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Labor Law -- Union Discipline of Supervisor Members

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sums involved in these corporate transactions. The injection of this element of uncertainty into corporate planning would result in a severe impediment to the effective use of these tax-free corporate reorganizations and divisions.

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Labor Law—Union Discipline of Supervisor Members

Section 8(b)(1) of the National Labor Relations Act, as amended,[1] (hereinafter called the Act) provides the statutory framework within which labor unions exercise disciplinary control over their members.[2] The general rule, based upon *NLRB v. Allis-Chalmers Manufacturing Co.*,[3] is that such discipline is a legitimate, internal union matter rarely subject to interference from the courts.[4] A trend[5] in the courts of appeals indicates, however, that the *Allis-Chalmers* doctrine does not apply where the disciplined member happens to be a supervisor.[6] In two recent

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[1]National Labor Relations Act §§ 1-18, 29 U.S.C. §§ 151-68 (1970) [hereinafter cited as NLRA].

[2]NLRA § 8(b)(1), 29 U.S.C. § 158(b)(1) (1970) provides in part:

> It shall be an unfair labor practice for a labor organization or its agencies—
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> (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

NLRA § 7, 29 U.S.C. § 157 (1970) provides in part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment . . . .

[3]388 U.S. 175 (1967).

[4]In *Allis-Chalmers* the union had imposed fines upon employee members who had crossed picket lines and continued to work during a strike in support of new contract demands. In finding that the fines did not violate § 8(b)(1)(A), the Court concluded that "Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status." 388 U.S. at 195.

The *Allis-Chalmers* doctrine had a slight gloss put on it in 1969. In Scofield v. NLRB, 394 U.S. 423 (1969), the Supreme Court added that union fines of members would not violate § 8(b)(1)(A) "unless some impairment of a statutory labor policy [could] be shown." *Id.* at 432.

[5]*See* text accompanying notes 31-35 *infra*.

[6]*See* note 18 and accompanying text *infra*, regarding supervisors as union members.

decisions the Court of Appeals for the District of Columbia Circuit has interpreted section 8(b)(1)(B)[7] of the Act as severely limiting—if not completely proscribing—union discipline of supervisor members.

In *Meat Cutters Local 81 v. NLRB*,[8] Safeway Stores, Inc., the intervenor, operated several retail stores in the Seattle, Washington, area. These stores contained meat markets at which meat products were cut, packaged, and sold. The meat market employees, including supervisors, were covered by contracts between the petitioner union and a multi-employer bargaining association to which Safeway belonged. In July of 1968 Safeway instituted a policy directing its managers, including a supervisor, Hall, to obtain certain meats pre-processed from a central warehouse. The result of this procedure was to eliminate some union work, for these meats previously had been processed by employee union members on the premises of the retail outlets.

The union objected to the new policy and ordered its supervisor members not to follow the directive. Hall disregarded the union's instructions and implemented Safeway's policy. For this conduct the union fined him fifty dollars.[9] Safeway promptly filed a section 8(b)(1)(B) charge with the National Labor Relations Board (NLRB). The Board issued a cease-and-desist order, thus holding that the union's disciplinary action against Hall restrained and coerced Safeway in the selection of its representative for the adjustment of grievances. The Board further ordered rescission of the disciplinary action, reinstatement to membership, and retroactive effect to any lost benefits.[10] The Court of Appeals for the District of Columbia Circuit affirmed the Board's findings and enforced the order.[11]

A few months later the same court again considered a possible violation of section 8(b)(1)(B) in *International Brotherhood of Electrical*

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[7]NLRA § 8(b)(1)(B), 29 U.S.C. § 158(b)(1)(B) (1970) provides in part: "It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . . ."

[8]458 F.2d 794 (D.C. Cir. 1972).

[9]The union also imposed an additional $10 fine for failure to appear, as requested, before the Union Executive Board and ultimately expelled Hall for refusal to pay the fine. This resulted in a loss of his rights to sickness and death benefits provided through his membership. Although the bargaining agreement contained a union-shop clause under which the supervisors were required to become and remain union members, there was no contention that this clause had been breached by Hall's expulsion. 458 F.2d at 796 n.3.

[10]Meat Cutters Local 81, 185 N.L.R.B. 130 (1968).

[11]458 F.2d at 802.

Workers v. NLRB.[12] In 1968 Illinois Bell Telephone Company had a collective bargaining agreement with Local 134, International Brotherhood of Electrical Workers (IBEW), AFL-CIO, similar to that in *Meat Cutters*, under which all employees and certain foremen were required to become union members. During an economic strike IllinoisBell advised the foremen members that it would like them to cross the picket line and perform non-supervisory work during the strike. The company left the decision as to whether to honor the work stoppage to the discretion of each individual foreman. Illinois Bell made it clear that those who chose to honor the strike would not be penalized. Conversely, the union advised its membership that any member who chose to work would be subject to union discipline.

Because of the union threat several of the foremen formed the Bell Supervisor's Protective Association for the dual purpose of encouraging other foremen to work and protecting the rights of those who did so. After the strike the union fined each foreman who worked five hundred dollars and imposed an additional fine of one thousand dollars on each of the five foremen who were instrumental in the formation of the Association. The disciplined members filed a charge with the NLRB and, as in *Meat Cutters*, the Board found the fines to be a violation of section 8(b)(1)(B).[13] The Court of Appeals for the District of Columbia followed its prior decision in *Meat Cutters* and affirmed.[14]

To appreciate fully the reasoning of the NLRB and the court of appeals in both these cases, it is necessary first to examine briefly the historical status of supervisors under the law and the development of section 8(b)(1)(B). The original National Labor Relations Act (the Wagner Act)[15] did not except supervisors from the definition of employee. They enjoyed all the rights and protection of other employees under the Act. Unions of supervisory employees such as the Foremen's Association of America and the United Technical and Supervisory Employees began to use the new protection to expand membership greatly.[16] Following passage of the Taft-Hartley Amendment to the Act in 1947,[17] which specifically exempted supervisors,[18] the supervisor un-

[12]No. 71-1559 (D.C. Cir., Sept. 22, 1972).

[13]International Bhd. of Electrical Workers, 192 N.L.R.B. No. 17 (July 14, 1971).

[14]No. 71-1559, at 35.

[15]NLRA (Wagner Act), ch. 372, § 2(3), 49 Stat. 450 (1935).

[16]*See* Moore, *The National Labor Relations Board and Supervisors*, 21 LAB. L.J. 195, 205 (1970).

[17]Labor Management Relations Act (Taft-Hartley Act) § 2(3), 29 U.S.C. § 152(3) (1970).

ions began to wither. Supervisory employees began to view themselves as a part of management.[19] Nevertheless, some employees, particularly those who had been promoted from the rank and file, took advantage of section 14(a) of the Act, which permitted them to become or remain union members, albeit without statutory protection.[20]

While an estimate of the current number of supervisors who are union members is unavailable, one may presume that it is sufficiently large to warrant substantial union interest in maintaining and controlling such members. It is also safe to say that the *Meat Cutters* and *IBEW* interpretation of section 8(b)(1)(B) will seriously undermine this interest.

The District of Columbia Circuit, interpreting legislative history, stated in both decisions that Congress enacted section 8(b)(1)(B) in recognition of the fact that unions had begun to pressure management not to appoint representatives who would be too strict in dealing with union members.[21] While section 8(b)(1)(B) proscribes direct restraint or coercion against employers in the selection of bargaining representatives, the court felt it was Congress' intent that indirect interference accomplished through union discipline of an employer's representative also would be prohibited.[22] This shift of attention to indirect restraint or coercion is a departure from earlier cases that proscribed direct interference with the employer's ability to choose his representatives in actual bargaining situations.

The first reported decision in which a union was found to have violated section 8(b)(1)(B) was *American Newspaper Publishers Association v. NLRB*.[23] The union had threatened to strike for a contract

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[18]NLRA § 2(3), 29 U.S.C. § 152(3) (1970) provides in part: "The term 'employee' . . . shall not include . . . any individual employed as a supervisor . . . ." This exempts supervisors from the protections afforded employees by the Act. However, NLRA § 14(a), 29 U.S.C. § 164(a) (1970) states: "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

[19]*See* Moore, *supra* note 16, at 203-04.

[20]*See* note 18 *supra*. The reasons for retention of union membership by a supervisor are several, including obtaining additional benefits, maintaining active status in the event of a demotion or change of jobs requiring union membership, or simply a sense of closeness to members associated with in the past. *See* Gould, *Some Limitations upon Union Discipline under the National Labor Relations Act: The Radiations of Allis-Chalmers*, 1970 DUKE L.J. 1067, 1129 (1970).

[21]No. 71-1559, at 13; 458 F.2d at 798 n.11.

[22]No. 71-1559, at 9; 458 F.2d at 798.

[23]193 F.2d 782 (7th Cir. 1951).

clause that would compel the employer to hire only foremen who were union members. The Seventh Circuit, in affirming the Board's finding of a violation, was primarily concerned that the union's objective was to further an illegal closed-shop scheme.[24] However, in 1958 in *Typographers Local 38*,[25] the NLRB found a strike to obtain a similar clause to be a violation in itself, absent any other illegal objective. The decision was subsequently affirmed on this point by an equally divided Supreme Court.[26]

The few NLRB and courts of appeals decisions handed down during the next decade found that the following conduct violated section 8(b)(1)(B): striking to procure the discharge of a labor relations consultant hired by the company to prepare for negotiations;[27] threatening a work stoppage to force the employer to accept a multi-employer association as his bargaining representative;[28] threatening to strike to force the employer to abandon such an association;[29] and bypassing the representative selected by the employer and requiring him to select another.[30] In every case the violation involved direct action by the union against the employer and the actual selection of a bargaining representative. Not until 1968 did the NLRB turn its attention to a union's use of its disciplinary machinery over supervisor members.

In *San Francisco-Oakland Mailers No. 18*[31] the Board found a violation of section 8(b)(1)(B) where the union had called two supervisors to appear before a union investigative committee on charges that the supervisors had violated the labor agreement by using supervisory and non-union personnel to do work covered by the agreement. On the employer's instructions the supervisors refused to appear and were fined. The Board rejected the union's argument that *Allis-Chalmers* was controlling, distinguishing that case as protecting only legitimate internal union affairs. Here, though, "the relationship primarily affected [was] one between the union and the employers."[32] The Board also held that the proviso to section 8(b)(1)(A) was limited to that section and not applicable to section 8(b)(1)(B).

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[24] *Id.* at 805.
[25] 123 N.L.R.B. 806 (1959).
[26] Typographers Local 38 v. NLRB, 365 U.S. 705 (1961).
[27] ILGWU, Los Angeles Cloak Joint Bd., 127 N.L.R.B. 1543 (1960).
[28] Painters Dist. Council No. 36, 155 N.L.R.B. 1013 (1965).
[29] Painters Local 823, 161 N.L.R.B. 620 (1966).
[30] Plasterers Local 739, 157 N.L.R.B. 823 (1966).
[31] 172 N.L.R.B. 252 (1968).
[32] *Id.* at ____.

San Francisco-Oakland Mailers was not appealed, and the first similar decision by the NLRB to be considered by a court of appeals was *NLRB v. Sheet Metal Workers Local 49*.[33] Citing *San Francisco-Oakland Mailers*,[34] the Tenth Circuit upheld a Board decision that fining a supervisor for working before the regular work day began was a violation of section 8(b)(1)(B). Several similar holdings have been issued by the NLRB, and each has been affirmed by various circuits.[35] *Meat Cutters* and *IBEW*, however, go further than any of the previous cases in analyzing the intent of Congress in prohibiting indirect as well as direct interference and distinguishing the application of *Allis-Chalmers*.

The majority in *IBEW* reiterated the earlier proposition in *Meat Cutters* that section 8(b)(1)(B) proscribes "*indirect* union restraint or coercion of an employer, accomplished through the imposition of discipline upon the employer's representatives for actions performed by them within the general scope of their supervisory or managerial responsibilities."[36] The court did not believe this to be too broad a view of the meaning Congress intended for the statutory language.[37] The majority perceived this Congressional intent by examining legislative history surrounding not only the enactment of section 8(b)(1)(B) but the other 1947 amendments to the Act as well, particularly section 2(3).[38]

The court reasoned that " 'Congress was aware of the potential conflict between the obligations of foremen as representatives of their employers, on the one hand, and as union members, on the other. Section 2(3) evidences its intent to make the obligations to the employer paramount.' "[39] The court thus rejected a union contention that section 14(a) of the Act evidenced Congressional intent that supervisors be controlled by the union that they join. The court felt that section 14(a) "does not detract from the undivided loyalty [supervisors] owe to their

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[33]430 F.2d 1348 (10th Cir. 1970).

[34]*Id.* at 1350 n.2.

[35]*See, e.g.*, Mailers Local 143, 181 N.L.R.B. 286 (1970), *enforced* Mailers Local 143 v. NLRB, 445 F.2d 730 (D.C. Cir. 1971); Carpenters Dist. Council, 177 N.L.R.B. 500 (1970), and Carpenters Dist. Council, 176 N.L.R.B. 797 (1969), both *enforced* NLRB v. Carpenters Dist. Council, 454 F.2d 1116 (10th Cir. 1972); Lithographers Local 15-P, 175 N.L.R.B. 1072 (1969), *enforced* NLRB v. Lithographers Local 15-P, 437 F.2d 55 (6th Cir. 1971).

[36]No. 71-1559, at 9 (emphasis by the court).

[37]*Id.* at 9-10.

[38]*See* note 18 *supra*.

[39]No. 71-1559, at 13, *quoting* Carpenters Dist. Council v. NLRB, 274 F.2d 564, 566 (1959).

employer under section 8(b)(1)(B) . . . . Similarly the fact that an employer may have consented to the compulsory union membership of his supervisors . . . does not negate his right to the full protection of section 8(b)(1)(B)."[40]

As to the effect of *Allis-Chalmers*, the union urged (and the dissent agreed) that, inasmuch as the conduct for which the discipline was imposed, *i.e.*, working during a strike, was the same in both *Allis-Chalmers* and *IBEW*, the former decision should control. The majority distinguished the two cases by stating that the Supreme Court in *Allis-Chalmers* drew " 'cogent support' for its decision"[41] from the proviso to section 8(b)(1)(A), which applies only to *internal*, union-employee relationships. The court noted that the proviso does not apply to section 8(b)(1)(B), the disputed section in *IBEW*, which regulates the *external*, union-employer relationship.[42]

Both the majority and the dissent viewed *Scofield v. NLRB*[43] as standing for the principle that unions may discipline members only when such discipline impairs no national labor policy.[44] The majority, however, found that Congress had expressed a policy in section 8(b)(1)(B) of protecting employers against union interference with their supervisors.[45] The dissent, on the other hand, argued that the policy was not violated when a union merely insured "strike solidarity among its members."[46]

The majority's interpretation of section 8(b)(1)(B) and the intent of Congress undoubtedly reaches the correct result. It seems unlikely that Congress would, on the one hand, legislatively recognize that supervisors are different from employees and, at the same time, intend that unions might treat them the same as employees, when such treatment would interfere with their status as supervisors. Indeed, the limited language of section 14(a) itself demonstrates Congress intended that

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[40]*Id.* at 15-16. The dissent, on the other hand, argued that §§ 2(3) and 14(a) merely give the employer the option to keep his supervisors out of the union or allow them to join and when he elects the latter course he bargains away his right to their loyalty. *Id.* at 55-56 (Wright, J., dissenting).

[41]*Id.* at 17.

[42]*Id.* at 16-19.

[43]394 U.S. 423 (1969).

[44]No. 71-1559, at 19, 54.

[45]*Id.* at 20.

[46]*Id.* at 54 (Wright, J., dissenting).

supervisor membership in unions would be something less than that of protected employees.[47]

There is little question that Congress intended to prevent union interference with management's right to designate its bargaining representatives,[48] and it would be specious to suggest that, once selected, the representatives permissibly could be hindered by union discipline in performing the duties for which they were selected. On the other hand, it is doubtful Congress intended to prohibit legitimate enforcement of union rules simply because the disciplined member may be a supervisor rather than a rank-and-file employee. Nevertheless, the legislative language selected by Congress to implement the former intent has been stretched by the *Meat Cutters* and *IBEW* court to the point that the latter intent is imperiled.

While section 8(b)(1)(B) does act as a limitation upon union discipline of supervisor members, whether it operates as an absolute bar is not clear. The court in both *Meat Cutters* and *IBEW* stated that not all supervisor discipline will be proscribed,[49] but it gives no workable guidelines with which to determine what discipline will be permitted. The lone example cited by the court was a Board decision, *Painters Local 453*,[50] in which the NLRB found no violation of section 8(b)(1)(B) where one local union fined a supervisor member of a sister local for violating a rule that required members of sister locals to register with the fining local when working in its jurisdiction. Clearly, failure to register was conduct outside the managerial duties of the supervisor. It can be argued, however, that the rule did interfere with his work as a supervisor in the jurisdiction of the fining local and with management's right to select him to work in that capacity.

Another question left unanswered by *IBEW* or *Meat Cutters* is whether the nature of the conduct for which discipline was imposed is the decisive factor in determining whether there has been a violation of section 8(b)(1)(B). In *IBEW* the court held that the conduct need not

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[47]*See* note 18 *supra*. This language also negates the *IBEW* dissenting argument that any employer who agrees to compulsory union membership for his supervisors gives up all rights to their loyalty. *See* note 40 *supra*. If an employer need not recognize supervisors as employees for the purpose of any collective bargaining law he certainly waives no rights in that respect under the very terms of section 14(a).

[48]*See* 1 LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 427 (1948); 2 *Id.* at 1012, 1077.

[49]No. 71-1559, at 15 n.28; 458 F.2d at 798-99 n.12.

[50]183 N.L.R.B. 24 (1970).

be in the actual application of a bargaining agreement provision or adjustment of a particular grievance; the discipline is proscribed any time "a supervisor is disciplined by a union because of the manner in which he exercised his supervisory or managerial authority . . . ."[51] This language would seem to suggest that the intent of a union is important and that a court should determine if a union intended to coerce management by its action or merely intended to discipline a member. The court later stated, however, that it is immaterial " 'whether the coercion succeeded or failed[;] . . . the test is whether the . . . conduct . . . tend[ed] to interfere with . . . [the rights protected] under the Act.' "[52] Thus even unintentional interference is seemingly proscribed if it has the requisite effect.

The controlling question appears to be whether the conduct the union seeks to restrain is essential to the supervisory function, but, as the dissent in *IBEW* pointed out, a supervisor, by the very nature of his alignment with management in opposition to labor, can commit few acts to which the union would object that would not be construed as the performance of his managerial duties.[53]

While *IBEW* held that it is not necessary that the conduct for which a supervisor is disciplined be restricted to acts committed in the actual administration of the bargaining agreement or adjustment of grievances, it is not clear whether a supervisor must have authority to perform such duties. It is possible, though perhaps rare, for a supervisor to administer matters not covered by the bargaining agreement and to have no role in the grievance process. For example, a union-member foreman might have unlimited authority to allocate over-time work among employees, a subject not covered by the bargaining agreement. He also might not serve a designated function in the grievance procedure. May the union order him to allocate over-time according to a particular union-determined formula and permissibly fine him for refusal to do so, or is any conduct performed as a representative of man-

[51]No. 71-1559, at 14.

[52]*Id.* at 24, *quoting* Mine Workers Local 167 v. NLRB, 422 F.2d 538, 542 (7th Cir.), *cert. denied*, 399 U.S. 905 (1970).

[53]*E.g.*, a supervisor may be required by management to cross picket lines; work during a strike (indeed, perform the duties of the striking workers as in *IBEW*); seek out permanent replacements for the striking workers; implement lockouts; campaign against the union during a representation election, or resolve jurisdictional disputes in opposition to the union's jurisdictional claim. In short, union discipline is generally imposed to sanction conduct in opposition to the union's interest, and opposing the union comprises a substantial amount of the supervisory function.

agement exempt from discipline so long as the actor is a supervisor? The NLRB, in a recent decision,[54] has taken the latter view, stating that "[a]ll persons who are 'supervisors' within the meaning of Section 2(11)[55] of the Act are employer's 'representatives for the purposes of collective bargaining or the adjustment of grievances' within the purview of Section 8(b)(1)(B) of the Act . . . ."[56] This can be viewed as an outright ban on discipline of supervisor members.

Neither *Meat Cutters* nor *IBEW* considered the situation of temporary supervisors. In some industries (most notably construction) an employee member of the union may work as a supervisor for a short period of time, or for only one project, and then return to non-managerial status either temporarily or permanently. It can be argued that if he is no longer a supervisor, he no longer has the protection of section 8(b)(1)(B), even against discipline for acts committed while he was in a supervisory status. If he is permanently returned to non-supervisory status, it is difficult to see how such discipline could coerce or restrain employers in any future selection of their representatives. On the other hand, a temporary supervisor who knows that his fine will be merely suspended until he returns to non-supervisory status will be reluctant to carry out management's directives.

What effect the limitation on discipline will have on continued supervisor membership in unions is speculative. Unions may lose interest in representing members they cannot discipline, or supervisors may become more interested in the benefits of membership without the hazards of discipline. The limitation should have some effect, however, upon the negotiation of union-shop clauses covering supervisors in future bargaining. Management's primary reasons for not agreeing to such a clause, that it would allow union control over management representatives, has been virtually eliminated and there is little reason for resistance. The union, on the other hand, may seek the clause as a valuable aid to the acquisition of membership, but could not insist upon

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[54]Engineers Local 501, 199 N.L.R.B. No. 91.

[55]NLRA § 2(11), 29 U.S.C. § 152(11) (1970) provides:

> The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

[56]199 N.L.R.B. No. 91 at ____.

its inclusion under the interpretation of *Typographers Local 38 v. NLRB*.[57] Management negotiators will be able to condition agreement to the benign clause only upon receipt of a valuable concession by the union.

JOHN O. POLLARD

Securities Regulation—The Reincarnation of the Deception Requirement

Rule 10b-5[1] has been used to develop a corpus of federal law relating to fiduciary obligations of directors, officers, and majority shareholders[2] in an area that has traditionally been a subject for state rather than federal regulation.[3] Due to its broad language, the rule creates an almost undefined liability. Absent definitive legislative action, courts have assumed primary responsibility for defining the extent of liability. In the recent case of *Popkin v. Bishop*,[4] the Second Circuit clearly rejected imposition of rule 10b-5 liability in the absence of an allegation of nondisclosure or deception in connection with the purchase or sale of securities. This holding, reiterating nondisclosure as a fundamental element in such an action, represents a significant restriction on the expansion of rule 10b-5 into the area of corporate fiduciary obligations.

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[57] *See* notes 23-26 and accompanying text *supra*. Attention should be called to the fact that *Typographers Local 38* was affirmed by an equally divided Supreme Court. However, an opposite decision in the near future seems unlikely.

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[1] 17 C.F.R. § 240.10b-5 (1971):

It shall be unlawful . . .

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to [make a misleading omission] . . . or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

[2] *See* Pappas v. Moss, 393 F.2d 865 (3d Cir. 1968); Vine v. Beneficial Fin. Co., 374 F.2d 627 (2d Cir.), *cert. denied*, 389 U.S. 970 (1967); O'Neill v. Maytag, 339 F.2d 764 (2d Cir. 1964); Entel v. Allen, 270 F. Supp. 766 (S.D.N.Y. 1965).

[3] Some commentators have expressed concern about this intrusion. *Compare* Fleischer, *"Federal Corporation Law": An Assessment*, 78 HARV. L. REV. 1146 (1965), *with* Lohf, *The Corporation Law of the Securities Acts: Federal Rights of Corporations*, 36 U. COLO. L. REV. 76 (1963).

For a discussion of the fiduciary responsibilities of corporate management, see H. HENN, CORPORATIONS §§ 235-41 (2d ed. 1970).

[4] 464 F.2d 714 (2d Cir. 1972).