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Labor Law - Reinstatement in a Union - Jurisdition of Courts to Order

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LABOR LAW—REINSTATEMENT IN A UNION—JURISDICTION OF COURTS TO ORDER

The defendant, trustee of a local union, caused plaintiff's employer to discriminate against plaintiff by threatening a strike if plaintiff was not fired. This occurred after the defendant trustee had maliciously discharged plaintiff from the union. Plaintiff brought an action in the Federal District Court of Alaska for reinstatement in the union and for damages, both compensatory and punitive, for exclusion therefrom. *Held*, action dismissed for lack of jurisdiction. An unfair labor practice had been committed by the union, and, according to Section 10(a) of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947, jurisdiction rests exclusively with the National Labor Relations Board to decide cases involving unfair labor practices. *Born v. Cease*, 101 F. Supp. 473 (D.C. Alaska 1951).

It is well settled that jurisdiction rests exclusively with the National Labor Relations Board to hear unfair labor practice charges,[1] and that in redressing the wrong, the board may direct the payment of wages lost as a result of the unfair labor practice.[2] However, with respect to the dismissal of the plaintiff's request for reinstatement in the union and punitive damages, the decision would seem not in accord with a sound interpretation of Section 10(a). This section of the Taft-Hartley Act states, in effect, that the board alone shall have jurisdiction over unfair labor practices. Section 8(b) of the act sets forth acts which on the part of the labor organization constitute these unfair labor practices. Nowhere in this section is to be found a statement to the effect that discharging a member from a union is a violation of the act. In fact, the proviso of Section 8(b) (1) specifically acknowledges "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." [3] The board has construed the proviso to "remove the application of a union's membership rules to its members from the proscriptions of Section 8(b) (1) (A), irrespective of any ulterior reasons motivating the union's application of such rules or the direct

1. Meyers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938). Labor Management Relations Act, 61 Stat. 146 (1947), 29 U.S.C.A. § 160(a) (Supp. 1951).

2. In re Pen and Pencil Workers Union 19593, 91 NLRB 883 (1950).

3. Labor Management Relations Act, 61 Stat. 141 (1947), 29 U.S.C.A. § 158(b)(1) (Supp. 1951).

effect thereof on particular employees." [4] Therefore, since Section 10(a) clearly does not give jurisdiction to the board over questions of reinstatement in a union and punitive damages resulting therefrom, only the courts could have such jurisdiction.

Not only does the decision seem to find no support in the act, but it also appears to be in conflict with well-settled jurisprudence. Courts have repeatedly entertained suits for reinstatement brought by discharged union members,[5] thus indicating that they have never considered jurisdiction in such cases to be vested exclusively in the board. It appears that the courts assume jurisdiction in order merely to perform one of the functions for which the courts were established, namely, to extend to wrongfully injured persons the protection of the law. They extend this protection through various theories, some of which are the contract theory,[6] the property right theory,[7] and the public policy theory.[8] Some cases have held that when a member joins a union, he enters into a contract, "the terms of which are expressed in the union constitution and by-laws." [9] The union may demand of the member anything that is within the provisions of that contract, but nothing else. When a union member is expelled for reasons not stated or reasonably implied from those provided for by the contract, the courts say that there has been a breach of the contract and, consequently, an improper discharge justifying the protection of the court.[10] Other cases have held that union benefit payments,[11] a man's trade, and his union membership[12] are property rights, and that when a union member is improperly

4. International Typographical Union, 86 NLRB 951, 957 (1949). See also Conway's Express, 87 NLRB 972 (1949) and Union Starch and Refining Co., 87 NLRB 779 (1949) where the board pointed out that the denial to the union of the right to demand the *discharge* of an employee under a valid union-security contract for reasons other than the non-payment of initiation fees and dues, did not interfere with the union's right under the Section 8(b)(1)(a) proviso to *deny membership* to an employee upon any ground it wishes.

5. Schneider v. Local Union No. 60, United Ass'n Journeymen Plumbers, 116 La 270, 40 So. 700 (1905); Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923); Shapiro v. Gehlman, 278 N.Y. 785 (1935); Reilly v. Hogan, 32 N.Y.S. 2d 864 (1942).

6. See Summers, Legal Limitations on Union Discipline, 64 Harv. L. Rev. 1049 (1951); Notes, 24 Iowa L. Rev. 178 (1938), 45 Yale L.J. 1494 (1936).

7. See Summers, supra note 6.

8. Ibid.

9. Ibid.

10. Snay v. Lovely, 276 Mass. 159, 176 N.E. 791 (1931); Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931).

11. Otto v. Journeymen Tailors' Protective and Benevolent Union, 75 Cal. 308, 17 Pac. 217 (1888); Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 Atl. 70 (1921).

12. LoBianco v. Cushing, 117 N.J. Eq. 593, 177 Atl. 102 (Ch. 1935).

expelled, he is deprived of these rights and therefore entitled to the protection of the court. To further protect the union member, a few courts have required the provisions in union constitutions and by-laws to be consistent with public policy[13] and natural justice.[14] Thus, whenever a member is expelled because of a provision which is opposed to public policy, the courts will render their protection.[15] Under any of these theories, the judicial remedy is usually reinstatement in the union and damages caused by the improper expulsion.[16] Once the court has found an improper expulsion, it holds the union liable to the injured party for any damages sustained as a result of the wrong committed.[17] If wrongful expulsion was in bad faith or malicious, the courts in some instances have also awarded punitive damages.[18] In some cases unwarranted discharge of union members by union officials has been prevented in advance through injunctive process.[19]

The preceding not only illustrates the jurisdiction, but also the power and duty of the courts to review and rule upon matters pertaining to reinstatement of discharged union members in a union and damages for wrongful expulsion therefrom.

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MINERAL RIGHTS—OIL ROYALTIES AS FRUITS

The appellee received royalty payments from oil and gas leases, entered into prior to his marriage, upon his separate prop-

13. Schneider v. Local Union No. 60, United Ass'n Journeymen Plumbers, 116 La. 270, 40 So. 700 (1905).

14. Gilmore v. Palmer, 109 Misc. 552, 179 N.Y. Supp. 1 (Sup. Ct. 1919).

15. Schneider v. Local Union No. 60, United Ass'n Journeymen Plumbers, 116 La. 270, 40 So. 700 (1905).

16. See cases cited notes 5 and 10, supra.

17. See cases cited note 5, supra; Johnson v. International of the United Brotherhood of Carpenters and Joiners, 54 Nev. 332, 16 P. 2d 658 (1932).

18. Schneider v. Local Union No. 60, United Ass'n Journeymen Plumbers, 116 La. 270, 40 So. 700 (1905); Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923); Walker v. Grand Int'l Brotherhood of Locomotive Engineers, 186 Ga. 811, 199 S.E. 146 (1938); Kinane v. Fray, 111 N.J.L. 553, 168 Atl. 724 (1933).

19. Otis Loney v. Wilson Storage and Transfer Co., 8 Labor Cases 66,663 (1944). Subsequent to the decision in the subject case the Supreme Court of Louisiana in Jones v. Hansen, 57 So. 2d 224 (La. 1952), affirmed the dismissal of a suit for compensatory and exemplary damages against a number of members of a local union (including one charged with having acted in his official capacity as secretary) for allegedly having wrongfully disciplined the plaintiffs to their monetary damage in employment relationships. The defense was apparently not urged nor did the court consider the question