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# Labor Law - Union Shop - Discharge of Employee for Refusal to Accept Union Membership

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LABOR LAW—UNION SHOP—DISCHARGE OF EMPLOYEE FOR REFUSAL TO ACCEPT UNION MEMBERSHIP—An employee tendered dues and initiation fee to the union which had a union shop contract with her employer. The union then wrote her a letter welcoming her into membership. She replied that although she had tendered dues and initiation fee she was not joining the union. The union thereupon requested her employer to discharge her pursuant to the provisions of their union shop agreement signed under the 1951 amendment to the Railway Labor Act.[1] After going through the regular grievance procedure the matter came before the arbitrator for final settlement. *Held*, the union was entitled to demand the employee's discharge. The proviso to section two, eleventh of the Railway Labor Act as amended in 1951[2] [which was intended to be similar to provisos (A) and (B) to section 8 (a) (3) of Title I of the Labor-Management Relations Act of 1947[3]] protects an employee from discharge under a union shop agreement only when the union denies membership. The proviso does not apply when the employee specifically refuses to join the union even though she tenders the requisite dues and initiation fee. *Pan American World Airways, Inc.*, 20 Lab. Arb. Rep. 312 (1953).

Although recognizing his right to decide the controversy de novo, the arbitrator in the present case distinguished a decision[4] by the National Labor Relations Board protecting employees from discharge where they tender dues and initiation fees and indicate their willingness to join the union, but refuse to take an oath of fidelity to the union, attend a union meeting, or fill out an application card. While the two cases can be distinguished, the respective decisions seem to follow more from divergent interpretations of the legislative history of the LMRA than from any factual distinctions. While the arbitrator specifically refused to decide whether the union can require an employee to sign an application card or can impose any other requirements, and held only that the employee must refrain from an overt act making it impossible for

[1] 64 Stat. L. 1238 (1951), 45 U.S.C. (Supp. V, 1952) §152.

[2] "*Provided*, that no such [union shop] agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." 64 Stat. L. 1238 (1951), 45 U.S.C. (Supp. V, 1952) §152.

[3] "*Provided further*, That no employer shall justify any discriminaton against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. . . ." 61 Stat. L. 141 (1947), 29 U.S.C. (Supp. V, 1952) §158(a)(3). Senator Hill, in reporting out the Railway Act amendment for a unanimous committee, said: "In the limitations imposed [on allowing a union shop] and the nature of the right granted, the bill closely follows the pattern of parallel provisions of the Taft-Hartley Act." 96 CONG. REC. 15736 (1950).

[4] Union Starch and Refining Co., 87 N.L.R.B. 779 (1949), affd. (7th Cir. 1951) 186 F. (2d) 1008, cert. den. 342 U.S. 815, 72 S.Ct. 29 (1951).

the union to consider her a member,[5] the NLRB does not seem to make this distinction. In fact, the Board stated the issue in *Union Starch and Refining Co.* as "whether an employee who tenders . . . initiation fees and . . . dues [is] within the protection from discharge. . . ."[6] The NLRB concluded that the only power the union has to demand discharge is to protect itself from "free riders."[7] The dissenting members of the Board, moreover, interpreted the majority's decision as meaning that unions would be denying membership if they refused to admit employees who "were willing *only* to pay dues and fees for the right to work. . . ."[8] They said: "We find no evidence of an intent to distort union-shop agreements into mere devices by which unions can insure that all employees *pay* for the right to work. Yet that is the clear effect of the majority decision."[9] Despite the broad language of both the majority and minority opinions of the NLRB, the arbitrator in the principal case felt that the Board decision is not inconsistent with his holding.[10] The arbitrator's reasoning that the union does not deny membership where it is specifically rejected by the employee seems to be somewhat parallel to the Board minority view that in order for the union to be said to deny membership the employee must at least seek it.[11] Similarly, his conclusion from the legislative history of section 8(a)(3) of Title I of the LMRA that Congress intended the union shop provision to allow compulsory union membership, and not just compulsory dues paying, agrees with the Board minority view against that of the majority. Both the House and Senate committee reports would seem to favor the arbitrator's position.[12] The Senate Minority Report also does not suggest that only a "dues shop" is required. The House Minority Report, however, does contain a statement that might be susceptible of such an interpretation.[13] The debates on the floors of both houses are enlightening in this connection. Senator Taft, in explaining the bill to his colleagues during debate and opposing the Ball amendment to ban union shops, described the bill's union shop provision in terms of compulsory unionization.[14] It was during

[5] Principal case at 315.
[6] Note 4 supra, at 781.
[7] Id. at 785.
[8] Id. at 792.
[9] Id. at 794.
[10] Principal case at 317.
[11] Union Starch and Refining Co., note 4 supra, at 792.
[12] ". . . requiring employees to become and remain members of the union. . . ." "Employees have 30 days to decide whether or not to join the union." H. Rep. No. 245 on H.R. 3020, 80th Cong., 1st sess., p. 9 (1947). "[The bill] permits . . . such forms of compulsory unionism. . . ." Id. at 34. ". . . permits voluntary agreements for requiring such forms of compulsory membership. . . ." S. Rep. No. 105 on S. 1126, 80th Cong., 1st sess., p. 3 (1947).
[13] H. Min. Rep. No. 245 on H.R. 3020, 80th Cong., 1st sess., p. 80 (1947).
[14] ". . . if a union shop agreement . . . provided that every man must be a member . . . then the union . . . must accept . . . all who *apply* for membership." 93 CONG. REC. 4193 (1947). Also see 93 CONG. REC. 3837 (1947). "If he [an employee] were willing to *enter* the union and pay the same dues as other members . . . he could not be fired . . . because the union refused to take him." 93 CONG. REC. 4272 (1947). Senator Ball stated:

the Ball amendment debate, after a series of exchanges with Senator Donnell, who was opposed to any form of compulsory union membership,[15] that Senator Taft made the statements relied upon by the Board in deciding that only a "dues shop" was intended.[16] However, even after Senator Taft's explanation, Senator Donnell apparently still felt that the bill provided for compulsory unionization.[17] Only one congressman during the debates seems to have viewed this provision as requiring merely a dues shop,[18] although another used language that could be so interpreted.[19] The debates on the 1951 amendment to the RLA point toward a requirement of compulsory *membership*, and indicate an understanding on the part of the congressmen that the Taft-Hartley Act also requires it.[20] Thus the weight of the evidence of legislative intent

". . . if there happens to be a union shop contract, the individual must, regardless of his own convictions, *join* the union *and* pay dues to it." Senator Taft said in answer: ". . . But the bill permits the union shop, which is the customary form of employment in the United States. . . . In the bill we say that the employee must join the union within 30 days after he is employed." 93 CONG. REC. 4885, 4886 (1947). Emphasis added.

[15] "I do not regard the payment of dues as the important point, at all . . . the important point is . . . under the bill as it now stands, a man will not be able to hold a job . . . unless within 30 days after he takes the job he joins a union, although he may not wish to join it at all." 93 CONG. REC. 4886 (1947).

[16] "Mr. President, while I think of it, I should like to say that the rule adopted by the committee is substantially the rule now in effect in Canada. Apparently by a decision of the justices of the Supreme Court of Canada in an arbitration case, the present rule in Canada is that there can be a closed shop or a union shop, and the union does not have to admit an employee who applies for union membership, but the employee must, nevertheless, pay dues, even though he does not join the union.

"If he pays the dues without joining the union, he has the right to be employed. That, in effect, is a kind of a tax, if you please, for union support, if the union is the recognized bargaining agent for all the men, but there is no constitutional way by which we can do that in the United States." 93 CONG. REC. 4887 (1947). See Union Starch Refining Co., note 4 supra, at 785-786. The arbitration case referred to by Senator Taft is Ford Motor Co. of Canada, 1 Lab. Arb. Rep. 439 (1946), in which the arbitrator refused to grant a union shop but awarded a compulsory check-off of dues for all employees to help pay for the union benefits and as an inducement to join the union.

[17] 93 CONG. REC. 4887 (1947).

[18] Representative Klein of New York: "This bill pretends to allow a requirement of membership but really allows only a requirement that dues be paid. Why do not they say what they mean?" 93 CONG. REC. 3447 (1947).

[19] Senator Murray: ". . . [an employer] may not discharge an employee for nonmembership in a union unless such nonmembership arises from a failure to pay dues." 93 CONG. REC. 6496 (1947).

[20] Senator Hill, who reported the amendment out for a unanimous committee was questioned as follows by Senator Wherry:

"Wherry: That is similar to a provision of the Taft-Hartley Act.

Hill: Yes. . . .

Wherry: . . . but I wish to find out what is mandatory about the bill. The railroad workers who come under this provision of the bill will have to belong to a union. . . . Is that correct?

Hill: That is correct. . . ." 96 CONG. REC. 16269 (1950).

Senator Holland in speaking of the amendment said: ". . . [would employees] be required to join the union—the answer to that question is 'yes'; they would be so required. . . . There would be no exception to that other than the refusal of the union to admit them. . . . Every man not now a member of the union would be forced to apply for mem-

appears to support the arbitrator's position that Congress did not intend that employees could protect themselves from discharge under a union shop contract merely by paying dues and the initiation fee, but that the employees must be willing actually to *join* the union.

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bership. . . ." And later: ". . . as to whether or not a nonmember of a union now working in an operating classification would be required at least to apply for membership must be answered 'Yes'." 96 CONG. REC. 16331 (1950).