Protection of Workers from Abuses in Union Procedures

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PROTECTION OF WORKERS FROM ABUSES IN UNION PROCEDURES

THE protection of members of labor unions, or would-be members, from discrimination and injustice at the hands of the union is a problem of increasing importance. Labor organizations have become an integral part of our industrial life. They have acquired more and more authority, statutory and otherwise, to speak and act for their members. In many instances, employment is conditional upon membership in a union. Hence, the right to be admitted as a member of a union, and to continue as such, and the remedies available for union abuses are of vital concern to employees.

RIGHT TO JOIN A UNION

At common law, labor unions like other voluntary associations are held to have arbitrary powers to exclude from membership whomever they please. In the absence of statute, a court has no authority to compel a union to admit an applicant to membership, regardless of the hardship or injustice caused by the expulsion.[1] This rule is an old one. For centuries courts have refused to interfere in the internal affairs of voluntary associations, such as clubs, lodges, fraternal orders, and churches, and this refusal has extended to the affairs of unions.[2] The judicial attitude has been one of *laissez faire*, and in the matter of exclusion from membership the courts have felt that they should not force the companionship of one man upon another.

It seems evident that there are significant functional differences between social clubs and labor unions and that application of

[1] Mayer v. Journeyman Stonecutters Assoc., 47 N. J. Eq. 519, 20 Atl. 492 (1890); See Summers, *The Right to Join a Union*, 47 COL. L. REV. 33 (1947); Mintz, *Trade Union Abuses*, 6 ST. JOHN L. REV. 272 (1932).

[2] See Chaffee, *The Internal Affairs of Association Not for Profit*, 43 HARV. L. REV. 993 (1930).

identical rules to the two types of organizations is inappropriate. A rule which precludes judicial interference in the internal affairs of all voluntary associations precludes judicial protection of employees in the enjoyment of important economic rights and privileges. The effects of such a rule applied to a union may well be felt throughout a community, where no repercussions would result from the application of the rule to a social or religious group.

Assuming that interference with a union's policy of exclusion is desirable, control may be exerted directly upon the union or indirectly by protecting an employee from the consequences of exclusion. In 1943, a Texas statute[3] (the Manford Act) was passed attempting the direct approach. Section 10 of this statute provided:

> "It shall be unlawful for any labor union to refuse to give any person desiring membership therein a reasonable time, after obtaining the promise of employment, within which to decide whether or not he desires to become a member of such labor organization, as a condition to such person's employment by the employer. . . ."[4]

Violation of the statute was made a misdemeanor and injunction was available for enforcement. However, this provision of the statute was held unconstitutional in *American Federation of Labor v. Mann*[5] on the ground that it was vague, indefinite, and ambiguous.

The indirect approach is seen in Texas legislation of last year making the closed shop (and variation thereof) illegal and unenforceable.[6] The statute declares that a person's right to work and bargain with his employer individually or collectively shall not be infringed and that no person shall be deprived of employment because of membership or non-membership in a union. Thus, in a case of exclusion from a union, the statute would appear to protect an employee from the loss of his job because of his non-

[3] TEXAS STAT. (Vernon's Supp., 1943) Art. 5154a.

[4] *Id.* § 10.

[5] 188 S. W. (2d) 276 (Tex. Civ. App. 1945).

[6] TEXAS STAT. (Vernon's Supp., 1947) Art. 5207a.

membership. A large number of states have passed similar legislation outlawing the closed shop and discrimination against non-union employees.[7]

The Labor Management Relations Act of 1947 leaves unions free in their admission policies but offers protection to employees excluded.[8] Section 8 (a) (3) makes it an unfair labor practice for an employer to discharge a non-union employee except pursuant to a union shop agreement properly entered into with a union representing a majority of the employees. Even when a proper union shop agreement prevails, the employer may not discharge if he has reason to believe that the non-union employee has been discriminatorily excluded. Further, in these circumstances, Section 8 (b) (2) makes a union guilty of unfair labor practice if it exerts pressure upon an employer to discharge a non-union employee who has been excluded for some reason other than failure to pay uniform fees and dues.

Apart from statute, there appears to be no court decision enforcing a right to join a union. However, there are indications that a right might be developed in certain critical situations.[9] Where a union has a closed shop or has wide-spread control over employment and refuses to admit new members, it takes on aspects of a monopoly conducted for the private benefit of present members. In *James v. Marinship Corporation*,[10] the court compelled a union in this situation either to give up the closed shop or to make membership open to all without discrimination. Of course, there is considerable authority, of twenty or thirty years ago, for action for damages or injunctions where a union engages in labor warfare to cause discharge of a non-union employee.[11] Such hold-

[7] See DeHay, *A Comparative Study of State Labor Legislation Enacted in 1947*, included within this issue.

[8] Labor Management Relations Act, 1947 (Public L. No. 101, 80th Cong., 1st Sess., Ch. 120).

[9] James V. Marinship Corporation, 25 Cal. (2d) 721, 155 P. (2d) 329 (1944); Williams v. International Brotherhood of Boilermakers, 27 Cal. (2d) 586, 165 P. (2d) 963 (1946).

[10] 25 Cal. (2d) 721, 155 P. (2d) 329 (1944).

[11] See TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING, §§ 90 and 97 (1940).

ings protect the so-called "right to work" but do not compel a union to remedy discriminatory admission policies. It seems doubtful that courts will come, unaided by statute, to the conclusion that unions are quasi-public in character and owe a duty to accept members without discrimination.[12]

RIGHTS OF UNION MEMBERS

Once a worker is admitted to union membership, important rights, privileges and benefits accrue to him. These accrue to him under the constitution and by-laws of the union, which constitute a contract between the union and its individual members.[13] Meetings are provided for and members have a right to attend and to vote for officers and policies of the union. They are vested with an interest in the funds and the property of the union. Usually provision is made in the constitution and by-laws for discipline and punishment of member for infraction of union rules. Procedures are commonly set up under which a fair trial is afforded on the question of guilt and appropriate penalty.

Not infrequently union members feel a need for judicial protection of their rights, privileges and benefits. Especially is this true where expulsion from the union has been ordered and the union has extensive control (through the closed shop or otherwise) over employment. At early common law the courts assumed a "hands-off" attitude. Unions were regarded as self-governing organizations whose private affairs were not subject to judicial review.[14] The courts stressed the similarities between unions and social clubs and fraternal orders and ignored vital economic differences.

In modern times the public has become very interested in the internal affairs of labor unions. Such matters as admission to membership, expulsion, freedom of elections, and autocratic powers

[12] But see, note 9 *supra*.

[13] Cameron, et al. v. Durkin, et al., 74 N. E. (2d) 671 (1947); See Witmer, *Civil Liberties and the Trade Unions*, 50 YALE L. J. 621 (1941).

[14] Screwman's Benef. Assn. v. Benson, 76 Texas 552, 13 S. W. 379 (1890).

in labor leadership have increasingly been considered of public concern. [15]The reason is that the internal affairs of union have a direct impact on the right to work and on the economic life of a community. No doubt this public interest has at times been stimulated by anti-labor groups. Nevertheless, it is safe to say that some of the abuses have occurred in union treatment of its own members and that a legislative or judicial remedy should be available.

It is clear that a union may prescribe in its constitution and by-laws the terms on which membership is conditioned. These terms may include prohibitions of certain conduct, with penalties attached for infractions. The prohibitions often include disorderly conduct at meetings, working with non-union employees, working in a manner inconsistent with accepted union practices, breach of strike, giving aid and comfort to the enemy, and other actions harmful to the union interest. The California Court has said that a union may expel a member on one or two grounds: (1) commission of an act which is specifically prohibited by the rules of the organization and for which the penalty of expulsion is provided; or (2) conduct of any character which violates the fundamental objects of the organization and which, if persisted in and allowed, would destroy the union or bring it into disrepute.[16]

If a union acts pursuant to its authority, as set forth in the constitution and by-laws, and if a fair trial has been had, the decision of expulsion or other penalty is final, and the courts will not interfere.[17] Of course, the rule violated must have relation to proper union objects and may not be opposed to sound public policy. It is said that a person who joins a union assents to the laws of the

[15] Otto v. Journeyman Tailor's Protective and Benev. Union, 75 Cal. 308, 17 P. 217 (1888). See Frieden, *The Public Interest in Labor Dispute Settlements*, 12 LAW AND CONTEMP. PROB. 384 (1947).

[16] Otto v. Journeyman Tailor's Protective and Benev. Union, 75 Cal. 308, 17 P. 217 (1888); Becker v. Calnan, et al., 313 Mass. 625, 48 N. E. (2d) 668 (1943); Reily v. Hogan, 264 App. Div. 885, 36 N. Y. S. (2d) 423 (1942).

[17] Webb v. Chicago, R. I. and G. Ry., 136 S. W. (2d) 245 (Tex. Civ. App. 1940); Screwman's Benef. Assn. v. Benson, 76 Tex. 552, 13 S. W. 379 (1890); Dragwa v. Federal Labor Union, 136 N. S. Eq. 172, 41 A. (2d) 32 (1945).

organization and binds himself to abide by its decisions fairly arrived at in regular proceedings. Further, where a member has suffered expulsion or other penalty and has not exhausted his appeal within the union, the courts consider this an additional reason for refusal to interfere.[18]

In conducting its proceedings a union need not adhere to the formalities of legal proceedings.[19] It is enough that the accused member has been given, in substance, a fair trial. The requirements of a fair trial are notice of charges, reasonable time to prepare for the trial, a hearing, and opportunity to present witnesses and to rebut the case made by the opposition.[20] It is to be noted that a union has wide latitude in interpreting and applying the language of its constitution and by-laws.[20]

Where proceedings resulting in expulsion or other discipline have not been conducted in compliance with union rules or in compliance with "fundamental principles of justice," the great weight of authority allows the aggrieved member to apply to the courts at once for relief, regardless of whether appeal remedies have been exhausted.[22] Under either view for the court to interfere, the defect in the proceedings must be serious, preventing a fair trial. The aggrieved member has been successful in his suit where notice of charges was not given and a generally unfair trial was had; where the proceedings were characterized by fraud or bad faith; where a conspiracy existed to oust plaintiff from membership; where prejudice manifested itself preventing the possibility of a fair trial; and where provision for appeal within a union is so unreasonable and expensive as to deny substantial

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[18] Dragwa v. Federal Labor Union, 136 N. J. Eq. 172, 41 A. (2d) 32 (1945).

[19] Snay v. Lovely, 276 Mass. 159, 176 N. E. 791 (1931).

[20] Local No. 7, Bricklayers, Masons and Plasterers v. Bowen, 278 Fed. 271 (1922); Headley v. Operative Plasterers and Cement Finishers Intl. Assn. Local No. 31, 324 Pa. 257, 188 Atl. 206 (1926).

[21] Thompson v. Grand International Brotherhood of Locomotive Engineers et al., 91 S. W. 834 (Tex. Civ. App. 1905).

[22] Polin v. Kaplan, 257 N. Y. 277, 177 N. E. 833 (1931); Gersh v. Ross, 238 App. Div. 552, 265 N. Y. S. 459 (1933); Nissen v. International Brotherhood T. C. S. H., 229 Iowa 1028, 295 N. W. 858 (1941).

justice.[23] Courts occasionally review the proceedings to determine whether the charges against a member are legally sufficient and whether there was evidence to sustain a finding of violation of union rules.[24]

The judicial remedy in these cases has taken the forms of injunction, writ of mandamus, and the action for declaration of rights. Injunction has probably been most commonly used, since it is a flexible writ protecting both personal and property rights. The judgment usually declares the expulsion or other penalty void and restores the aggrieved member to his previous status.

Where an aggrieved member does not seek reinstatement in the union but asks damages for wrongful expulsion, the courts apparently make no requirement that union procedures and appeals be exhausted.[25] The theory has been that an expelled member is no longer under union authority and should not be subjected to its regulations and procedures.

In Texas, legislation has been passed bearing upon the sufficiency of cause for expulsion from a union and the procedures leading to this action. Section 10 of the Manford Act states:

> "It shall also be unlawful for any labor union to expel any member thereof except for good cause, and upon a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on specific charges preferred. Any court of competent jurisdiction upon his petition therefor, shall order reinstatement of any member of the labor organization who shall be expelled without good cause."[26]

It is apparent that the section is, in the main, declaratory of common law principles developed in recent years. Noteworthy is

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[23] Harris v. Grier, 112 N. J. 99, Atl. 50 (1932); Thompson v. Grand International Brotherhood of Locomotive Engineers, et al., 91 S. W. 834 (Tex. Civ. App. 1905); Abdon v. Wallace, et al., 95 Ind. App. 604, 165 N. E. 68 (1929); International Longshoremen's Assn., et al., v. Graham et al., 175 S. W. (2d) 225 (Tex. Civ. App. 1943); Brotherhood of Railroad Trainmen v. Barnhill, 214 Ala. 565, 108 So. 456 (1926); Dallas Photo Engravers Union, 148 S. W. (2d) 954 (Tex. Civ. App. 1941).

[24] MacPherson v. Green, 72 N. Y. S. (2d) 790 (1947).

[25] Shinskey v. Tracey, 226 Mass. 21, 114 N. E. 957 (1917); International Printing Pressmen and Assistants Union of North America v. Smith, 198 S. W. (2d) 729 (Tex. Civ. App. 1947).

[26] TEX. STAT. (Vernon's Supp., 1943), Art. 5154a.

the declaration that expulsion can only be ordered for "good cause," confirming that a court may review the sufficiency of the reason. The union hearing is to be both "fair" and "public"; the latter requirement is desirable and was not entirely clear at common law. The section apparently allows judicial relief on a petition for reinstatement, a simplification which avoids questions as to whether mandamus, injunction or other special type of writ should be employed. The question whether union procedures must be exhausted before resort to the courts under this statute has not been decided as yet.

While the Texas statute provides a direct remedy for wrongful expulsion, the Labor Management Relations Act of 1947 safeguards the employment rights of a worker wrongfully expelled. Section 8 (a) (3) makes it an unfair labor practice for an employer to discharge a non-union employee except pursuant to a union shop agreement properly entered into with a majority union, and even then, he may not discharge if he has reason to believe that the employee has been expelled for some reason other than payment of uniform union dues and fees. Section 8 (b) (2) rules it an unfair labor practice for a union to exert pressure upon an employer to discharge an employee under these circumstances.[27]

CONCLUSION

It seems safe to assert that the tendency toward legislative and judicial interference in intra-union affairs will continue. Union action in refusing admission to applicants for membership, in expelling members, and in imposing discipline and penalties has serious effects upon the persons directly involved. The disputes arising may bring serious economic loss to a community. The interests of the individuals concerned and of the community have impelled courts and legislatures to make available judicial remedies where unfair or arbitrary action has been taken.

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[27] See Note 12 *supra*, and accompanying text.