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LABOR LAW - JURISDICTION OF COURTS OVER ACTIONS BY MEMBER AGAINST UNION - NECESSITY OF EXHAUSTING TRADE UNION AND ADMINSTRATIVE REMEDIES

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COMMENTS

LABOR LAW — JURISDICTION OF COURTS OVER ACTIONS BY MEMBER AGAINST UNION — NECESSITY OF EXHAUSTING TRADE UNION AND ADMINSTRATIVE REMEDIES — In cases involving the discipline of union members by a trade union, and the member's right of redress for such disciplinary action, one of the most consistently quoted maxims is that the remedies offered by the union must be exhausted before the

court will assume jurisdiction.[1] Imbued with the desire to do justice, courts have made many exceptions to the general rule, and the problem presented is when the courts will require the exhaustion of internal remedies.[2]

The weight of authority appears to be that the courts will accept jurisdiction when the trade union tribunal acts beyond the scope of its authority granted by the constitution and by-laws,[3] or if the acts are void as against public policy. Among the acts so classified are those restricting the freedom of contract,[4] the right to testify in court,[5] and the right to vote and petition the government.[6]

In addition to these exceptions the courts have held that the within-the-union remedies need not be pursued if they would be futile, illusory, or vain. It has been held that an appeal to union tribunals was not necessary when it was apparent the member could not secure a fair and impartial trial,[7] when the time for appeal would be at a remote date,[8] or the appeal would not be adequate.[9]

There is a clear distinction made between the right to bring a suit for damages for alleged wrongful expulsion and the right to ask for reinstatement without first exhausting internal remedies. Courts which demand exhaustion of remedies for reinstatement will give damages for

[1] The rule was first laid down in cases concerning beneficial organizations. Chafee, "The Internal Affairs of Associations Not for Profit," 43 HARV. L. REV. 993 (1930); Roxbury Lodge v. Hocking, 60 N. J. L. 439, 38 A. 693 (1897).

[2] For an analysis of internal remedies and labor tribunals, see Chamberlain, "The Judicial Process in Labor Unions," 10 BROOKLYN L. REV. 145 (1940).

[3] Johnson v. International of United Brotherhood of Carpenters, 52 Nev. 400, 288 P. 170 (1930); Nissen v. International Brotherhood of Teamsters, 229 Iowa 1028, 295 N. W. 858 (1941).

[4] Collins v. International Alliance of Theatrical Stage Employes, 119 N. J. Eq. 230, 182 A. 37 (1935); Cameron v. International Alliance of Theatrical Stage Employees, etc., 118 N. J. Eq. 11, 176 A. 692 (1934).

[5] Abdon v. Wallace, 95 Ind. App. 604, 165 N. E. 68 (1929).

[6] Schneider v. Local Union No. 60, United Assn. Journeymen Plumbers, 116 La. 270, 40 So. 700 (1905); Spayd v. Ringing Rock Lodge, No. 665, 270 Pa. 67, 113 A. 70 (1921).

[7] Robinson v. Nick, 235 Mo. App. 461, 136 S. W. (2d) 374 (1940); Heasley v. Operative Plasterers & Cement Finishers Int'l Assn., Local No. 31, 324 Pa. 257, 188 A. 206 (1936); Malloy v. Carroll, 272 Mass. 524, 172 N. E. 790 (1930). But in the absence of proof of mala fides it will not be assumed. Koukly v. Canavan, 154 Misc. 343, 277 N. Y. S. 28 (1935).

[8] Harris v. Geier, 112 N. J. Eq. 99, 164 A. 50 (1932) (right to appeal to a convention meeting once in five years); Walsche v. Sherlock, 110 N. J. Eq. 223, 159 A. 661 (1932) (convention to be held in two years). But in Snay v. Lovely, 276 Mass. 159, 176 N. E. 791 (1931), it was held a convention a year and a half hence was not too remote.

[9] Burke v. Monumental Division No. 52, Brotherhood of Locomotive Engineers, (D. C. Md. 1919) 273 F. 707 (an injunction by member to prohibit an unlawful strike was proper since the appeal would take at least nine months).

loss of the benefits of membership without requiring compliance with the prescribed procedure.[10] The reasons given for the distinction are that by not asking for reinstatement the member has severed his connection with the union and should not be subject to its regulations,[11] reinstatement would not afford full redress,[12] or it would not be fair to let the labor union in an action against it for damages be the judge of the merits of the claim.[13] When property rights are involved, some courts have made the distinction that in the absence of an expressed agreement to exhaust the remedies provided within the association, it will not be necessary although the action may be a prerequisite for reinstatement.[14]

If the labor tribunal has confined its actions strictly within its authorized scope, if there has been a fair trial,[15] and its actions have not been void for reasons of public policy, its decision will be treated as substantially final,[16] and the court is restricted to the question of sufficiency of the evidence and cannot determine the weight of evidence. In this respect the courts are recognizing a similarity between the labor tribunal and the administrative tribunal in that each is particularly qualified to do its special function.[17]

As in the trade union cases, under administrative law it is necessary that the administrative remedies be exhausted prior to an appeal to a court,[18] and likewise there are many exceptions to the general rule.

[10] Dallas Photo-Engravers' Union v. Lemmon, (Tex. Civ. App. 1941) 148 S. W. (2d) 954; Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923).

[11] Shinsky v. Tracey, 226 Mass. 21, 114 N. E. 957 (1917).

[12] Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923).

[13] Brotherhood of Railroad Trainmen v. Barnhill, 214 Ala. 565, 108 So. 456 (1926).

[14] Harris v. Geier, 112 N. J. Eq. 99, 164 A. 50 (1932); Nissen v. International Brotherhood of Teamsters, etc., 229 Iowa 1028, 295 N. W. 858 (1941).

[15] A fair trial includes the right to notice of charges, to a hearing, to present witnesses, and to cross examine the opposition. Heasley v. Operative Plasterers & Cement Finishers Int'l Assn., Local No. 31, 324 Pa. 257, 188 A. 206 (1936); Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, (N. Y. Sup. Ct. 1920) 183 N. Y. S. 855. But the labor court is not held to the technicalities of law court procedure. Donovan v. Travers, 285 Mass. 167, 188 N. E. 705 (1934).

[16] Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 17 P. 217 (1888); McConville v. Milk Wagon Drivers' Union, 106 Cal. App. 696, 289 P. 852 (1930); Webb v. Chicago, R. I. & G. Ry., (Tex. Civ. App. 1940) 136 S. W. (2d) 245. This includes the right to make an honest error. Snay v. Lovely, 276 Mass. 159, 176 N. E. 791 (1931).

[17] Allen v. Southern Pacific Co., 166 Ore. 290, 110 P. (2d) 933 (1941); Mogelever v. Newark Newspaper Guild, 124 N. J. Eq. 60, 199 A. 56 (1938).

[18] First National Bank of Greeley v. Weld County, 264 U. S. 450, 44 S. Ct. 385 (1923); Natural Gas Pipeline Co. v. Slattery, 302 U. S. 300, 58 S. Ct. 199

When the act creating the administrative board is contested as being void or unconstitutional there is no requirement of exhaustion;[19] and the threat of irreparable damages,[20] and unreasonable delay are additional grounds for direct appeal.[21] Generally, courts, while skeptical of both trade union tribunals and administrative tribunals,[22] have been more lenient in granting powers to the administrative tribunal.[23] Perhaps the court feels that an individual dealing with a trade union which has derived its authority from a contract[24] needs more protection than one dealing with an administrative tribunal whose function is to effectuate a legislative purpose.

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(1937); People ex rel. Lamme v. Buckland, 84 Colo. 240, 269 P. 15 (1928); Stason, "Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies," 28 MICH. L. REV. 637 (1930); Berger, "Exhaustion of Administrative Remedies," 48 YALE L. J. 981 (1939).

[19] State ex rel. Tingley v. Gurda, 209 Wis. 63, 243 N. W. 317 (1932); Krumgold & Sons v. Jersey City, 102 N. J. L. 170, 130 A. 635 (1925); Hirsh v. Block, (App. D. C. 1920) 267 F. 614.

[20] Banton v. Belt Line Ry., 268 U. S. 413, 45 S. Ct. 534 (1927).

[21] Smith v. Illinois Bell Telephone Co., 270 U. S. 587, 46 S. Ct. 408 (1926). Compare labor cases on delay and the right to appeal: International Longshoremen's Assn. v. Williams, (Tex. Civ. App. 1937) 102 S. W. (2d) 1072; Grand International Brotherhood of Locomotive Engineers v. Marshall, (Tex. Civ. App. 1940) 146 S. W. (2d) 411.

[22] O'Reilly, "Administrative Absolutism," 7 FORDHAM L. REV. 310 (1938).

[23] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938); United States v. Sing Tuck, 194 U. S. 161, 25 S. Ct. 621 (1904).

[24] The constitution and by-laws are regarded by the courts as a contract between the union and the member. Amalgamated Clothing Workers of America v. Kiser, 174 Va. 229, 6 S. E. (2d) 562 (1939); Engel v. Walsh, 258 Ill. 98, 101 N. E. 222 (1913); Sammel v. Myrup, (N. Y. Mun. Ct. 1939) 12 N. Y. S. (2d) 217.