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Registration and Licensing of Union Organizers

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REGISTRATION AND LICENSING OF UNION ORGANIZERS

The expansion of American industry into previously unindustrialized areas has brought with it numerous problems generally associated with the labor movement. One of the more pressing of these problems is the attempt by states and political subdivisions thereof to regulate or restrict the activities of labor union organizers.

The organizer is usually the first representative of the union to present its ideals and objectives in a nonunion area. In initially soliciting memberships and organizing a local the organizer faces a difficult task. He must overcome a reluctance on the part of many employees to identify themselves with the laboring class by joining a union. Generally he must also surmount some resistance on the part of the employer. The resulting opposition to union organization is often vigorous; violence is not unlikely. In order to prevent social turmoil and, in some instances, to hinder or prohibit union organization, certain jurisdictions have enacted regulatory measures affecting the organizer.

REGISTRATION LAWS

Registration is the simplest type of regulatory action that can be utilized to control the union organizer. Registration statutes are designed to inform the authorities and the public that an organizer is at work in a particular locale by requiring him to register with designated officials.[1] Secrecy is sometimes an important weapon for the union struggling to gain a foothold in an unorganized area; registration strips the veil of secrecy from the organizer. Registration laws sometimes serve a useful public purpose, for knowledge of the organizer's presence could prove extremely helpful to law enforcement agencies in fixing responsibility for any public disturbance arising out of his activities. The same information, however, could also become a valuable tool in the hands of the employer in counteracting union organization. In addition, awareness by a prospective member that the union representative's identity is a matter of public record might tend to inhibit his associating himself with the organizer or the union.

The validity of registration statutes has been established. A Texas

[1] *E.g.*, Marengo County, Ala., ch. 43L (1956); Anson County, N.C., ch. 1146L (1957).

statute requiring organizers to register with the secretary of state before soliciting memberships within the state[2] has been held to be a reasonable exercise of the police power.[3] A similar Kansas statute which, in addition, called for the payment of a $2.00 fee[4] has been upheld.[5]

In *Thomas v. Collins* the Texas statute, as applied in that particular factual situation, was invalidated by the United States Supreme Court.[6] Thomas, a nonresident union official, spoke to a group of workers and in general terms entreated them to become union members. After concluding his address, he specifically solicited one individual for membership. The State of Texas attempted to prosecute Thomas for failure to register with the secretary of state and to procure an organizer's card prior to the speech. The Texas Supreme Court upheld the statute as a valid exercise of the state's police power and "necessary for the protection of the general welfare of the public, and particularly the laboring class."[7] The United States Supreme Court agreed that "the State has power to regulate labor unions,"[8] but nevertheless reversed the state court's decision on the ground that the regulation attempted to "trespass upon the domains set apart for free speech and free assembly."[9] The Court indicated that the result might have been different had the speaker engaged in conduct going beyond the right of free discussion, apparently neglecting the fact that Thomas did exactly that when he solicited an individual for membership. Aside from this specific case, the point remains that regulatory measures requiring the registration of union organizers are valid and will be upheld.

LICENSING LAWS

A more common but considerably more complex type of regulatory legislation is the licensing statute. These statutes usually require the applicant to pay a fee and meet other qualifications in order to obtain a license enabling him to engage in union activities.

[2]TEX. REV. CIV. STAT. art. 5154a, §5 (1948).

[3]AFL v. Mann, 188 S.W.2d 276 (Tex. Civ. App. 1945).

[4]KAN. GEN. STAT. ANN. §44-806 (1949).

[5]Stapleton v. Mitchell, 60 F. Supp. 51 (D. Kan.), *appeal dismissed*, 326 U.S. 690 (1945).

[6]323 U.S. 516 (1945).

[7]*Ex parte* Thomas, 141 Tex. 591, 596, 174 S.W.2d 958, 961 (1943).

[8]323 U.S. at 532.

[9]*Ibid.*

Fees

The fees required by various state statutes and municipal ordinances have ranged from $1.00[10] to $5,000.[11] It is well settled that an organizer can be required to pay a reasonable fee for the privilege of exercising his vocation,[12] and when the fee is imposed only for the purpose of covering the administrative costs of licensing it will generally be upheld as reasonable.

Excessive fees will be invalidated if "on their face they are a restriction of the free exercise of those freedoms which are protected by the first amendment."[13] A Georgia municipal ordinance requiring a fee of $5,000 was labeled as excessive on its face and held to be unconstitutional.[14] Another municipal ordinance, which provided for an initial fee of $2,000 plus $500 for each member obtained, was invalidated.[15] A third Georgia municipality repealed an ordinance requiring payment of $1,000 plus $100 for each twenty-four-hour period during which an organizer recruited.[16] The obvious purpose of requiring these fees was not to regulate licensing or raise revenue but to prevent the unionization of workers.

A fee that is not excessive is permissible, but when the fee goes beyond the pale of reasonableness it is subject to nullification. Reasonableness is, of course, a matter of degree, but a fee that is excessive on its face will be invalidated.

Character Requirements

Many licensing statutes prescribe certain personal qualifications which the applicant must meet in order to obtain a license. Among other things these statutes usually require good moral character[17] and

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[10]KAN. GEN. STAT. ANN. §44-804 (1949).

[11]See Starnes v. City of Milledgeville, 8 CCH LAB. CAS. ¶62,340 (1944).

[12]*E.g.*, Stapleton v. Mitchell, 60 F. Supp. 51 (D. Kan.), *appeal dismissed*, 326 U.S. 690 (1945).

[13]Murdock v. Pennsylvania, 319 U.S. 105, 114 (1943).

[14]Starnes v. City of Milledgeville, 8 CCH LAB. CAS. ¶62,340 (1944).

[15]An ordinance of the City of Baxley, Ga., was declared unconstitutional because the city officials had an uncontrolled discretion as to whether to issue the license. Staub v. City of Baxley, 355 U.S. 313 (1958).

[16]An ordinance of the City of Carrollton, Ga., with this provision was repealed after an indication by a federal court of its unconstitutionality. Denton v. City of Carrollton, 235 F.2d 481 (5th Cir. 1956).

[17]*E.g.*, FLA. STAT. §447.04 (1957).

the absence of any prior felony conviction.[18] An interesting example of the stringent conditions that must sometimes be met in establishing these qualifications can be found in South Carolina, where the prospective organizer is required to furnish three character witnesses.[19]

Ostensibly the purpose of character requirements is to protect the public from those who would fraudulently solicit dues. Actually, however, it is unusual for the organizer to collect dues from newly acquired members; ordinarily dues are not collected until some bargaining agreement has been reached. A more justifiable purpose of these requirements would seem to be to minimize the possibility of violence and general community disorder.

The United States Supreme Court has upheld the validity of licensing laws containing character tests when the activity to be licensed was of a fiduciary nature.[20] This would seem to be inapplicable to union organizers. In *AFL v. Mann*,[21] however, the Texas statute[22] prohibiting any person convicted of a felony whose civil rights have not been restored from serving as an officer, official, or organizer of a labor union was upheld. The court stated that this provision in no sense denied any person the right to work and earn a livelihood but merely prohibited him from occupying a responsible position in an organization affecting the public interest economically and politically.

Aliens and Nonresidents

Several licensing statutes deny organizers' licenses to aliens;[23] others require the applicant to be a resident of the locality in which he intends to operate.[24] The validity of these restrictions is questionable. It has been held that a state may not deny aliens the right to engage in any private trade or calling on terms of equality with

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[18]*E.g.*, FLA. STAT. §447.04 (1957); TEX. REV. CIV. STAT. art. 5154a, §4a (1947).

[19]Acts and Joint Resolutions of S.C. 948 (1956). Similar measures were enacted in eight other counties. *Id.*, Acts 442, 365, 328, 233, 172, 333, 406, 329 (1957).

[20]Hall v. Geiger-Jones Co., 242 U.S. 539 (1917) (security dealers).

[21]188 S.W.2d 276 (Tex. Civ. App. 1945).

[22]TEX. REV. CIV. STAT. art. 5154a, §4a (1947).

[23]*E.g.*, FLA. STAT. §447.04 (1957); TEX. REV. CIV. STAT. art. 5154a, §4a (1947).

[24]A city ordinance of Milledgeville, Ga., requiring among other things that applicants for organizers' licenses must have resided within the city limits for at least one year was declared unconstitutional because it denied equal protection of the laws to nonresidents. Starnes v. City of Milledgeville, 8 CCH LAB. CAS. ¶62,340 (1944).

citizens, except when the state, under its police power, may absolutely or conditionally prohibit the calling through the exaction of a license.[25] The fact of alienage may justify denial of the license privilege to an organizer, provided there is some relation between exclusion of the alien and protection of the public welfare.[26]

Licensing Boards

A number of jurisdictions vest special boards with the power to arbitrarily deny or grant a petition for a license.[27] An extreme example of this type of provision can be found in the Barnwell County, South Carolina, ordinance which provides that the board "shall have power to refuse to issue any permit for any just reason and for the peace and good order of the citizens of Barnwell County."[28] This ordinance is as yet untested; however, similar provisions in other statutes, both state and local, have been declared invalid.[29] The vesting of uncontrolled discretion in designated officials, thereby enabling them to contravene peaceful enjoyment of basic constitutional guaranties, is "an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms."[30]

FLORIDA LAW

Florida has been one of the forerunners in the attempt to regulate and restrict labor unions and union officials.[31] One Florida statute requires all union "business agents" to register with the secretary of state and to procure from a board comprised of the governor, the secretary of state, and the superintendent of education a license permitting an individual to act in this capacity. In *Hill v. State ex rel. Watson*[32] the Florida Supreme Court stated that the mere requirement of registration and the procurement of a license were valid exercises of the state police power. The Court noted, however, that

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[25]People v. Crane, 214 N.Y. 154, 108 N.E. 427, *aff'd*, 239 U.S. 195 (1915).

[26]*Ibid.*

[27]*E.g.*, Ordinances of Milledgeville, Ga., Barnwell County, S. C., Kershaw County, S. C.

[28]Acts and Joint Resolutions of S.C. 948, §4 (1956).

[29]Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945); Starnes v. City of Milledgeville, 8 CCH LAB. CAS. ¶62,340 (1944).

[30]Staub v. City of Baxley, 355 U.S. 313, 322 (1957).

[31]FLA. STAT. §447.04 (1957).

[32]155 Fla. 245, 19 So.2d 857 (1944).

certain portions of the act that gave to the Board an excessive amount of arbitrary power in determining what constituted the public interest were invalid and should be deleted.

In reversing this decision,[33] the United States Supreme Court held the statute completely invalid as interfering with the "full freedom" given to employees to choose their own collective bargaining representatives and officials under the National Labor Relations Act.[34] In so holding, the Court stated that in enacting the National Labor Relations Act Congress did not attach any conditions whatsoever to the "full freedom" of choice concept and that to allow this statute to stand unchanged would be to substitute "Florida's judgment for the workers' judgment."[35] Prior to this decision, the National Labor Relations Board had held that an employer must negotiate with a union agent regardless of whether he had received a license under this statute.[36] Accordingly, in the *Hill* case the State of Florida argued that since the union's representative could engage in collective bargaining without securing a license, the statute did not, in fact, interfere with any rights granted to employees by the National Labor Relations Act. In rejecting this argument the Court indicated that by sustaining the statute the employees, through their selected representatives, would be susceptible to fine or imprisonment.

There was also a jurisdictional dispute involved in the *Hill* case. The National Labor Relations Act failed to include provisions requiring the licensing of union agents, registration of unions, or the filing of financial reports. Nevertheless, the Court held that the National Labor Relations Board had pre-empted the field, and thus the state was precluded from passing any restrictive legislation affecting the choice of representatives by union members.

In the *Hill* case the Court was concerned primarily with a determination of whether the Florida statute was invalid as applied to business agents of the union. Seemingly the term *business agents,* as defined by Florida law,[37] would include both bargaining representatives and union organizers. In a 1946 opinion, however, the

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[33]Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945).

[34]National Labor Relations Act §1, 49 STAT. 449 (1935), as amended, 29 U.S.C. §151 (1958): "It is declared to be the policy of the United States . . . [to protect] the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing . . . ."

[35]325 U.S. at 541.

[36]Eppinger & Russell Co., 56 N.L.R.B. 1259 (1944).

[37]FLA. STAT. §447.02 (2) (1957).

Attorney General of Florida recognized the Court's decision only in so far as it pertained to the removal of statutory restrictions imposed on bargaining representatives.[38] As applied to other officials of the union, particularly the organizer, the opinion indicated that the statute was still in effect.

In 1951 the Florida legislature deleted from the statute that part which had been declared objectionable by the Florida Supreme Court and the United States Supreme Court. The excised clause conferred upon the designated state board arbitrary power to determine whether a license should be issued.[39] The statute presently remains in effect as amended in 1951.

Aside from the *Hill* case, there is at least one other indication that the judiciary in Florida will view regulatory or licensing statutes or ordinances critically. In *Pittman v. Nix* the Florida Supreme Court invalidated a municipal ordinance prohibiting the solicitation of union members within the municipality.[40] The Court held that the ordinance violated the constitutional guaranties of life, liberty, due process of law, freedom of speech and press, and the right of acquisition, possession, and protection of property.

CONCLUSION

The union organizer is essential to the continued existence and expansion of the labor movement.[41] Theoretically, however, the states can regulate unions and union officials in the same manner that they can regulate other areas of human endeavor.[42] Most jurisdictions having registration and licensing laws maintain that the validity of these laws rests upon a reasonable exercise of the police power.[43]

Simple registration laws are valid unless they infringe basic constitutional rights, such as freedom of speech and freedom of assembly. The validity of licensing laws is not so clearly established. Seemingly

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[38]OPS. ATT'Y GEN. FLA. 602 (1946).

[39]FLA. STAT. §447.04 (1951).

[40]152 Fla. 378, 11 So.2d 791 (1943).

[41]Pittman v. Nix, 152 Fla. 378, 11 So.2d 791 (1943).

[42]*E.g.*, Brazee v. Michigan, 241 U.S. 340 (1916) (upholding the right of the state to license private employment agencies); Engel v. O'Malley, 219 U.S. 128 (1911) (private bankers); Emert v. Missouri, 156 U.S. 296 (1895) (peddlers).

[43]*E.g.*, Hill v. Florida *ex rel.* Watson, 325 U.S. 538 (1945). *Ex parte* Thomas, 141 Tex. 591, 174 S.W.2d 958 (1943).

the imposition of a reasonable fee would not invalidate a licensing statute. The levying of excessive fees, however, places a premium on the enjoyment of constitutional guaranties and is clearly unconstitutional. Likewise, making the issuance of a license dependent upon the arbitrary will of governmental officials, either by a grant to them of unlimited discretion or allowing them to misuse the various character tests, would be held to be in conflict with either the Constitution or the federal labor acts, or both. The character tests in the present Florida law would probably be sustained only in so far as they purport to exclude from the occupation people with alleged moral deficiencies. Should an attempt be made to use them as a weapon against union organizational efforts they would probably be invalidated.

In view of the Supreme Court's recognition of the social and economic value of labor unions[44] and the congressional policy of encouraging and fostering the labor movement, it is doubtful that any law that in effect restricts or prohibits efforts on the part of unions to expand and obtain new members would be upheld.

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[44]See NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937); American Steel Foundaries v. Tri-City Cent. Trades Council, 257 U.S. 184, 209 (1921).