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INTERNAL UNION AFFAIRS

FOREWORD

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It has been over thirty years since Professor Zechariah Chafee wrote his pioneer article on Internal Affairs of Associations Not for Profit.[1] Since then, there has been a growing accumulation of significant literature, among the most helpful of which have been articles by Aaron and Komaroff, Pierson, Kovner, Taft, Leiserson and Summers and the study by the American Civil Liberties Union back in 1952. In the judicial area the accumulation has grown correspondingly, with Ohio courts making their own contribution in Judge Thompson's opinion in *Crossen v. Duffy*[2] and the per curiam opinion of our Supreme Court in *Perko v. Thomas*.[3] The McClellan Committee, unwillingly encouraged by Mr. Hoffa, has led to landmark contributions in the federal legislative field. The Landrum-Griffin Act, more properly the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959, has given us a comprehensive statutory approach that still remains to pass the test of practical achievement.

This symposium then rides the crest of a mounting wave of interest and increasing public concern with union problems of internal democracy, control and plain common honesty. Originally planned in 1958, its appearance in 1961 could hardly have been better timed.

The articles that comprise this symposium provide, we believe, a full spectrum of the subject matter. Opening with a perspective of the place of organized labor in a free society, Dr. Kahn-Freund provides both the background and the point of departure for what is to follow. With Professor Blumrosen's paper on exclusion from union membership and Professor Aaron's discussion of a union's duty of fair repre-

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1 43 Harv. L. Rev. 993 (1930).

2 90 Ohio App. 252, 103 N.E.2d 769 (1951) to which should be added the other two Duffy cases: Armstrong v. Duffy, 90 Ohio App. 233, 103 N.E.2d 760 (1951) and Finley v. Duffy, 88 Ohio App. 159, 94 N.E.2d 466 (1950).

3 168 Ohio St. 161, 151 N.E.2d 742 (1958).

sentation, the series continues with Mr. Brooks' analysis of the operation of one of the three existing institutions for union disposition of its own internal complaints. Next comes the paper by Messrs. Katz and Friedman on members' right of control over their internal affairs, followed by Professor Summers' penetrating analysis of the principles of federal pre-emption as articulated in each separate title of the LMRDA. Mr. Mayer discusses the particular facet of intergroup conflicts that provoked the schism doctrine and Messrs. Cohn and Lubell conclude the symposium with an inventory of the external devices calculated to control internal controversies.

With this perspective a word should be added about each of these treatments. Dr. Kahn-Freund, to begin with, points to the tendency in all democratic institutions to delegate functions and then resign to a posture of "impotence and trustfulness," a trend that is only aggravated by the achievement of stability, comfort and the "affluent society." Unions, he says, are more comparable to political organizations, in the sense that they are entrusted with the economic existence of millions of members and, for this reason, are peculiarly prone to exhibit this same tendency. Their internal functions are therefore of unique importance to society. He then poses the dilemma of how to deal with their public responsibilities without imperilling their independence, and concludes with a summation of the English modes of resolving it in each of three problem areas.

In Legal Protection against Exclusion from Union Activities, Professor Blumrosen, against a background of common law, discusses two categories of rarely considered groups of nonunion members: those within the bargaining unit and those seeking to enter it. The position of control which unions often enjoy over each group, he maintains, imposes a responsibility that is a necessary accompaniment of power.

In his discussion of Fair Representation, Professor Aaron proceeds from the common law duty grounded in the collective bargaining relation, through the Wagner and Taft-Hartley Acts to a group of three problems: negotiation of a collective agreement, administration of it and the operation of union security clauses with particular reference to the use of union funds for political purposes. He notes the conflicts between the union's institutional objectives and the rights of individual members that make the first two so perplexing, and what he considers the relative simplicity of the third where the issue, he believes, is more properly a new attack on the union shop than a question of individual rights.

Mr. Brooks, with recent experience as Executive Director of the Public Review Board, UAW-CIO, describes the procedural steps of this novel and encouragingly successful form of union self-discipline.

The article by Messrs. Katz and Friedman refers to what they consider to be the infrequency of court decisions on the rights of individual members to control their own affairs, discusses such remedies as mandamus, receiverships and monitorships and concludes with a summary of LMRDA with particular reference to the remedies provided union members as to free elections and finances.

Professor Summers, in his discussion of federal pre-emption, concludes that despite the obvious mixture of coexistence and pre-emption found in the various parts of LMRDA, the statute "represents a serious effort to define and coordinate the relative roles of federal and state law through statutory provisions." Read in the light of the over-all purpose of the act, the anti-pre-emption clause in the Bill of Rights (section 103), the complete pre-emption in respect to reporting (section 205(c)), the anti-pre-emption of trusteeship (section 306), the comprehensive pre-emptive federal code on elections (section 403) and the general anti-pre-emption clause (section 603(a)) that applies to the act as a whole, "none of the problems," he concludes, "is beyond the ordinary competence of courts to resolve."

Mr. Mayer is concerned about one particular internal union conflict. After discussing the type of disaffiliation capable of lifting the contract bar in a representation case, he notes the danger of risking instability short of a basic intraunion conflict at the highest level that manifests its effect at the level of the local.

In the concluding article, Messrs. Cohn and Lubell provide us with a comprehensive enumeration of the various factors that serve to guide or control the relations of unions to their members. They conclude realistically that these factors present an approach that is futile, anarchic and archaic, that they disregard the basic ills of economic life, and that what this country needs is "an intensive federal study of existing labor laws with a view to an integrated system that will bring order out of chaos."

The Ohio State Law Journal is indebted to those busy practitioners and teachers who have been willing to allocate valuable time to the preparation of these articles. Separately and collectively they afford an effective insight into a highly complex field of the law.