THE RELEVANCE OF "UNION BENEFIT" TO PROSECUTIONS FOR UNAUTHORIZED EXPENDITURES OF UNION FUNDS

United States v. Goad, 490 F.2d 1158 (8th Cir. 1974)

Defendants, officers of Local 600 of the Teamsters Union,[1] received salary increases upon the sole authorization of the Local president, defendant Lane.[2] Neither the Executive Board nor the general membership of the Local approved the increases, although such approval was required by the Local constitution.[3] For authorizing and accepting the pay raises, defendants were convicted[4] of violating section 501(c) of the Labor-Management Reporting and Disclosure Act of 1959[5] (LMRDA). Defendants appealed, alleging that the prosecution had failed to show that the union did not benefit from the pay raises.[6] The

1. Defendant Goad was vice president of Local 600 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union); other defendants were the president, secretary-treasurer, and recording secretary of the Local.

2. Lane authorized separate $50 per week pay increases for defendant officers on May 24, 1969, October 18, 1969, and January 5, 1970. When appellants assumed their offices in 1968, the annual salaries for Local officers were: president, $21,000; vice president, $15,000; secretary-treasurer, $19,600; recording secretary, $17,700. By 1971 the salaries were: president, $36,133; vice president, $33,311; secretary-treasurer, $38,742; recording secretary, $33,728. United States v. Goad, 490 F.2d 1158, 1160 (8th Cir.), *cert. denied*, 417 U.S. 945 (1974). The court did not explain the source or validity of the salary increases other than those for which defendants were prosecuted.

3. Section 7.02(b) of the Local's constitution requires the Executive Board of the Local, made up of the president, vice president, secretary-treasurer, recording secretary, and three other trustees, to "[a]pproved [*sic*] the salaries, benefits, allowances, direct and indirect disbursements, expenses and reimbursement of expenses for officers, agents and employees." Brief for Appellants at 34 n.8, United States v. Goad, 490 F.2d 1158 (8th Cir. 1974). Section 6.09 of the constitution requires an officer to perform executive or administrative functions as authorized or directed by the general membership. Since one executive function might be to fix the level of officer compensation, the membership, as well as the Executive Board, could exercise control over officers' salaries. *Id.* at 33-34 & n.7.

4. 490 F.2d at 1159-60.

5. 29 U.S.C. § 501(c) (1970) provides:

> Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

6. 490 F.2d at 1161. Defendants also contended that there was proper authorization for their salary increases since a general membership resolution gave the local pres-

Court of Appeals for the Eighth Circuit affirmed and *held*: Lack of benefit to the union is not a necessary element of a violation of section 501(c) of LMRDA.[7]

In response to discoveries of widespread corruption in the internal management of many American labor unions,[8] Congress enacted the Labor-Management Reporting and Disclosure Act of 1959[9] to insure lawful and democratic control of labor organizations.[10] Section 501 of the LMRDA[11] concerns union officers' fiduciary duties[12] to union members: subsection (a) establishes and defines the fiduciary duties;[13] sub-

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ident and secretary-treasurer " 'authority . . . to make such expenditures and use of Teamsters Local 600 funds and facilities to whatever extent they believe is related to the interests and benefit of Teamsters Local 600 without any prior approval.' " *Id.* (quoting resolution). The court held that the membership resolution could not "be read as rescinding the specific constitutional provision requiring Executive Board approval of salary increases." *Id.*

7. United States v. Goad, 490 F.2d 1158 (8th Cir.), *cert. denied*, 417 U.S. 945 (1974).

8. The discoveries were made by the Senate Committee on Improper Activities in the Labor and Management Field. *See* note 10 *infra*. For a concise but perceptive analysis of the background of the LMRDA, see Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819 (1960). *See generally* Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 VA. L. REV. 195 (1960).

9. 29 U.S.C. §§ 401-531 (1970). This statute is also referred to as the Landrum-Griffin Act.

10. For a collection of excerpts from the legislative history of the LMRDA, see 2 U.S. CODE CONG. & AD. NEWS 2318-514 (1959). Unfortunately, the legislative history of § 501 gives no help in determining the elements of a violation of § 501(c). For a general discussion of issues raised by the LMRDA, see Naumoff, *Landrum-Griffin and Regulation of Internal Union Affairs*, 18 LAB. L.J. 387 (1967).

11. 29 U.S.C. § 501 (1970). For the text of the section see notes 5 *supra*, 13-14 *infra*.

12. The classic statement of the nature of a fiduciary relationship was given by then-Chief Judge Cardozo in Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928):

> Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

A fiduciary has the duty to act solely for the benefit of the beneficiary, and to comply strictly with the terms of the trust defining his powers and duties. *See* note 33 *infra*.

13. 29 U.S.C. § 501(a) (1970) provides:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members

section (b) creates civil liability for violation of the duties;[14] and sub-

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and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

The courts have not agreed on the extent of the fiduciary duties imposed by § 501(a). Some courts have held that the subsection applies to union officers only in the management of the union's financial affairs and assets. *E.g.*, Coleman v. Brotherhood of Ry. Clerks, 340 F.2d 206 (2d Cir. 1965); Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964); Puma v. Brandenburg, 324 F. Supp. 536 (S.D.N.Y. 1971); Richardson v. Tyler, 309 F. Supp. 1020 (N.D. Ill. 1970). Other courts have construed the subsection more broadly. *E.g.*, Hood v. Journeymen Barbers Union, 454 F.2d 1347, 1354 (7th Cir. 1972) ("every area in which subversion of the interests of the union membership may be accomplished by union officials or representatives bent on acting in culpable derogation of those interests"); Johnson v. Nelson, 325 F.2d 646, 653 (8th Cir. 1963) (refusal to pay members' attorney fees and related expenses although authorized by majority vote of local members); Moschetta v. Cross, 48 L.R.R.M. 2669 (D.D.C. 1961) (failure and refusal to complete arrangements for and call special convention); *cf.* Woody v. Sterling Alum. Prods. Inc., 244 F. Supp. 84 (E.D. Mo. 1965), *aff'd*, 365 F.2d 448 (8th Cir. 1966); Highway Truck Drivers Local 107 v. Cohen, 182 F. Supp. 608 (E.D. Pa.), *aff'd*, 284 F.2d 162 (3d Cir. 1960), *cert. denied*, 365 U.S. 833 (1961). *See generally* H.R. REP. No. 741, 86th Cong., 1st Sess. (1959); Clark, *The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA*, 52 MINN. L. REV. 437 (1967); Cox, *supra* note 8; Dugan, *Fiduciary Obligations Under the New Act*, 48 GEO. L.J. 277 (1959); Note, *The Fiduciary Duties of Union Officials Under the LMRDA: A Guide to the Interpretation of Section 501*, 37 N.Y.U.L. REV. 486 (1962).

14. 29 U.S.C. § 501(b) (1970) provides:

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

For cases construing this subsection, see Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir.), *cert. denied*, 409 U.S. 853 (1972); Phillips v. Osborne, 403 F.2d 826 (9th Cir.

section (c) makes the embezzlement of union assets by union officers or employees a crime.[15] Prosecutions under subsection (c)[16] have generally focused on union officers' use of their positions for personal gain rather than for the benefit of the union.[17] In several of these cases, benefit to the union has implicitly been recognized as a defense to a prosecution under section 501(c)[18] and as evidence disproving the fraudulent intent of the officers.[19]

United States v. Goad denies that benefit to the union has any relevance to section 501(c), and limits the elements of a violation of the section to an unauthorized expenditure of union funds and an intent

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1968); Horner v. Ferron, 362 F.2d 224 (9th Cir.), *cert. denied*, 385 U.S. 928 (1966); Teamsters Union v. Hoffa, 242 F. Supp. 246 (D.D.C. 1965); Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962), *aff'd*, 325 F.2d 646 (8th Cir. 1963).

15. For the text of § (c), see note 5 *supra*.

16. The collection of various offenses in § 501(c), *see* note 5 *supra*, has not been a source of controversy. The courts have held that § 501(c) creates a new federal crime of embezzlement of funds from a labor organization, but to the extent that terms with established meanings are used, those meanings are still applicable. Colella v. United States, 360 F.2d 792 (1st Cir.), *cert. denied*, 385 U.S. 829 (1966); Woxberg v. United States, 329 F.2d 284 (9th Cir.), *cert. denied*, 379 U.S. 823 (1964). It was the intent of Congress in drafting the statute to avoid technical definitions whereby guilty persons could escape liability by slipping through the crevices between the so-defined crimes. United States v. Harmon, 339 F.2d 354 (6th Cir. 1964), *cert. denied*, 380 U.S. 944 (1965). *See also* Morissette v. United States, 342 U.S. 246 (1952).

The Government is not required to specify which of the individual crimes the defendant has committed. United States v. Dibrizzi, 393 F.2d 642 (2d Cir. 1968); Colella v. United States, *supra*; United States v. Harmon, *supra*; Woxberg v. United States, *supra*; Doyle v. United States, 318 F.2d 419 (8th Cir. 1963).

17. *See, e.g.*, United States v. Vitale, 489 F.2d 1367 (6th Cir. 1974) (union-owned automobile sold to dealer and resold to union official at reduced price); United States v. Ferrara, 451 F.2d 91 (2d Cir. 1971), *cert. denied*, 405 U.S. 1032 (1972) (spending union money for automobile for officer's private use; using expense account for personal purposes); United States v. Silverman, 430 F.2d 106 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971) (embezzlement of proceeds of employee welfare fund; misuse of union funds in awarding "Christmas gratuities"); United States v. Dibrizzi, 393 F.2d 642 (2d Cir. 1968) (payment of personal expenses not involved in union business); United States v. Brill, 350 F.2d 171 (2d Cir.), *cert. denied*, 382 U.S. 973 (1965) (issuance of false expense vouchers to increase officers' salaries); United States v. Harrelson, 223 F. Supp. 869 (E.D. Mich. 1963) (causing checks to be drawn on union funds for delivery to another for political purposes).

18. United States v. Ferrara, 451 F.2d 91 (2d Cir. 1971), *cert. denied*, 405 U.S. 1032 (1972); Colella v. United States, 360 F.2d 792, 804 (1st Cir.), *cert. denied*, 385 U.S. 829 (1966).

19. United States v. Silverman, 430 F.2d 106, 115 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971).

to defraud the union.[20] The court declared that both the legislative history and prior judicial interpretation of section 501 required that subsection (c) be broadly construed[21] to insure that union officers fulfill their fiduciary duties.[22] The court reasoned that requiring the prosecution to prove lack of benefit to the union would unduly burden the Government and thereby emasculate the Act.[23] Noting that the case was one of first impression in the Eighth Circuit,[24] the court found that the Court of Appeals for the Second Circuit had dealt with subsection (c), but had not construed it to require a showing of lack of union benefit.[25]

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20. 490 F.2d at 1166.

21. "Congress intended that [the Act] should not be interpreted . . . narrowly or strictly, but, to the contrary, that its confines are broad." Johnson v. Nelson, 325 F.2d 646, 650 (8th Cir. 1963); *accord*, Pignotti v. Local 3, Sheet Metal Workers, 477 F.2d 825, 832-35 (8th Cir.), *cert. denied*, 414 U.S. 1067 (1973). H.R. REP. No. 741, 86th Cong., 1st Sess. 10-11 (1959) provides a broad definition of the fiduciary duties of union officers. *See also* note 13 *supra*.

22. 490 F.2d at 1162. The court observed that "[t]he conduct of these defendants cannot by any stretch of the imagination or by the use of sophisticated semantics be raised to the level of conduct required of fiduciaries . . . ." *Id.* at 1165.

23. *Id.* at 1165.

24. *Id.* at 1163. The court referred to previous Eighth Circuit cases which considered § 501(c) violations but did not discuss the elements of the offense. *E.g.*, United States v. Bryant, 430 F.2d 237 (8th Cir. 1970); Hayes v. United States, 329 F.2d 209 (8th Cir.), *cert. denied*, 377 U.S. 980 (1964); Doyle v. United States, 318 F.2d 419 (8th Cir. 1963).

25. The Second Circuit had specifically discussed lack of union benefit as an element of § 501(c), but had not definitively established the elements of a violation of the subsection. United States v. Silverman, 430 F.2d 106 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971). Judge Friendly, writing for the court on some counts, believed that "it is doubtful whether a payment made in a bona fide belief that it was for a union's benefit and that it had been authorized or would be ratified can ever be swept under 29 U.S.C. § 501(c) . . . ." *Id.* at 127 (dictum).

Judge Moore, in dissent, stated:

> Decisions finding violations of . . . section 501(c) have also emphasized the elements of appropriate union benefit and proper union authorization. . . .
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> It is clear that when there is no possible union benefit from the use of the union funds made by the official, it makes no difference whether the use was authorized.

Id. at 114. He also argued that "a conviction under section 501(c) may be made out by a demonstration of a fraudulent intent to deprive the union of its funds and *either* a lack of bona fide authorization *or* an absence of benefit to the labor organization from the expenditure." *Id.* at 117 (emphasis added).

In United States v. Ferrara, 451 F.2d 91 (2d Cir. 1971), *cert. denied*, 405 U.S. 1032 (1972), the court, in reviewing the evidence leading to the defendant's conviction, said: "By its verdict of guilty the jury found that appellants, without authority and for personal purposes, entered into long-term auto leases for themselves and their Union friends." *Id.* at 96. The court later stated, in relation to another § 501(c) count, that "[t]he first defense to this charge was that the dinners were for Union business, but

The court further observed that similar felonious-taking statutes do not require a showing of lack of benefit to the owner of the property.[26] The court finally concluded that the elements of the offense were present in *Goad* because the defendant had intentionally disregarded proper authorization procedures for increasing officers' salaries.[27]

The court's advocacy of a broad construction of section 501(c) is of questionable validity. While it is true that some cases have held that section 501 should be broadly construed in determining the nature of the officers' duties,[28] those cases involved civil liability under subsection (b), not criminal liability under subsection (c). Furthermore, the prior cases concerned whether the fiduciary duties extended to activities other than management of the union's finances, not whether the duties could be expanded to prohibit acts relating to finances that did not damage the union. In announcing a policy of broadly construing the entire section, the court ignored one maxim of statutory construction, that penal statutes should be strictly construed unless there is substantial evidence of legislative intent to the contrary.[29] Subsequent

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there was evidence that they were merely social occasions." *Id.*

In United States v. Dibrizzi, 393 F.2d 642, 645 (2d Cir. 1968), the court said: "[T]he Government adduced at the trial enough evidence from which the jury could have found beyond a reasonable doubt that the items were personal non-business expenses and in no way incurred in furtherance of the union's business."

Thus, while the *Goad* court was correct in asserting that the Second Circuit had not conclusively established a lack of union benefit as an essential element of a § 501(c) offense, one Second Circuit case (*Silverman*) had indicated that it would sometimes be an element, and two cases (*Ferrara* and *Dibrizzi*) had indicated that the Government gave evidence of a lack of union benefit. The latter two cases had also implied that if the expenditures were for the benefit of the union, that fact would have been a valid defense.

26. 490 F.2d at 1165, *citing* 18 U.S.C. § 641 (1970) (embezzlement, theft, or conversion of public money, property, or records); *id.* § 645 (embezzlement by court officers and employees of money which comes into their possession by virtue of their positions); *id.* § 654 (embezzlement or conversion of property of another by officers or employees of United States); *id.* § 655 (theft by bank examiner); *id.* § 656 (theft, embezzlement, or misapplication by bank officer or employee); *id.* § 657 (same, by employees of various federal credit, lending, and insurance institutions); *id.* § 658 (same, of mortgaged property by officers or agents of farm credit agencies); *id.* § 659 (theft from interstate shipments via common carrier); *id.* § 660 (theft or embezzlement by president, director, or officer of any firm engaged in interstate commerce); *id.* § 661 (theft of personal property within United States maritime and territorial jurisdictions); 15 U.S.C. § 80a-36 (1970) (embezzlement of assets of registered investment companies).

27. 490 F.2d at 1166.

28. *See* cases cited note 13 *supra.*

29. *See* United States v. Wiltberger, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.):

courts may rely on the policy of broad construction to justify attaching criminal liability to behavior not usually considered criminal.[30] This is particularly unfortunate because it is not clear that the *Goad* court broadly construed subsection (c) to reach its decision.[31]

The court emphasized that the defendants' conduct constituted a breach of their fiduciary duties.[32] By holding that any benefit to the union was immaterial, the *Goad* court followed the general rule that, if a fiduciary breaches the terms of his trust, he is liable whether or not his breach caused an incidental benefit to the beneficiary.[33] How-

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> [T]hough penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend.

See generally 3 J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 59.01-.08 (4th ed. C. Sands 1974).

30. It is impossible to forecast the particular results that a policy of broad construction may have in subsequent decisions. Perhaps courts will use *Goad* as the basis for criminalizing any behavior which generally resembles embezzlement or conversion, or behavior which seems inconsistent with the standard of behavior required of a fiduciary. In so doing, courts may neglect to make the hard decisions concerning whether a defendant's conduct satisfies, beyond a reasonable doubt, all of the necessary elements of embezzlement.

31. After announcing that broad construction was necessary to hold officers to their fiduciary duties, the court did not explain how the policy of broad construction was applied in this particular context. If the court simply meant that it agreed with prior courts' views of the breadth of the fiduciary duties, *see* note 13 *supra*, then the language regarding broad construction was unnecessary because defendants' conduct involved financial management and would fall within the scope of § 501(a) even under a narrow interpretation.

Perhaps by "broad construction" the court meant that no criminal conduct should go unpunished simply because it does not fit within the specific definitions of any of the specified crimes in subsection (c). Such an approach could be justified under the rationale of United States v. Harmon, 339 F.2d 354 (6th Cir. 1964), *cert. denied*, 380 U.S. 944 (1965), *see* note 16 *supra*, but it is submitted that this involves simply finding the congressional intent and not broadly construing the statute.

32. 490 F.2d at 1163, 1165-66. Although the point was not an issue in the case, and therefore was not resolved by the court, it seems obvious that defendants did in fact breach their fiduciary duty to the union since they made expenditures without obtaining authority in accordance with the Local's constitution and bylaws.

33. *See* G. BOGERT & G. BOGERT, HANDBOOK OF THE LAW OF TRUSTS 343 (5th ed. 1973). A somewhat useful analogy to the union officers' fiduciary duties may be found in corporation law, with respect to the fiduciary duties of corporate directors and officers. While the corporate directors are nominally subject to a rule of undivided loyalty, courts often recognize that an officer or director may benefit both himself and the corporation through a particular transaction. The ultimate fairness of the transaction is becoming the dominant standard for judging whether an interested director may retain the benefits of the transaction. N. LATTIN, THE LAW OF CORPORATIONS 290-94 (2d ed.

ever, it is not clear that subsection (c) incorporates the fiduciary duties of subsection (a),[34] and several cases have affirmed convictions for embezzlement without reference to the fiduciary duties.[35] Construing section 501 as a unit, the *Goad* court held that the principles applicable to civil liability for breach of fiduciary duties in the expenditure of union funds are also applicable to embezzlement. This conclusion may seem logical, given that embezzlement can only occur in a fiduciary context.[36] There is a danger, however, that the line drawn by Congress between civil and criminal liability will be blurred,[37] so that any ex-

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1971); *cf.* H. HENN, HANDBOOK OF THE LAW OF CORPORATIONS 465-70, 502-03 (2d ed. 1970).

Nevertheless, the general rule remains that any fiduciary has a duty to act solely for the benefit of the beneficiary. *See, e.g.*, Page v. Natural Gas & Fuel Co., 35 F.2d 462 (8th Cir. 1929); Thompson v. Hays, 11 F.2d 244 (8th Cir. 1926); White v. Sherman, 168 Ill. 589, 48 N.E. 128 (1897); Hardwick v. Cotterill, 221 Ky. 783, 299 S.W. 958 (1927); *In re* Johnson, 187 Wash. 552, 60 P.2d 271 (1936); *In re* Carlson, 162 Wash. 20, 297 P. 764 (1931); RESTATEMENT (SECOND) OF TRUSTS § 170(1) (1959). *But cf. id.* comment *a* (emphasis added): "A trustee is in a fiduciary relationship to the beneficiary and as to matters within the scope of the relation he is under a duty not to profit *at the expense of the beneficiary* . . . ."

A trustee must also comply strictly with the terms of the trust defining his powers and duties. *See, e.g.*, Cleveland Clinic Foundation v. Humphreys, 97 F.2d 849 (6th Cir.), *cert. denied*, 305 U.S. 628 (1938); Darrow v. Van Buskirk, 57 Ariz. 1, 110 P.2d 216 (1941); Bryson v. Bryson, 62 Cal. App. 170, 216 P. 391 (Dist. Ct. App. 1923); Eaker v. Husbands, 263 Ky. 283, 92 S.W.2d 43 (1936); *cf.* Young v. Hood, 209 N.C. 801, 184 S.E. 823 (1936); Crayton v. Fowler, 140 S.C. 517, 139 S.E. 161 (1929).

34. *See* United States v. Sullivan, 498 F.2d 146, 148 & n.3 (1st Cir. 1974); Doyle v. United States, 318 F.2d 419, 423 (8th Cir. 1963). Other cases which relied on the concept of the fiduciary relationship also recognized union benefit as an exculpatory factor. *See, e.g.*, United States v. Ferrara, 451 F.2d 91 (2d Cir. 1971), *cert. denied*, 405 U.S. 1032 (1972); United States v. Silverman, 430 F.2d 106 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971); Colella v. United States, 360 F.2d 792 (1st Cir.), *cert. denied*, 385 U.S. 829 (1966); *cf.* United States v. Harrelson, 223 F. Supp. 869 (E.D. Mich. 1963).

35. *See, e.g.*, United States v. Dibrizzi, 393 F.2d 642 (2d Cir. 1968); United States v. Brill, 350 F.2d 171 (2d Cir.), *cert. denied*, 382 U.S. 973 (1965); Woxberg v. United States, 329 F.2d 284 (9th Cir.), *cert. denied*, 379 U.S. 823 (1964).

36. Moore v. United States, 160 U.S. 268, 268-70 (1895); United States v. Silverman, 430 F.2d 106, 126-27 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971); Colella v. United States, 360 F.2d 792, 799 (1st Cir.), *cert. denied*, 385 U.S. 829 (1966); Doyle v. United States, 318 F.2d 419, 423 (8th Cir. 1963); United States v. Harrelson, 223 F. Supp. 869, 870 (E.D. Mich. 1963).

37. The essence of the court's reasoning was that the defendants spent union funds without obtaining authorization in accordance with the Local's constitution. Civil liability for that particular breach of the officer's fiduciary duties, however, is provided for in § 501(b). If Congress had intended the same breach of duty to constitute a § 501 (c) offense, then Congress should have been more explicit in relating subsection (c)

penditure without authorization in accordance with the union's constitution or bylaws will constitute a section 501(c) violation.[38]

Although fraudulent intent is the most important element of a section 501(c) offense,[39] the *Goad* opinion gave that element only superficial attention. In contrast to *United States v. Silverman*,[40] the court did not acknowledge that benefit to the union may have some probative weight on the fraudulent intent issue.[41] *Goad* suggests that if union officers knowingly disregard proper procedures, a fraudulent intent to deprive the union of its funds may be inferred.[42] A more satisfactory analysis could be made by identifying the primary intended beneficiary of the defendants' acts. If a union officer, knowing that he has no bona fide authorization, spends union funds primarily for the benefit of the union and in fact does benefit the union, then it would be illogical to

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to the other subsections. The legislative history of § 501, *see* note 10 *supra*, does not suggest such a close relationship, and it is not illogical to argue that Congress prescribed different kinds of liability for different kinds of culpable conduct. This is not meant to suggest that for certain conduct both types of liability might not result.

38. The court conceded only two defenses to an unauthorized expenditure: mistake and accident. 490 F.2d at 1166. For an argument that, in some circumstances, an officer should not be criminally liable even when he knows that he has no authorization, see note 43 *infra* and accompanying text.

39. This is true because (1) there is no defense recognized for fraudulent intent as there is for lack of authorization, *see* note 38 *supra*; and (2) under United States v. Silverman, 430 F.2d 106 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971), fraudulent intent is the one element that must always be proved, *see* note 25 *supra*.

40. 430 F.2d 106, 115 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971); *see* note 25 *supra*. In a recent case, the Second Circuit held in more explicit terms that benefit to the union would be strong evidence that an officer did not have a fraudulent intent, even if he knew that the expenditures were not authorized. United States v. Ottley, No. 74-1731 (2d Cir., Jan. 7, 1975).

41. The court said:

> [T]o allow a showing of union benefit to vitiate fraudulent intent in a case involving unauthorized expenditures would allow union officials to handily evade the broad fiduciary provisions of § 501(c) and the essential elements of a § 501(c) violation.
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> . . . [N]or is a showing of benefit relevant to disproving fraudulent intent to deprive the union of its funds where the disbursement was unauthorized.

490 F.2d at 1166.

42. *Id.* at 1166 & n.10. Defendants charged in their petition for rehearing that

> the Court's opinion on this issue has inadvertently established the patently erroneous precedent that intentional violation of a union by-law (relating to disbursement of funds) is exactly the same as intentional violation of a federal embezzlement statute, and therefore that 501(c) becomes a strict liability criminal statute, rather than one which requires specific fraudulent intent, in all instances where the disbursement was unauthorized under the union by-laws.

Appellants' Petition for Rehearing at 3, United States v. Goad, 490 F.2d 1158 (8th Cir. 1974).

hold that simply because the expenditures were not authorized, the officer must have intended to defraud the union.[43] On the other hand, if an officer intends to and does benefit himself, then any incidental benefit to the union would rightly be considered immaterial.[44] The *Goad* opinion may be criticized for not making that distinction clear, even though in this particular case, the personal benefit to the defendants was considerable while the benefit to the union was only arguable.[45] It is unclear whether the court would hold that union benefit is irrelevant if the benefit were more substantial and direct.

Goad represents a more rigid enforcement of union officers' duties than existed prior to the decision. Its policy of broadly construing section 501 as a unit, its definition of the offense by reference to the strict standard of conduct required of fiduciaries, and its apparent approval of an inference of fraudulent intent from knowing disregard of proper authorization procedures should deter misconduct by union officers and employees. Such an effect would be a desirable consequence of the case. This result would be more commendable if the court's reasoning were less open to criticism.

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43. *See* notes 18 & 19 *supra* and accompanying text. Generally, good faith negates fraudulent intent. State v. Parker, 112 Conn. 39, 151 A. 325 (1930); Brown v. State, 92 Fla. 538, 109 So. 438 (1926); People v. Parker, 355 Ill. 258, 189 N.E. 352 (1934); W. LAFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW § 89, at 652 (1972).

All facts and circumstances bearing on defendant's fraudulent intent are admissible as a defense. State v. Smith, 48 Idaho 558, 283 P. 529 (1929); People v. Barrett, 405 Ill. 188, 90 N.E.2d 94 (1950); People v. Heilemann, 362 Ill. 322, 199 N.E. 792 (1936); State v. Rives, 193 La. 186, 190 So. 374 (1939); State v. Larson, 123 Wash. 21, 211 P. 885 (1923); State v. Smith, 117 W. Va. 598, 186 S.E. 621 (1936).

Precedent exists, therefore, for recognizing a real and substantial benefit to the union as a possible defense. By ruling out the possibility that union benefit could ever be a defense to an unauthorized expenditure, the court seems to have gone beyond the requirements of either precedent or reason in order to protect a union's assets from misuse by union officers.

44. *See* 490 F.2d at 1163.

45. The only benefit to the union which the defendants alleged was that the defendants were working a greater number of hours than required. Brief for Appellants at 43, United States v. Goad, 490 F.2d 1158 (8th Cir. 1974).