs two and three of the agreement. Plaintiffs appeal.

I. Jurisdiction - Applicable law.

Although neither party has raised the issue of this court's subject matter jurisdiction, we do so on our motion because of the delicacy of the relationship between state courts and the National Labor Relations Act. *See* Walles v. International Brotherhood of Electrical Workers, 252 N.W.2d 701 (Iowa 1977); Harden v. Illinois Cent. R. Co., 254 Iowa 426, 429, 118 N.W.2d 76 (1962).

29 U.S.C. 185(a) gives state courts concurrent jurisdiction with federal courts over contract disputes between an employer and an authorized representative for the employees. Dowd Box Co. v. Courtney, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed2d 483 (1962). The major problem in resolving this court's jurisdiction is whether the termination agreement executed after the collective

bargaining agreement is a 'contract' within the meaning of 29 U.S.C. 185(a). In defining 'contract', as used in the statute, the United States Supreme Court has held the term is broad enough to encompass any agreement between employers and labor organizations significant to the maintenance of labor peace between them. Retail Clerks v. Lion Dry Goods, 369 U.S. 17, 82 S.Ct. 541, 7 L.Ed.2d 503 (1962); *see also*, Deaton Truck Line, Inc. v. Local Union, 612 Etc., 314 F.2d 418, 422 (5th Cir. 1962). Clearly, this agreement is one significant to the maintenance of labor peace between Cargill and Local 9. This agreement provided the means for an orderly and peaceful termination of their relationship. The agreement was important to Cargill and Local 9 as it expressed the settlement of their respective rights and provided for continued operation of the mill until closing. The fact the agreement was executed after the collective bargaining agreement is not determinative. *See* Alvares v. Ericksen, 514 F.2d 156 (9th Cir. 1975). We conclude this court has subject matter jurisdiction. *See also*, Smith v. Evening News, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962).

The law to be applied to plaintiffs' and defendant's claims is the federal common law fashioned from the policy of national labor law. Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). Where there is no federal statutory or case law to provide guidance in an individual case, the law of the state may be utilized providing it is not incompatible with the federal policies. Textile Workers Union of America v. Lincoln Mills, supra. All parties agree, and our research has shown, that there is little, if any, federal decisional law on the claim which defendant is making. It follows Iowa case law remains the guide by which to judge the parties' claims.

II. Mistake.

At the outset, plaintiffs concede the written memorandum ultimately executed does not reflect the agreement reached between Bakeberg and Rajcevich on April 27. Plaintiffs urge that the mistake between Bakeberg and Rajcevich can not be the basis of reformation of the agreement since (1) Rajcevich was not their agent so as to impute knowledge of the mistake to them, or (2) Cargill was culpably negligent in the preparation and execution of the document as to be an equitable bar to reformation.

A. Agency.

Plaintiffs claim that Rajcevich was not their agent is based mostly upon the relative constitutions of the International and Local 9. Plaintiffs also rely on the fact that no express authority was given by Local 9 to the International to negotiate the termination agreement. Defendant's claim of an agency relationship finds its basis in the past history of bargaining between Local 9 and Cargill, Rajcevich's own testimony, and testimony of several members of Local 9 who referred to Rajcevich as their "business agent".

We need not decide the narrow factual issue whether Cargill met its burden of proof in demonstrating whether an agency relationship, either express or implied, existed between Local 9 and Rajevich, for Local 9 clearly is bound by Rajcevich's mistaken belief under principles of ratification. *See* Nissen v. Nissen Trampoline Co., 241 Iowa 474, 483-484, 39 N.W.2d 92 (1950); 3 Am.Jur.2d Agency § 167 (1962). In the final analysis, Plaintiffs position is that they can accept the fruits of Rajcevich's negotiation, yet disclaim his mistake - a partial ratification. However, it is clearly the settled law that ratification of the third party's act must be in toto. 3 Am.Jur.2d Agency § 172 (1962). *Having brought suit on the contract,* plaintiffs cannot partially disclaim it. 3 Am.Jur.2d Agency § 174 (1962). Consequently, plaintiffs are bound by Rajcevich's mistaken belief that

the written contract was the same as the oral agreement.

B. Culpable negligence.

Plaintiffs contend Cargill is guilty of culpable negligence as to bar reformation. *See* Walnut Street Baptist Church v. Oliphant, 257 Iowa 879, 886, 135 N.W.2d 97 (1965). It is true as plaintiffs argue that a party who has the opportunity to read a written agreement before he signs it and fails to do so is estopped to reform it. *See* Akkerman v. Gersema, 260 Iowa 432, 441, 149 N.W.2d 856 (1967). However, this rule has several exceptions. *See* Akkerman v. Gersema, supra; Betz v. Swanson, 200 Iowa 824, 205 N.W. 507 (1925); Pyne v. Knight, 130 Iowa 113, 106 N.W. 505 (1906).

We find no culpable negligence under this record as to bar reformation. Bakeberg delegated the drafting of the agreement to a subordinate. He provided her with the Kansas City Agreement and explained the changes. Bakeberg was entitled to believe his agent followed his instructions absent evidence to the contrary. Pyne v. Knight, supra at 120.

Plaintiffs have not challenged trial court's reformation on grounds that the reformed agreement was never accepted by them, perhaps for tactical reasons. *But see,* Concrete Technology v. Local 252, 3 Wash. App. 869, 479 P.2d 125 (1970). Having presented clear, satisfactory and convincing evidence of mutual mistake, defendant is entitled to reformation. Wilden Clinic, Inc. v. City of Des Moines, 229 N.W.2d 286, 289 (Iowa 1975).

Plaintiffs are not entitled to interest on the money due them under the reformed agreement as Cargill made an unconditional tender of the money to plaintiffs. In re Estate of Zach, 257 Iowa 234, 238-239, 131 N.W.2d 484 (1965).

Trial court's judgment is affirmed.