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## Smith v. Evening New Ass'n, 83 S.Ct. 267 (1962)

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SUITS BY INDIVIDUAL EMPLOYEES FOR BREACH OF COLLECTIVE BARGAINING AGREEMENTS MAY BE BROUGHT UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.—Defendant, plaintiff's employer, had entered into a collective bargaining agreement with a labor union of which plaintiff was a member. The agreement contained no grievance arbitration procedure, but did include a "no discrimination" clause.<sup>1</sup> Plaintiff brought suit in a Michigan state court on behalf of himself and 49 fellow union members for breach of the "no discrimination" clause. The complaint alleged that defendant refused to pay plaintiff and the 49 other employees full wages during a strike conducted by another union, even though non-union employees were paid full wages. The state court sustained defendant's motion to dismiss because the alleged breach indicated an unfair labor practice under the Labor Management Relations Act,<sup>2</sup> and as such, was within the exclusive jurisdiction of the National Labor Relations Board. The Michigan Supreme Court affirmed.<sup>3</sup> On certiorari to the Supreme Court of the United States, *held*, reversed. A suit arising under Labor Management Relations Act, section 301 (a),<sup>4</sup> for breach of a collective bargaining agreement provision concerning individual employee rights may be brought by an employee against his employer in a state court, even though the conduct sued upon is also an unfair labor practice. *Smith v. Evening News Ass'n*, 83 S.Ct. 267 (1962) (Mr. Justice Black dissented on the ground that as an unfair labor practice was involved, the jurisdiction of the state court was pre-empted by the National Labor Relations Board<sup>5</sup>).

An employee's right to sue for breach of a collective bargaining agreement between the employer and the employee's union has been recognized by state courts,<sup>6</sup> and lower federal courts,<sup>7</sup> but in the instant case the Supreme Court has for the first time included this right in the body of federal labor law being formulated by the courts under section 301 of the Labor Management Relations Act (hereinafter referred to as section 301).

<sup>1</sup>"[T]here shall be no discrimination against any employee because of his membership or activity in the Guild." Instant case at 268.

<sup>2</sup>"It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ." Labor Management Relations Act, § 8 (a) (3), 29 U.S.C. § 158 (a) (3).

<sup>3</sup>362 Mich. 350, 106 N.W.2d 785 (1961). The Michigan court based its holding upon a 1959 Supreme Court decision. "When an activity is arguably subject to § 7 or § 8 of the [Labor Management Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board . . ." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959).

<sup>4</sup>"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, § 301 (a), 29 U.S.C. § 185 (a).

<sup>5</sup>Mr. Justice Black also relied on *San Diego Bldg. Trades Council v. Garmon*, *supra* note 3. The apparent policy of the Supreme Court to exclude suits upon collective bargaining agreements from the operation of the *Garmon* rule will not be discussed further in this article. For an extensive treatment of this area of labor law, see *Sovern, Section 301 and the Primary Jurisdiction of the NLRB*, 76 HARV. L. REV. 529 (1963).

<sup>6</sup>See *e.g.*, *Marvin v. Thomas J. Hoffman, Inc.*, 280 App. Div. 616, N.Y.S.2d 697 (1952).

<sup>7</sup>See, *e.g.*, *Woodward Iron Co. v. Ware*, 261 F.2d 138 (5th Cir. 1958).

Enacted in 1947, section 301 has been the subject of considerable controversy. The Supreme Court cases construing it epitomize the dynamic state of labor law in the United States. In *Ass'n of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*,<sup>8</sup> the first major case concerning section 301, the Supreme Court held that a union could not sue under section 301 to enforce "uniquely personal rights" of individual employees.<sup>9</sup> The Court in the *Westinghouse* decision also stated that section 301 is procedural in nature, and therefore no substantive rights or means of establishing a body of federal labor law could be read into that section. The Supreme Court sought to distinguish *Westinghouse* in *Textile Workers Union v. Lincoln Mills*,<sup>10</sup> on the ground that *Westinghouse* had involved an attempt to enforce "uniquely personal rights" of individual employees, and held that section 301 is more than procedural in nature. The Court stated that the substantive law applicable under section 301 is to be federal law fashioned by the courts pursuant to the policies of national labor law. Since *Lincoln Mills*, the Supreme Court has undertaken to develop a uniform body of federal law concerning collective bargaining agreements under section 301.<sup>11</sup>

The most important aspect of the instant case is the Court's rejection of the position taken by Mr. Justice Frankfurter in the *Westinghouse* case, that "uniquely personal rights" of employees arising out of the collective bargaining agreement cannot be vindicated under section 301.<sup>12</sup> However, before examining the desirability of allowing an employee to sue for breach of a collective bargaining agreement under section 301, the basis for such right must be determined.

State courts and lower federal courts have justified the right of an employee to sue for the breach of collective bargaining agreement provisions concerning purely individual rights on several theories, including the following: that an employee is a third-party beneficiary of the agreement; that the agreement is a mutual general offer, with the individual employment contract serving as acceptance by the employee; that the principles of agency law are applicable, with the union serving as the employee's principal; that such agreements are similar to group insurance; and a combination of several of the above theories.<sup>13</sup> The Third Circuit in *Westinghouse*,<sup>14</sup> by a divided court, adopted an "eclectic" theory to describe the rights of employees under collective bargaining agreements, concluding that agreement provisions for the employee's benefit are incorporated either expressly or impliedly in the individual contracts of

<sup>8</sup>348 U.S. 437 (1955).

<sup>9</sup>Prior to the instant case, several lower federal courts had relied on the *Westinghouse* decision in holding that an employee could not sue for breach of a collective bargaining agreement under section 301. See, e.g., *Palnau v. Detroit Edison Co.*, 301 F.2d 702 (6th Cir. 1962). However, these courts did not question the right of an employee to sue for breach of the agreement in state courts. *Infra* note 25.

<sup>10</sup>353 U.S. 448 (1957).

<sup>11</sup>In this regard, the Court has ruled that section 301 has not divested state courts of the power to adjudicate suits on such agreements. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). However, in such suits state courts must apply federal law. *Local 1174, Teamsters Union v. Lucas Flour Co.*, 369 U.S. 95 (1962).

<sup>12</sup>Instant case at 269.

<sup>13</sup>Howlett, *Contract Rights of the Individual Employee as Against the Employer*, 8 LAB. L.J. 316, 319 & n.16 (1957).

<sup>14</sup>210 F.2d 623 (3rd Cir. 1954), *aff'd*, 348 U.S. 437 (1955).

hire. Therefore, when the collective bargaining agreement promises are solely for the employee's benefit, he alone can sue for their breach, as the suit is based upon part of the individual hiring contract.<sup>15</sup>

The various theories under which an employee has been permitted to enforce collective bargaining agreements by suit, and the "electric" reasoning of the Third Circuit, have arisen because of the peculiar nature of the collective bargaining agreement. Such agreements are not employment contracts, but rather trade agreements between labor and management.<sup>16</sup> The Supreme Court has explained these agreements in the following words:<sup>17</sup>

[T]he agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, which do not of themselves establish any relationships but which do govern the terms of the shipper or insurer or customer relationship whenever and with whomever it may be established.

Although the Supreme Court has stated that an employee is somewhat of a third-party beneficiary of the collective bargaining agreement,<sup>18</sup> it does not view such agreements solely in terms of contract law for:<sup>19</sup>

[A collective bargaining agreement] is more than a contract; it is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate. \* \* \* It calls into being a new common law—the common law of a particular industry or of a particular plant. \* \* \* . . . [It] is an effort to erect a system of industrial self-government.

Thus, the collective bargaining agreement is a hybrid creature with some characteristics of a contract, and others of regulatory legislation. Therefore, it is clear that an employee's right to sue for breach of agreement provisions concerning individual rights need not be determined strictly on the basis of contract principles.

Professor Cox has recognized that traditional legal concepts alone cannot be relied upon to determine the rights which arise from collective bargaining agreements.<sup>20</sup> He contends that the union and the employer should be free to determine, through the collective bargaining agreement, the respective rights of the union and individual employees for purposes of administering the agreement. However, when the intent of the union and employer is not apparent on the face of the agreement, such intent can be gleaned by the courts through forming presumptions based upon

<sup>15</sup>The Supreme Court, affirming by a divided court, rejected this reasoning of the Circuit Court as such reasoning relies upon, ". . . an assumed federal concept of the nature of a collective bargaining agreement which is not justified either in terms of discoverable congressional intent or consideration relevant to the function of the collective agreement in the field of labor relations." 348 U.S. 437, 459 (1955). This language in turn has also been repudiated by the Court in *Lincoln Mills*, *supra* note 9.

<sup>16</sup>J.I. Case Co. v. NLRB, 321 U.S. 332, 335 (1944).

<sup>17</sup>*Ibid.*

<sup>18</sup>*Id.* at 336.

<sup>19</sup>United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574, 578 (1960).

<sup>20</sup>Cox, *Rights Under a Labor Agreement*, 69 HARV. L. REV. 601 (1956); Cox, *Individual Enforcement of Collective Bargaining Agreements*, 8 LAB. L.J. 850 (1957).

fairness and convenience.<sup>21</sup> Using this approach, Cox has formulated three propositions:<sup>22</sup>

1. The employer and bargaining representative are free to determine by contract in the collective agreement who shall have the right to enforce and settle claims arising out of the employer's failure to observe the agreed conditions of employment. In other words, the power to compromise claims, the right to sue for breach of contract, and the necessity of exhausting a grievance procedure shall be determined by asking what character of rights the parties intended to create when they negotiated the agreement.
2. Unless a contrary intention is manifest, the employer's obligations under a collective bargaining agreement which contains a grievance procedure controlled by the union shall be deemed to run solely to the union as the bargaining representative, to be administered by the union in accordance with its fiduciary duties to employees in the bargaining unit. The representative can enforce the claim. It can make reasonable binding compromises. It is liable for breaches of trust in a suit by the employee beneficiaries.
3. Unless a contrary intention is manifest, a collective bargaining agreement which contains no grievance procedure shall be

<sup>21</sup>Cox lists five questions to be asked by the courts in determining the intent of the union and the employer in entering the collective bargaining agreement, and the presumptions which should result from the answers: "1. Does the contract call for channeling all grievances and other disputes concerning its interpretation or application into a single grievance procedure? If the union is charged with handling grievances above the first step and if the union decides what cases to appeal and is alone given the right to invoke arbitration this is the equivalent of stipulating that the employees shall be paid in accordance with the contract as it is interpreted and applied through the grievance procedure. Such a contract contemplates the creation of rights which the union is to enforce for the benefit of the employees in the manner of one who holds legal title to a contract claim in trust for the ultimate beneficiaries. In such a case, the courts should rule that the union has full power to sue and to make reasonable binding settlements. 2. Are there many clauses in the contract which require implementation by the company and the union jointly or by the company alone subject to the union's right to challenge its decisions? An affirmative answer would point strongly to an intention to create interests legally controlled by the union. 3. Are there many clauses in the contract whose enforcement must be vested in the union because of the absence of injury to any identifiable employee? 4. Is continuous law-making likely to be required in the guise of interpretation because of the wide scope of the collective bargaining agreement and the generality of its terms? 5. How often will contested claims of contract violation give rise to competing interests among different groups of employees within the bargaining unit which can best be resolved through the use of the union's constitutional processes?" Cox, *Individual Enforcement of Collective Bargaining Agreements*, 8 LAB. L.J. 850, 858 (1957).

<sup>22</sup>Cox, *Rights Under a Labor Agreement*, 69 HARV. L. REV. 601, 619 (1956). Cox's third proposition follows the "eclectic" reasoning of the Third Circuit in the *Westinghouse* decision. Under such view, the instant case could not fall under section 301. Such reasoning compels the result that an employee can only sue on the individual hiring contract. Therefore, his suit could not be brought under section 301 which, by its terms, only deals with labor-management agreements. However, the better view regarding the source of employee rights seems to be that expressed by the dissent to the Third Circuit's decision in *Westinghouse*. That view considered the matter of employee rights under a collective bargaining agreement on a more realistic plane, predicating such rights on the agreement itself rather than on the individual hiring contract. 210 F.2d 623, 631 (3rd Cir. 1954). The dissent relied upon the language used by the Supreme Court in the *J. I. Case* decision, *supra* note 16, and felt that the individual hiring contract is subsidiary to the collective bargaining agreement to the extent that any suit upon an individual hiring contract is also a suit upon the collective bargaining agreement itself.

deemed a bilateral contract between the employer and union which contemplates the execution of further bilateral contracts of employment between the employer and individual workers incorporating the wage scale and other conditions of employment set forth in the collective agreement. The union may sue on the collective agreement to enforce the closed shop, check-off, and similar provisions inuring to its benefit as an organization, but only individuals may prosecute or settle claims based upon failure to observe the stipulated conditions of employment.

However, even if the above rationale as to the basis of an employee's right to sue for breach of a collective bargaining agreement is accepted, this alone does not justify the position that such right should fall under section 301.

The Supreme Court has stated that the substantive law to be applied in suits under section 301 will have three definite sources: 1. Federal labor statutes and the judicial interpretations of them; 2. Judicial inventiveness in the absence of statute; and 3. state law.<sup>23</sup> The substantive law gathered from the last two sources must be compatible with the policy of federal labor law.<sup>24</sup> Therefore, regardless of whether the right of an employee to sue for breach of a collective bargaining agreement is a result of the common law as developed by state courts,<sup>25</sup> or results from judicial inventiveness, before such right can fall under section 301 it must be found to be compatible with federal labor law policy. This reasoning is in accord with the instant case. The Court did not concern itself with traditional legal doctrines in acknowledging the employee's right to bring suit under section 301, but looked solely to the policy of uniformity in federal labor law in reaching its decision.<sup>26</sup>

Aside from the fact that the instant case has added to the body of substantive law being formulated under section 301, the Court has also indicated that it has not departed from its policy of requiring a strict enforcement of collective bargaining agreements under section 301.

Prior to *Sinclair Ref. Co. v. Atkinson*,<sup>27</sup> the Supreme Court had been quite liberal in determining the substantive rights of both management and labor arising under section 301.<sup>28</sup> The Court in *Sinclair* ruled in a five-three decision that the Norris-LaGuardia Act<sup>29</sup> continued to prevent federal courts from enjoining strikes, even though the strikes in question

<sup>23</sup>*Supra* note 10 at 457.

<sup>24</sup>*Ibid.*

<sup>25</sup>It would appear that the right of the employee to sue for breach of a collective bargaining agreement is recognized as a development of the common law. "There was no suggestion that Congress, at a time when its attention was directed to congestion in the federal courts, . . . intended to open the doors of the federal courts to a potential flood of grievances based upon 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 employee's have always been able to enforce their individual rights in the state courts. . . To this extent, the collective bargaining contract has always been "enforceable." *Supra* note 8 at 460.

<sup>26</sup>Instant case at 270.

<sup>27</sup>370 U.S. 195 (1962).

<sup>28</sup>*United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

<sup>29</sup>29 U.S.C. §§ 101-115.

were alleged to be in violation of a collective bargaining agreement, "no strike" clause. The Court reasoned that the Norris-LaGuardia anti-injunction provision<sup>80</sup> governs all strikes, regardless of whether or not they also constitute a breach of a collective bargaining agreement.<sup>81</sup> Mr. Justice Brennan, joined by Justices' Douglas and Harlan, dissented on the ground that section 301 and Norris-LaGuardia could be "accommodated" in order to preserve the purpose of each in the same manner as Norris-LaGuardia and the Railway Labor Act had been in *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R.R. Co.*<sup>82</sup> The dissent argued that such "accommodation" is necessary for the effective enforcement of arbitration provisions contained in collective bargaining agreements.

The position taken by the majority in *Sinclair*, as contrasted with the reasoning of the dissent, is reminiscent of the question posed by Mr. Justice Frankfurter in the *Westinghouse* decision. "How far are courts to go in reshaping or transforming the obvious design of Congress in order to achieve validity for something Congress has not fashioned?"<sup>83</sup> Thus, the *Sinclair* decision may be some indication that the Court has begun a retreat from the liberality it has heretofore demonstrated in determining the substantive rights arising under section 301. In short, the Court may be partially abandoning its position that, "the basic policy of national labor legislation [is] to promote the arbitral process as a substitute for economic warfare."<sup>84</sup>

The instant case is the first decision of the Court concerning section 301 since *Sinclair*, and it gives some indication that the Court will not further weaken its policy that under section 301 both labor and management must comply with the terms of the agreements they have voluntarily entered into.

The agreement in the instant case contained no grievance arbitration procedure, and thus the question remains open whether the Supreme Court in future applicable cases will adopt the approach suggested by Cox's second proposition, *i.e.*, that the inclusion of such procedure precludes individual employee suits. A footnote to the majority opinion in the instant case suggests that grievance arbitration procedure in collective bargaining agreements will have to be exhausted before the Court will allow an employee to sue under section 301.<sup>85</sup> However, the footnote gives no indication whether an employee will have recourse against his employer after exhausting the

<sup>80</sup>"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment; . . . (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; . . . (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified. . . ." 29 U.S.C. § 104.

<sup>81</sup>370 U.S. 195, 202 (1962).

<sup>82</sup>353 U.S. 30 (1957).

<sup>83</sup>348 U.S. 437, 454 (1955).

<sup>84</sup>369 U.S. 95, 105 (1962).

<sup>85</sup>Instant case at 268.

grievance procedure, or will only be able to sue his union upon a breach of trust theory.<sup>86</sup>

It is submitted that if an employee is allowed to sue his employer under section 301 after exhausting the collective bargaining agreement grievance arbitration procedure, there will be further encroachment upon the policy of industrial peace through arbitration. Such a suit would deny the employer the benefit of the union's promise to act as a representative of its members. It would thus weaken the arbitration procedure by virtue of the employer's knowledge that he may ultimately be subject to suit by the employee, even though a compromise as to the employee's grievance is reached with the union.

On the other hand, if the union refuses to arbitrate the employee's claim, or the employee is dissatisfied with the compromise made by the union with the employer, the policy of industrial peace through arbitration would be fully served by allowing the employee to sue his union for breach of trust under section 301.<sup>87</sup> This would assure the employer that his compromise with the union would be binding so far as a suit by the employee is concerned, and place the burden on the union to defend its method of representing the particular employee.

However, the Court in the instant case, by way of a footnote, refused to consider plaintiff's substantive right to sue for breach of the "no discrimination" clause, or the right of any employee to sue for breach of any collective bargaining agreement provision concerning individual employee rights.<sup>88</sup> This refusal in effect rejects the notion that, but virtue of the *Sinclair decision*, the Court will accept limitations on section 301 which will hinder the effective operation of collective bargaining agreements. If the Court had unqualifiedly determined that an employee could sue his employer under section 301 to enforce individual rights arising out of any collective bargaining agreement, then grievance arbitration provisions would be of little value. For these reasons, it seems likely that the Court will limit the right of the individual employee to sue his employer, under section 301, to those cases in which the collective bargaining agreement contains no grievance arbitration procedure.

The Supreme Court in the instant case has made a valuable addition to the uniform law governing labor-management agreements by allowing an

<sup>86</sup>*Falsetti v. Local 2026, UMW*, 400 Pa. 145, 161 A.2d 882 (1960).

<sup>87</sup>It would not be difficult for the Court to find that the fiduciary duty of the union to represent the employee in the grievance arbitration procedure arises out of the collective bargaining agreement. "In entering into this [collective bargaining] Agreement, the Union has assumed the role of trustee for the rights of its members and other employees in the bargaining unit. The employees, on the other hand, have become beneficiaries of the fiduciary obligations owed by the Union. . . . If the Union, in processing an employee's grievance, does not act in good faith, in a reasonable manner and without fraud, it becomes liable in damages for breach of duty. In this way, the employee is recompensed for the harm he had suffered, and yet the process of collective bargaining in the industry is meaningfully preserved." *Id.* at 161 A.2d 895.

<sup>88</sup>Instant case at 270. Mr. Justice Black in dissenting could see no reason for the Court's refusal to determine these rights, but he did not disagree with the Court as to the rights of employees under section 301. Instant case at 272. In dissenting in the *Westinghouse* decision, Mr. Justice Black also emphasized that the rights of the individual employee are enforceable under section 301. 348 U.S. 437, 465 (1955).

employee to sue his employer under section 301 when the collective bargaining agreement contains no grievance arbitration procedure. Furthermore, by impliedly refusing to determine the right of an employee to sue his employer under section 301 for breach of an agreement containing grievance arbitration procedure, the Court has indicated that it has not abandoned its view that industrial peace is best obtained by the enforcement of collective bargaining agreements.

KEMP J. WILSON

TAXPAYER WHO GENERATES INCOME AND DESIGNATES ITS RECIPIENT HELD NOT TAXABLE THEREON WHEN HE HAS NO RIGHT TO RECEIVE IT.—Taxpayer entered a contest under rules which required contestants over the age of seventeen years and one month to designate persons under that age as recipients of any prizes won. Taxpayer, an adult, designated his daughter and his entry subsequently won. The daughter received an annuity policy payable to her at age eighteen without restriction as to the use of the proceeds. Taxpayer did not include the amount of the prize in his income tax return and the Commissioner determined a deficiency for the amount excluded. The United States Tax Court held that a taxpayer who generates income and designates its recipient is not taxable thereon when he has no right to receive it. *Teschner v. Commissioner*, 38 T.C. .....no. 101 (1962) (two justices concurring) (seven justices dissenting).

Prior to 1954 the courts expressed divergent views as to who should be taxed on prizes and awards.<sup>1</sup> With the enactment of section 74 of the 1954 Internal Revenue Code "amounts received as prizes and awards" were expressly included in the gross income of the recipient.<sup>2</sup> In the instant case the question before the court was whether a taxpayer who entered a contest and won a prize could be taxed upon it even though, under the rules of the contest, he could not receive the prize.<sup>3</sup>

<sup>1</sup>Compare *Pauline C. Washburn*, 5 T.C. 1333 (1945) ("Pot O' Gold" case); *McDermott v. Comm'r*, 150 F.2d 585 (D.C. Cir. 1945) (Ross Essay contest); *Glenn v. Bates*, 217 F.2d 535 (6th Cir. 1954) (car giveaway); *with Herbert Stein*, 14 T.C. 494 (1950) and *Robertson v. United States*, 343 U.S. 711 (1952).

<sup>2</sup>INT. REV. CODE, § 74: Prizes and Awards.

"(a) General Rule.—Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

"(b) Exception.—Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

"(1) the recipient was selected without any action on his part to enter the contest or proceeding; and

"(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award."

<sup>3</sup>There was no question in the instant case as to whether the prize constituted taxable income. The sole question was whether taxpayer should be taxed upon it. Instant case at 3. Under section 74 of the INT. REV. CODE the recipient of the prize is taxed. From the facts in the instant case it would seem that the daughter should be taxed. Instant case at 7. See *infra* note 33.