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Substantive Law - Public Law: Labor Law

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defendant was convicted of unlawful possession of narcotic drugs. In the course of the trial there were offered in evidence narcotics and weighing equipment which had been seized in the course of a search without a warrant. The defendant contended, unsuccessfully, that the search having been illegal, the evidence should have been suppressed. A uniform line of jurisprudence dating back to 1920 holds that such evidence, although illegally obtained, may nevertheless be admitted in evidence. The federal rule has always been to the contrary.[36] And the result remains unchanged despite the recent decision of the Supreme Court of the United States in *Wolf v. Colorado*,[37] holding that the Fourth Amendment is applicable to the states through the due process clause of the Fourteenth Amendment. In a characteristically eloquent dissenting opinion in that case, Mr. Justice Murphy underscored the necessity, as he saw it, for extending the federal rule to state police officials who all too frequently show a callous disregard for the right of privacy intended to be secured by the Fourth Amendment.[38]

The *Mastricovo* case was the first to be decided since the decision in *Wolf v. Colorado*, and it was at least to be hoped that the court might reappraise the Louisiana rule in the light of what was said there. However, the case was not cited, and the principle involved in the *Wolf* case is dismissed with the mere citation of prior Louisiana jurisprudence.

LABOR LAW

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The past term, like the one which preceded it, produced one case in the field of labor law. *Jones v. Hansen*[1] was a suit by three union members against seven of their brothers who had served as a trial committee to hear and decide charges against the plaintiffs, resulting in expulsion of one and suspension of the other two from the union. Plaintiffs asked for wages lost and for damages attributable to the defendants' advising employers that plaintiffs were no longer members of the union in good stand-

36. Weeks v. United States, 232 U.S. 383 (1914). See also Reynard, Freedom from Unreasonable Search and Seizure—A Second Class Constitutional Right?, 25 Ind. L.J. 259 (1950).

37. 338 U.S. 25 (1949).

38. See Reynard, supra note 36, at 306.

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1. 220 La. 673, 57 So. 2d 224 (1952).

ing, which conduct had resulted in plaintiffs' inability to secure employment. Predicating their attack upon alleged defects in the manner in which the union trial commitee had proceeded with the hearing of the charges, plaintiffs contended, in substance, that they had been denied due process of law, and thus deprived of a fundamental right, the liberty to pursue a livelihood.

Justice LeBlanc, writing the unanimous opinion of the court, reviewed the proceedings and observed that "In some cases the date of the trial was fixed as near as two days from the date of notice and it would appear that this was a short notice for a person to defend himself on twelve charges such as were presented against those plaintiffs."[2] He also noted that the union's constitution required that "reasonable notice" be accorded in disciplinary proceedings. Conceding that the plaintiffs had not been accorded sufficient notice to comply with judicial concepts of due process, the court concluded that this omission had been cured by the action of the union's national executive committee when it considered the plaintiffs' appeals and directed that "each member be again informed to appear before a committee to review the case and be tried again."[3] No rehearing was in fact accorded the plaintiffs, the local union construing the action of the national as permitting a review of the cases by the trial committee in the absence of the plaintiffs or witnesses—a construction which was apparently justified, as the national committee on a second appeal approved the decision of the trial committee.

Based on these procedural facts the court concluded:

> "While it may be that the evidence produced, or the manner in which the trials were conducted, would not have been sufficient in a court of law, yet there was evidence to support the finding of the trial committee and under our jurisprudence courts will not interfere with the internal affairs of an unincorporated association so as to settle disputes between the members, or questions of policy, discipline or internal government where the by-laws or constitution of the organization is followed, where there is no fraud, oppression or bad faith; or no property or civil rights are involved. . . . No invasion of plaintiffs' property or civil rights were involved because they merely enjoyed the privilege of membership, with only a right to the joint use and enjoyment of

2. 220 La. 673, 682, 57 So. 2d 224, 228 (1952).
3. 220 La. 673, 684, 57 So. 2d 224, 228 (1952).

> the association's property and funds so long as they remained members. Their rights ceased upon their suspension in the same way they would have if they had terminated their membership by their own voluntary acts. See Elfer v. Marine Engineers Beneficial Ass'n. No. 12 (179 La. 383, 154 So. 32 [1934])."[4]

Thus, Louisiana continues to adhere to the so-called "contract theory" of union membership, regarding membership in a union as a contract, the terms of which consist of the union's constitution and by-laws. This is a view adopted by the courts of a number of jurisdictions. In another group of states a so-called "property right" theory of union membership has evolved, which the courts there will invoke for purposes of interfering with internal union affairs where property rights are found to be involved. It is true, of course, that the Louisiana court has said that it will interpose judicial relief where property rights are involved, but to date, no such rights have been discovered in the cases. In the jurisdictions adhering to the property right theory, however, the courts have readily seized upon the right to pursue a trade as a property right and would unquestionably have regarded *Jones v. Hansen* in that light.[5]

As a practical matter, neither of the two theories, borrowed as they are from pre-existing legal concepts in an attempt to accommodate the rising labor movement to our jurisprudence, is designed to cope with the problems of internal union affairs. These are matters which, if not properly administered by the unions themselves, will ultimately come to be controlled by legislation. As a matter of fact, provisions of the Taft-Hartley Act already confer a remedy for workers in the predicament of the plaintiffs in this case,[6] and had the controversy arisen subsequent to the effective date of that legislation (the disciplinary proceedings were held in 1946), they would presumably have been controlled by it, and conceivably the courts might be held to lack jurisdiction to hear and decide the case.[7]

4. 220 La. 673, 685 and 687, 57 So. 2d 224, 229 (1952).

5. See Summers, Legal Limitations on Union Discipline, 64 Harv. L. Rev. 1049 (1951).

6. Section 8(a)(3) makes it an unfair labor practice for an employer to discharge or refuse to hire a person because of nonmembership in a union unless his nonmembership is attributable to nonpayment of dues or fees; and Section 8(b)(2) makes it an unfair labor practice for a union to cause an employer to violate Section 8(a)(3). Either or both of them may be required to restore lost wages to an employee who is the victim of such discrimination.

7. See Note, 12 LOUISIANA LAW REVIEW 489 (1952).