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Labor Law - Union Internal Affairs - Right of Union Members to Inspect Union Books and Exhaustion of Internal Remedies as a Prerequisite to Judicial Enforcement of that Right

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LABOR LAW—UNION INTERNAL AFFAIRS—RIGHT OF UNION MEMBERS TO INSPECT UNION BOOKS AND EXHAUSTION OF INTERNAL REMEDIES AS A PREREQUISITE TO JUDICIAL ENFORCEMENT OF THAT RIGHT—Plaintiff, a member of defendant labor union, requested permission to examine all defendant's financial records for a specified period. The request was refused. The constitution of the international union required members to exhaust internal remedies before resorting to the courts. Without exhausting these remedies[1] plaintiff applied for, and received from the trial court, a writ

[1] Plaintiff failed to appeal to the executive board of the international union from the adverse decision of its president. This was the final internal remedy prescribed by the union constitution.

of mandate directing that he be permitted to inspect all the defendant's records and books of account. On appeal, *held,* affirmed. A member of an unincorporated labor union has a right to inspect its financial records, and it would serve no useful purpose to delay judicial enforcement of that right until all remedies within the union have been exhausted. *Mooney v. Bartenders Union Local No. 284,* (Calif. 1957) 313 P. (2d) 857.

Absence of any prior decisions concerning the right of a union member to examine the union's books led the court to approach the question by analogy to the right of a stockholder to examine corporate records.[2] The union-corporation analogy had been received sympathetically by California courts in previous cases.[3] Its application in this case seems valid. Union members and stockholders alike have a definite interest in seeing their respective organizations well run, and withholding financial records by either unions or corporations has no apparent justification.

The second issue in the principal case involved the necessity to exhaust union internal remedies before seeking relief from the courts. Courts have been reluctant to interfere in the internal affairs of voluntary associations,[4] and labor unions traditionally have been included in that classification.[5] The general rule is that a member's grievance against such an association will not be judicially considered until the member has exhausted his internal remedies.[6] Attempts to escape this rule have resulted in the creation of a large number of exceptions to it.[7] These exceptions have

2 Cal. Corp. Code Ann. (Deering, 1953) §3003. A right of inspection at a proper time and place and for a proper purpose was also recognized at common law. Matter of Steinway, 159 N.Y. 250, 53 N.E. 1103 (1899).

3 Otto v. Journeymen Tailors' Protective and Benevolent Union of San Francisco, 75 Cal. 308 at 313, 17 P. 217 (1888) (involving expulsion of union member); Oil Workers International Union v. Superior Court of Contra Costa County, 103 Cal. App. (2d) 512 at 571, 230 P. (2d) 71 (1951) (involving capacity of a union to obey an equity decree).

4 Davis v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, 60 Cal. App. (2d) 713, 141 P. (2d) 486 (1943). See 21 A.L.R. (2d) 1397 at 1404 (1952); Chafee, "The Internal Affairs of Associations Not for Profit," 43 HARV. L. REV. 993 (1930).

5 Davis v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, note 4 supra.

6 Dragwa v. Federal Labor Union No. 23070, 136 N.J. Eq. 172, 41 A. (2d) 32 (1945). See 168 A.L.R. 1462 (1947); 27 ORE. L. REV. 248 (1948). An obligation to exhaust internal remedies is judicially imposed and not dependent on presence of such an obligation in the union governing rules. Holman v. Industrial Stamping & Mfg. Co., 344 Mich. 235 at 261, 74 N.W. (2d) 322 (1955).

7 Internal remedies need not be exhausted when damages for improper expulsion are sought [Pfoh v. Whitney, (Ohio 1945) 62 N.E. (2d) 744; 168 A.L.R. 1462 at 1482 (1947)]; when property rights are involved, unless the exhaustion requirement is specific in the constitution or by-laws [Lo Bianco v. Cushing, 117 N.J. Eq. 593, 177 A. 102 (1935), affd. 119 N.J. Eq. 377, 182 A. 874 (1936); 168 A.L.R. 1462 at 1479 (1947)]; where there was lack of jurisdiction in the proceeding imposing the penalty or where such proceeding was void for any reason [Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, 229 Iowa 1028, 295 N.W. 858 (1941); 168 A.L.R. 1462 at 1468 (1947)]; where appeal within the union would be futile [Malloy v. Carroll, 272 Mass. 524 at

raised the question whether, as applied to labor unions, the rule still exists in more than name.[8] This dilution of the rule may reflect judicial appreciation that the rule of noninterference needs modification because of the large degree of power given unions by law[9] and the necessity to guard union members against abuse of that power.[10] In the principal case the majority recognized the general rule requiring exhaustion of internal remedies before resort to the courts, and held the problem to be essentially one of balancing the rights of individual members against the right of the union to govern itself.[11] Three elements seem to have influenced the court's decision not to require the union member to exhaust his intra-association remedies: (1) no union activity would be harmed by inspection of the books, (2) delay might possibly defeat the purpose of the inspection, and (3) the interests of the union and of the plaintiff in discovering dishonest management were similar, not adverse. The third factor may provide the key to interpretation and prediction of the limits of application of this decision.[12] Where the substantive interests of union and member are alike there is no basic balance of interests problem, and it is arguable that exhaustion of remedies would serve only the purpose of giving those responsible for mismanagement opportunity for concealment.[13] It is submitted that this case reflects a desirable judicial approach toward the exhaustion of remedies problem in that it examines the policy reasons for making an exception to the exhaustion requirement rather than mechanically trying to fit the case into stereotyped categories of

538, 172 N.E. 790 (1930), revd. on other grounds 287 Mass. 376, 191 N.E. 661 (1934); 168 A.L.R. 1462 at 1472 (1947)]; or where appeal would be unreasonably delayed [Fritz v. Knaub, 57 Misc. 405, 108 N.Y.S. 1003 (1907), affd. 124 App. Div. 915, 108 N.Y.S. 1133 (1908); but see Mulcahy v. Huddell, 272 Mass. 539, 172 N.E. 796 (1930)].

8 See Summers, "Legal Limitations on Union Discipline," 64 HARV. L. REV. 1049 at 1092 (1951); 1954 WASH. UNIV. L. Q. 440 at 457.

9 61 Stat. 136 (1947), 29 U.S.C. (1952) §§141 to 188.

10 See Kovner, "The Legal Protection of Civil Liberties Within Unions," 1948 WIS. L. REV. 18.

11 For a general discussion of the need to maintain this balance, see 57 YALE L. J. 1302 (1948).

12 If this is the proper explanation of the case, the dissent is incorrect in viewing the majority holding as overruling Holderby v. International Union of Operating Engineers, 45 Cal. (2d) 843, 291 P. (2d) 463 (1955). That case involved wrongful expulsion of a member from a union; in it, and other union discipline cases, the interests of union and member are adverse. Therefore, the result of the principal case would not be controlling in the union discipline area. Whether the balance of interests approach to the problem will be carried over into union discipline cases remains undecided. The fact that the majority did not consider their holding incompatible with the Holderby case seems to indicate they did not contemplate such an extension.

13 This is especially so if these same persons are in a position to impede the remedial process within the union. On the other hand, it might be desirable to give the union every chance to do its own housecleaning before submitting its affairs to judicial inspection.

exceptions.[14] In each case the exhaustion of remedies question should be approached from the standpoint of balancing the need for rapid final determination of individual rights against the interest of the union in self government. This evaluation should involve consideration of the type of right asserted, the substantive rules which govern such rights within the union, the speed and effectiveness of union review procedures,[15] the impact of delay upon the individual, and the union's interest in regulation of member conduct free from interference by the courts. Also not to be ignored is the public interest in keeping the court dockets free from disputes which can be fairly settled within the union organization.

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[14] In this case the policy approach allowed an exception which could not have been comfortably fitted into any of the established categories. However, the primary merit of the approach lies in the realistic foundation it establishes for decisions and not in its potential for creating further inroads into the exhaustion rule.

[15] That the procedures prescribed in union constitutions and those applied in practice may be different, see Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 (1950).