NOTES

JUDICIAL INTERVENTION IN INTRA-UNION AFFAIRS TO PROTECT THE RIGHTS OF MEMBERS

Today labor unions are the bargaining arm of approximately seventeen million American workers,[1] which is about one-third of the total number employed in the United States exclusive of those engaged in the agricultural industries.[2] As the bargaining arm of its members, a union enters into a collective bargaining contract with an employer to establish the terms of employment of its membership. Generally, each collective bargaining contract contains "union security provisions," so called because the provisions are designed to protect a union's bargaining position. Many of these agreements provide for "closed" or "union" shops. In a closed shop an employer is bound to hire only workers affiliated with a union local;[3] in a union shop, an employee is required to become a union member within a prescribed time after the date of employment.[4] Under either type of agreement a member must remain in good standing with his union, or the employer is obligated to dispense with his services.[5]

It is easy to see that under such agreements union membership may, in many instances, be far from voluntary and that a union must necessarily have a great deal of control over the economic lives of its members if the purposes of the union are to be successfully attained. Within such a system there is the constant danger of arbitrary and unfair discipline by a union which may ultimately deprive a member of his livelihood or of other economic benefits.[6] Thus, a

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1. WORLD ALMANAC 80 (Hansen ed. 1954).
2. *Id.* at 261.
3. 908 DEP'T LABOR BULL. 6 (1947).
4. 908 *Id.* at 10.
5. 61 STAT. 136, 140 (1947), 29 U.S.C. § 158 (1952). Section 8(b)(2) effectively outlaws the "closed" shop by making it an unfair labor practice for a labor organization to cause or attempt to cause an employer to discriminate against an employee in violation of § 8(a)(3), which makes it an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment. Section 8(a)(3), however, affirmatively protects the "union" shop by a proviso that says:

> [N]othing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment. . . .

6. Although most interference in intra-union affairs is judicial, recent legislation has, as a practical matter, indirectly limited the area of effective union tribunal *action* on matters that are within the union's *jurisdiction*. The Taft-Hartley Act makes it an unfair labor practice for an employer to discharge an employee because the employee has been expelled from the union, unless the ground of expulsion was the employee's non-payment of dues or initiation fee. Since loss of union membership could not result in subsequent loss of employment (except in the cases of non-payment of dues or initiation fee), the union sanction

member's legally enforceable rights within the union require attention in considering whether the law governing labor unions provides a member with sufficient safeguards against arbitrary or unreasonable union action.

Legally, labor unions have been classified as voluntary associations. This theoretically puts labor unions in the same category as churches and fraternal groups.[7] Historically, the courts have been reluctant to intervene in the internal affairs of such organizations. They have, however, recognized the necessity of judicial intervention in intra-union affairs to protect the rights of union members.[8]

Judicial intervention in union affairs to protect members' rights has been predicated principally upon two theories. One is the contract theory; by this theory joining the union creates a contract binding the union and the joining member to adhere to the rights and duties encompassed by the union constitution and by-laws.[9] The other is the property theory, whereby the courts purport to protect a member's "property" rights in his union against certain types of arbitrary interference.[10] Although public policy has often been part of the underlying reason why a court has found the existence of property rights, some courts make explicit, as their primary reason for intervention, the ground that the union action involved is repugnant to public policy.[11]

Though the courts speak of the "property" and "contract" theories as separate and distinct grounds for intervention, in practice the two theories are generally found to be intertwined and co-existent in

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of expelling a member becomes much less effective and the union's control over its members is restricted accordingly.

Thus, the unions having union shop security provisions are faced with a dilemma. Expulsion, which would not result in the member's discharge from employment, would render the union security provision ineffective. On the other hand, the failure to expel a member as provided by union by-laws would render such laws a nullity. The only logical course open to the unions, since union shops are coveted, is to confine disciplinary expulsion to cases where the member is delinquent in his dues or initiation fee. Other offenses could be punished by remedial sanctions within the union. See 61 STAT. 136 § 8(b)(2) (1947), 29 U.S.C. § 158(b)(2) (1952); National Labor Relations Board v. Eclipse Lumber Co., 199 F.2d 684 (9th Cir. 1952).

7. See Kovner, *The Legal Protection of Civil Liberties Within Unions*, [1948] WIS. L. REV. 18; Note 58 HARV. L. REV. 448 (1945); 26 B.U.L. REV. 66 (1946).

8. *Ibid.*

9. Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931); Krause v. Sander, 66 Misc. 601, 122 N.Y. Supp. 54 (Sup. Ct. 1910); Herman v. United Automobile, Aircraft & Agricultural Implement Workers, 264 Wis. 562, 59 N.W.2d 475 (1953). See Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1054 (1951).

10. Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 17 Pac. 217 (1888); *cf.* Heasley v. Operative Plasterers & Cement Finishers International Ass'n., 324 Pa. 257, 188 Atl. 206 (1936). See Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1051 (1951).

11. Cameron v. International Alliance of Theatrical Stage Employees & Moving Picture Operators, 118 N.J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935); *cf.* Ray v. Brotherhood of R.R. Trainmen, 182 Wash. 39, 44 P.2d 787 (1935). See also Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 Atl. 70 (1921).

a given case. The courts give no reason for the commingling of these theories. The probable reason may be that in the great majority of cases involving judicial intervention a member applies to a court of equity to enjoin a union tribunal decision and, historically, property rights must exist before equity jurisdiction will attach. If a property right is involved it is most likely to be unjustly infringed by a union's breach of either an express or implied contract with the member.

The courts, for the most part, have been extremely liberal in finding property rights to exist, and only five cases have been discovered where property rights have not been found present.[12] The courts have found property rights to exist in a member's share of the assets,[13] in insurance policies,[14] in death benefits,[15] and in a member's trade and in his union membership.[16] A court which goes so far as to hold one has a property right in his union membership and in his trade certainly will never refuse jurisdiction where an injustice is found which threatens to invade those interests. Some equity courts, however, do not seem to think it important to find property rights present in these cases, and have predicated intervention solely upon the union's breach of contract with the member. These courts felt that membership in the association was a *personal* right, and this right was sufficient to warrant judicial protection.[17]

EXHAUSTION OF INTERNAL REMEDIES

The courts hold that within the membership contract with the union there is an implied obligation by the member that, in case of grievance with the union, he will exhaust all available intra-union remedies established by the union constitution and by-laws before he

12. For the citations of these cases see Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1052 n.11 (1951).

13 See Angrisani v Stearn, 167 Misc. 728, 730, 3 N.Y.S.2d 698, 700 (Sup. Ct. 1938). *But see* Rueb v. Rehder, 24 N.M. 534, 548, 174 Pac. 992, 996 (1918) (assets consisting of a Bible and gavel do not warrant interference).

14. Heasley v. Operative Plasterers & Cement Finishers International Ass'n., 324 Pa. 257, 188 Atl. 206 (1936).

15. *Ibid.*

16. Brotherhood of Painters, Decorators & Paperhangers v. Boyd, 245 Ala. 227, 16 So.2d 705 (1944) (property right found in a member's trade); Lo Bianco v. Cushing, 117 N.J. Eq. 593, 177 Atl. 102 (Ch. 1935) (property right found in both the member's trade and union membership). In these cases, the member is involved in a specialized trade such as those common to the building industry. In order to pursue his trade he must be a member of the union and to be a member of the union he must fulfill all of the necessary qualifications peculiar to the trade. Therefore, union membership usually goes hand in hand with the pursuance of a trade and the exclusion of the member from the union will prevent him from continuing to ply his trade.

17. Dingwall v. Amalgamated Ass'n of Street Railway Employees, 4 Cal. App. 565, 88 Pac. 597 (1906); Polin v. Kaplin, 257 N.Y. 277, 177 N.E. 833 (1931). See Pound, *Interests in Personalty*, 28 HARV. L. REV. 343 (1915); 80 U. OF PA. L. REV. 452, 453 (1932). The proposition that union membership is a "personal" right should be compared with the holding that such membership is a "property" right. See note 16 *supra*. In these cases, if the courts had attempted to find the existence of property rights they could easily have done so.

will appeal to an equity court;[18] an appeal will not be entertained until this obligation is fulfilled.[19] The courts have failed to give reasons why they will not entertain a member's appeal if he has not exhausted his internal remedies. Superficially one might say that the member is in court on the theory that the union has breached its contract with him. One of the elements of the contract is his obligation to exhaust his internal remedies before appealing to the courts. If he fails to do this he is in breach of his contract, and normally a plaintiff in substantial breach of a contract may not obtain judicial relief. However, the implied obligation to exhaust internal remedies appears to be only a peg on which to hang a rationale for the exhaustion rule. The real question is: What is the *basic* reason for the exhaustion rule? There are several possible reasons which seem to have validity in explaining the rule.

It is likely that the rule of exhaustion as it applies to litigants before union tribunals is based on the same policy which requires exhaustion of remedies offered by an administrative tribunal.[20] The reasons given for the rule in the administrative law field are that it provides for an efficient management and an orderly procedure by a tribunal familiar with problems of a specialized nature,[21] and that failure to exhaust internal remedies in an administrative proceeding, as in a union proceeding,[22] renders the suit premature[23] because, until there has been an exhaustion of remedies, no right has been irrevocably violated. Another factor to consider is that historically labor unions were classified as voluntary associations in whose internal affairs the courts are not inclined to intervene, and they would naturally be reluctant to intervene in a union's affairs before it was clear that a member had no other adequate remedy.

Where a member is expelled by a union he may choose one of two courses of action if he wishes to litigate his cause. He may bring an action for equitable reinstatement or an action at law for damages.

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18. Lo Bianco v. Cushing, 117 N.J. Eq. 593, 177 Atl. 102 (Ch. 1935); Way v. Patton, 241 P.2d 895 (Ore. 1952); *see* Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 179, 41 A.2d 32, 36 (1945). See 27 ORE. L. REV. 248 (1948).

19. Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, 229 Iowa 1028, 295 N.W. 858 (1941); Reubel v. Lewis, 182 Misc. 30, 43 N.Y.S.2d 540 (Sup. Ct. 1943). *See* Snay v. Lovely, 276 Mass. 159, 164, 176 N.E. 791, 793 (1931). *But cf.* State *ex rel.* Alden v. Cook, 360 Mo. 252, 227 S.W. 729 (1950) (The court reversed and remanded the circuit court decision requiring that all remedies be exhausted because the circuit court had failed to determine if the union remedies were adequate.).

20. *See* Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938). See also DAVIS, ADMINISTRATIVE LAW § 182 and § 182 n.1 (1951).

21. See note 20 *supra*. *Cf.* Way v. Patton, 241 P.2d 895 (Ore. 1952).

22. In Way v. Patton, *supra* note 21. the court, in considering an appeal from a *union* tribunal decision, said that failure to exhaust internal remedies amounted to prematurity of suit.

23. See note 20 *supra*.

If he brings a law action, the rule of exhaustion does not apply.[24] It is said that the right of a direct appeal in a law action exists independently of exhausting internal remedies since the member has abandoned his claim to membership,[25] and a reversal of the tribunal ruling would not afford full redress for the injury to the member's property rights since there would be no restoration of membership and its attendant benefits.[26]

Though the courts enunciate the exhaustion rule in broad terms, there are many factual situations raising exceptions to it. The implied obligation to exhaust internal remedies applies only if the controversy presents a "social question" involving a member's relationship with his union and not involving property rights.[27] Thus, if the subject in the controversy involves a property interest of a member, and if the by-laws are silent on the subject of exhaustion, there is no implied obligation and the remedies need not be exhausted.[28] Where, however, there are express provisions in the constitution or by-laws that a member must exhaust internal remedies, he must exhaust these remedies whether the question involves "social" or "property" rights,[29] unless additional circumstances bring the member within other exceptions to the exhaustion rule.

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24. Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923); International Printing Pressmen & Assistants' Union v. Smith, 145 Tex. 399, 198 S.W.2d 729 (1946); McCantz v. Brotherhood of Painters, Decorators & Paperhangers, 13 S.W.2d 902 (Tex. Civ. App. 1929). This same exception would probably apply when a member's rights are arbitrarily invaded in a way other than expulsion, and the member sues for damages rather than a restoration of the right. However, no cases involving such a situation have been found.

25. McCantz v. Brotherhood of Painters, Decorators & Paperhangers, 13 S.W.2d 902 (Tex. Civ. App. 1929); *see* Amalgamated Sheet Metal Workers v. Nalty, 7 F.2d 100, 101 (6th Cir. 1925).

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

27. The courts have failed to give reasons for this exception. Way v. Patton, 241 P.2d 895 (Ore. 1952); *see* Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 179, 41 A.2d 32, 36 (Ch. 1945); Lo Bianco v. Cushing, 117 N.J. Eq. 593, 605, 177 Atl. 102, 105 (Ch. 1935). See 27 ORE. L. REV. 248 (1948). The courts consider a question "social" in nature when it does not involve property rights. Therefore, any right of a member which is personal may be said to involve a "social" question. Although some courts feel a member's interest in his union membership and trade is a "property interest" (see note 16 *supra*), other courts feel that union membership and a man's trade is a "personal" right (see note 17 *supra*). The writer uses the word "feel" advisedly, considering the decisions in these cases to be a result of the courts' personal attitude toward the problem.

28. Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, 229 Iowa 1028, 295 N.W. 858 (1941); Shapiro v. Gehlman, 244 App. Div. 238, 278 N.Y. Supp. 785 (1st Dep't 1935); *see* Lo Bianco v. Cushing, 117 N.J. Eq. 593, 605, 177 Atl. 102, 105 (Ch. 1935); Cameron v. International Alliance of Theatrical Stage Employees & Moving Picture Operators, 118 N.J. Eq. 11, 19, 176 Atl. 692, 696 (Ct. Err. & App. 1935).

29. Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 41 A.2d (Ch. 1945); *see* Cameron v. International Alliance of Theatrical State Employees & Moving Picture Operators, 118 N.J. Eq. 11, 19, 20, 176 Atl. 692, 696, 697, (Ct. Err. & App. 1935).

If there is a situation where it appears that an intra-union appeal would be futile or result in a substantial denial of justice, then as a practical matter all reasonable remedies available to the member are in fact exhausted.[30] Such a situation would exist where the union officers are oppressive, precluding any possibility for a fair and unbiased review,[31] or where the charge against the member was slandering the international president and the appeal of last resort would be before the president.[32] Thus, notwithstanding an express provision requiring a member to exhaust his internal remedies, courts have said that the remedies need not be exhausted where a property right is present and an appeal to the union tribunal would be futile, illusory or a substantial denial of justice.[33] It appears superfluous for the courts in these cases to speak of property rights coupled with futility of appeal since they probably would not require a member to pursue a futile remedy even if no property rights existed. These cases, however, are before equity courts and they may consider the presence of a property right to be requisite for equity jurisdiction to attach.

It is said that excessive and unreasonable delay in the union's appellate process will warrant a direct appeal to the courts when a member's property rights are involved and the delay necessitated by exhausting internal remedies would result in irreparable injury to the member.[34] Although this exception is spoken of as one distinct from the exception based upon futility of appeal, it is submitted that this exception is merely a test applied by the courts in order to determine whether the cause will qualify for the futility exception. Therefore, if delay is to be considered unreasonable it must indicate that an appeal would be vain, futile or a substantial denial of justice. Thus, delay incident to an appeal was considered unreasonable where a member's only opportunity for redress within the union was by an appeal to a convention which was supposed to meet biennially but had not convened for eight years and was not scheduled to convene in the foreseeable future.[35] It appears that the foreseeable delay was

30. In Browne v. Hibbets, 290 N.Y. 459, 49 N.E.2d 713 (1943), the court felt that a statement by a union official to the member that "we" can do nothing further, justified the conclusion that all *reasonable* remedies were at an end. *Id.* at 466, 49 N.E.2d at 717.

31. Robinson v. Nick, 235 Mo. App. 461, 136 S.W.2d 374 (1940).

32. Corregan v. Hay, 94 App. Div. 71, 87 N.Y. Supp. 956 (4th Dep't 1904).

33. See notes 30-32 *supra.*

34. Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, 229 Iowa 1028, 295 N.W. 858 (1941). *Cf.* Cameron v. International Alliance of Stage Employees & Moving Picture Operators, 118 N.J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). See Mulcahy v. Huddell, 272 Mass. 539, 172 N.E. 796 (1930) (mere delay alone is not enough). See Summers, *Legal Limitations on Union Discipline,* 64 HARV. L. REV. 1049, 1086 (1951).

35. Heasley v. Operative Plasterers & Cement Finishers International Ass'n, 324 Pa. 257, 188 Atl. 206 (1936). See also Lindahl v. Supreme Court I. O. F., 100 Minn. 87, 110 N.W. 358 (1907) (three year delay before appeal could be had made internal remedies inadequate and thus amounted to a denial of justice.).

evidence that an appeal would be in vain because it was unlikely that the appeal would ever be considered. On the other hand, the single circumstance that the appeal board would not convene for a year did not justify a direct appeal to the courts even though the member under suspension would be unable to find work in the interim.[36] In this case the date on which the appeal was to be considered was definite and it did not appear that the appeal would be futile or result in a substantial denial of justice.

Perhaps the most sweeping exception to the exhaustion rule is that internal remedies need not be exhausted where there is a void tribunal proceeding. When a tribunal proceeding is void, its decision is completely ineffective[37] and the courts analogize the proceeding to a civil proceeding without jurisdiction over the subject matter or the person of a litigation.[38] In such civil actions, a person adversely affected by the court proceeding may attack its jurisdiction collaterally when there is a levy of execution under a judgment rendered without jurisdiction.[39] By analogy, when a union divests a member of rights by authority of a decision which is a nullity because rendered without jurisidiction, the member may collaterally attack the tribunal's jurisdiction in the courts in an effort to reacquire the rights of which he was deprived. The rationale for this exception to the exhaustion rule is based upon a violation by the union of the member's contract with the union. A member has not contracted to appeal within an association from a decision rendered by the association, when he did not contract that the association should have the power or authority to render such a decision.[40]

A union proceeding is deemed void: (1) when the union tribunal lacked jurisdiction because of a failure to comply with the union constitution and by-laws in assuming jurisdiction; and (2) when the *procedure* was repugnant to the concepts of natural justice, "fair play" or the by-law procedural provisions. Union proceedings have been declared void for lack of jurisdiction when a member was summarily dismissed although the by-laws called for a hearing,[41] when a member was tried twice for the same offense in contravention of the

36. Snay v. Lovely, 276 Mass. 159, 176 N.E. 791 (1931).

37. Hall v. Supreme Lodge Knights of Honor, 24 Fed. 450 (E.D. Ark. 1885); Abdon v. Wallace, 95 Ind. App. 604, 165 N.E. 68 (1929); Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, 229 Iowa 1028, 295 N.W. 858 (1941); Rueb v. Rehder, 24 N.M. 534, 174 Pac. 992 (1918); Gersh v. Ross, 238 App. Div. 552, 265 N.Y. Supp. 459 (1st Dep't 1933). See BACON, BENEFIT SOCIETIES AND LIFE INSURANCE § 133 (1917).

38. Hall v. Supreme Lodge Knights of Honor, 24 Fed. 450 (E.D. Ark. 1885). See BACON, BENEFIT SOCIETIES AND LIFE INSURANCE § 133 (1917).

39. See, *e.g.*, People *ex rel.* Sandnes *v.* Sheriff, 164 Misc. 355, 299 N.Y. Supp. 9 (Sup. Ct. 1937); *see* Miller v. Rowan, 251 Ill. 344, 348, 96 N.E. 285, 287 (1911).

40. Rueb v. Rehder, 24 NM. 534, 547, 174 Pac. 992, 995 (1918).

41. Corregan v. Hay, 94 App. Div. 71, 87 N.Y. Supp. 956 (4th Dep't 1904); Heasley v. Operative Plasterers & Cement Finishers International Ass'n, 324 Pa. 257, 188 Atl. 206 (1936).

by-laws of the organization,[42] and when the conduct provoking the expulsion proceeding was not offensive to the union laws.[43] A proceeding has been held void due to unfair procedure when the member was not given an impartial trial.[44]

The failure of a union tribunal to grant a member an adequate and reasonable opportunity to defend himself is in violation of "fair play" and natural justice. The void proceeding exception, therefore, has been invoked when the by-laws were silent as to notice and hearing of the accused member, and no notice or hearing was granted.[45] Thus, it appears that a union tribunal must accord the member notice and a hearing similar to the due process procedure required by the Fifth and Fourteenth Amendments of the Federal Constitution, notwithstanding the fact that a union tribunal is within the union framework and can act only in respect to the members of its organization.[46] This requirement is by no means a Constitutional right[47] because the determination of the rights of a member is made by a group of individuals, not by a state or its agents; it is a requirement of fairness and justice in the spirit of the common law.[48]

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42. Rueb v. Rehder, 24 N.M. 534, 174 Pac. 992 (1918).

43. Lo Bianco v. Cushing, 117 N.J. Eq. 593, 177 Atl. 102 (Ch. 1935). In Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931), the by-law which the union claimed the member breached was one providing for appeal within the organization. The member brought charges against union officers directly to the court without a previous tribunal action. In holding this conduct not within the scope of the by-law, the court said:

> [I]t is perfectly obvious that the section relates only to appeals from the decisions of a lower tribunal within the association to a higher tribunal, within the union. When the plaintiffs brought action against the officers of the union, no decision of the association had then been rendered against them; therefore, they could not take an appeal as provided by the section. . . . The purpose of the action was to procure restoration to the treasury of the union of moneys alleged to have been misappropriated by its officers. It was the absolute right of plaintiffs to bring the suit. . . .

Id. at 284, 177 N.E. at 835.

44. Bricklayers', Masons' & Plasterers' International Union v. Bowen, 278 Fed. 271 (S.D. Tex. 1922) (members of trial board had personal interest in inquiry); Browne v. Hibbets, 25 N.Y.S.2d 573 (Sup. Ct. 1941) (trial board which summarily removed member from union office was prejudiced).

45. Rodier v. Huddell, 232 App. Div. 531, 250 N.Y. Supp. 336 (1931); Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921). *But cf.* Trainer v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators, 353 Pa. 487, 46 A.2d 463 (1946).

46. Cason v. Glass Bottle Blowers Ass'n, 37 Cal. 2d 134, 231 P.2d 6 (1951) (The failure of the tribunal to allow the accused to be confronted with his accusers and subject them to cross examination was a denial of substanial justice.); Rodier v. Huddell, 232 App. Div. 531, 250 N.Y. Supp. 336 (1931); Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921).

47. Junkins v. Communication Workers of America, C.I.O., 263 S.W.2d 337 (Mo. 1954).

48. Cason v. Glass Bottle Blowers Ass'n, 37 Cal. 2d 134, 231 P.2d 6 (1951); *see* Blek v. Kirkman, 148 Misc. 522, 523, 266 N.Y. Supp. 91, 92 (Sup. Ct. 1933).

JUDICIAL CONTROL OF UNION ACTIVITIES

a. Intervention in union tribunal action

A dissatisfied member who has fulfilled the exhaustion requirements, either by appealing to the highest tribunal within the union or by falling within one of the exceptions to the exhaustion rule, is in a position to have an appeal granted for a judicial review of the union tribunal proceedings.

The courts accept a case for review where there is a substantial question whether the union tribunal has arbitrarily invaded a member's contract[49] or property[50] rights, or if the tribunal has violated the member's Constitutional rights.[51] Unless the courts find an arbitrary invasion of one of these rights they will generally consider the tribunal's decision to be binding because of its quasi-judicial nature.[52] To test whether a union tribunal has arbitrarily encroached upon a member's contract or property rights, the courts look to the basis of the union's jurisdiction over the cause,[53] to the procedure at the disciplinary hearing[54] and to the evidence to determine whether it was substantial enough to warrant the decision issued by the tribunal.[55] Of course, if a union tribunal acts without jurisdiction, no decision it makes can be binding on a member. A decision rendered without jurisdiction is void, as we saw above,[56] and an attempt to enforce it against a member is an arbitrary invasion of his rights.

There are several different situations which involve lack of jurisdiction by the union tribunal, and for clarity these should be distinguished. The first is where the union tribunal is acting completely without a jurisdictional base; the second is where the union unreason-

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49. Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923); Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 17 Pac. 217 (1888); Gaestel v. Brotherhood of Painters, Decorators & Paperhangers, 120 N.J. Eq. 358, 185 Atl. 36 (Ch. 1936).

50. Hall v. Morin, 293 S.W. 435 (Mo. App. 1927); *see* Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 179, 41 A.2d 32, 36 (Ch. 1945); Heasley v. Operative Plasterers & Cement Finishers International Ass'n, 324 Pa. 257, 188 Atl. 206 (1936).

51. Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 41 A.2d 32 (Ch. 1945); Corregan v. Hay, 94 App. Div. 71, 87 N.Y. Supp. 956 (4th Dep't 1904); *see* Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 314, 17 Pac. 217, 219 (1888).

52. The court in Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 17 Pac. 217 (1888), said that:

> In the matter of expulsion, the society acts in a *quasi* judicial character, and so far as it confines itself to the exercise of the powers vested in it, and in good faith pursues the methods prescribed by its laws . . . its sentence is conclusive, like that of a judicial tribunal.

Id. at 314, 17 Pac. at 219.

53. Grand International Brotherhood of Locomotive Engineers v. Green, 210 Ala. 496, 98 So. 569 (1923); Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 17 Pac. 217 (1888).

54. See note 51 *supra.*

55. See, *e.g.*, Wiggin v. Knights of Pythias, 31 Fed. 122 (W.D. Tenn. 1887).

56. See text at note 37 *et seq., supra.*

ably interprets the constitution or by-law in a proceeding; the third is where the union fails to give notice and hearing to the charged member.

A union tribunal is acting completely without a jurisdictional base when the cause over which they act is nowhere contained, expressly or by implication, as a ground for action in the union constitution and by-laws. The courts allow a union to base expulsion or discipline of a member on two basic grounds: 1) any violation of the established rules of the association that have been subscribed or assented to by the member and that provide some form of discipline for such violation; and 2) conduct which violates the fundamental objects of the association and which, if continued, would thwart those objects or bring the association into disrespect.[57] Both of these grounds appear to be based upon contract. The first ground refers to expressed contractual provisions where the penalty for violation of the provision is designated and a member has contracted to give power of discipline to the union in the event that he violates the provision.[58] The second ground indicates an implied contract whereby a member, upon joining the union, owes an allegiance to the union not to interfere with its purpose or bring it into disrespect.[59] A tribunal which assumes jurisdiction to hear a cause that does not fall under either of these categories will be acting without jurisdiction, and its decision will be void.[60]

An appellate tribunal, as well as a trial tribunal, must assume jurisdiction in accordance with the constitution and by-laws. An interesting problem involving the jurisdiction of an appellate tribunal arose over the construction of a by-law provision requiring that an appeal from the lower tribunal must be filed within thirty days. The executive committee filed charges against a member; the member was acquitted in the lower tribunal hearing. The committee took an appeal from this decision after the thirty day limit had expired. Despite the by-law, the appellate tribunal entertained the appeal, without objection by the member, and found the member guilty. The member then applied to a state court of equity to enjoin enforcement of the appellate tribunal's disciplinary action. The executive committee, relying primarily on cases where an accused had waived notice

57. Otto v. Journeymen Tailors' Protective & Benevolent Union, 75 Cal. 308, 314, 17 Pac. 217, 219 (1888); Polin v. Kaplan, 257 N.Y. 277, 283, 177 N.E. 833, 834 (1931) (citing Otto v. Journeymen Tailors' Protective and Benevolent Union, *supra*).

58. Krause v. Sander, 66 Misc. 601, 122 N.Y. Supp. 54 (Sup. Ct. 1910).

59. Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931).

60. See, *e.g.*, notes 41-45 *supra*. These cases should be distinguished from those involving a judicial review of the evidence to determine whether it was substantial enough to warrant the decision rendered. The question in those cases is not whether the tribunal had jurisdiction over the cause, but whether they had properly determined a cause over which they had jurisdiction. See text at note 79, *infra*.

of a hearing by failure to object, argued that the member, by his failure to object to the late appeal, had waived the thirty day limitation. The court said that if a member appears at a hearing without notice it would be a waiver because the purpose of notice for a hearing is to give the member time to prepare his defense, and appearance is a presumption of such preparation. The court held, however, that these cases were not applicable to the facts presented, since they involved a different principle. They reasoned that the appellate tribunal had jurisdiction to hear only those appeals perfected within the thirty day time limit. The member, by failure to object, could not confer jurisdiction on the tribunal, for this could only be done by the entire membership in the form of an amendment to the union by-laws.[61]

Closely related to the cases where a union acts completely without a basis for jurisdiction are the cases where a union tribunal purports to take jurisdiction by authority of the union constitution or by-laws, but unreasonably interprets the constitution or by-law in the proceeding. It has been said that a member who agrees to accept discipline for cause impliedly consents to union determination of whether the cause exists.[62] The consent is not operative, however, if the union unreasonably construes a by-law in finding cause for discipline. Therefore, a tribunal must act according to the reasonable meaning of their by-laws in trying and disciplining a member or they will be acting without jurisdiction. In general, any reasonable construction which an association gives to its own constitution and by-laws will be controlling unless it is clearly in derogation of personal or property rights of a member.[63] Thus, where a union may have unreasonably interpreted a by-law, the interpretation is subject to judicial review.

A tribunal decision was held void because of an unreasonable construction where a member was expelled for violation of a by-law provision making conduct which tended to injure a fellow member an expellable offense. The conduct involved was the informing on a member who violated an ordinance requiring all shops to be closed on Sundays. The court interpreted the word "injury" to mean "the unlawful infringement or privation of rights," and ordered reinstatement.[64] An unreasonable construction was also set aside where the by-laws provided that a life insurance policy obtained through the association would be avoided if a member was six months delinquent

61. Gordon v. Tomei, 144 Pa. Super. 449, 19 A.2d 588 (1941). *Contra:* Bush v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators, 55 Cal. App. 2d 357, 130 P.2d 788 (1942) (The by-law required that an appeal must be filed within 30 days; the court construed it to be only a directive and not obligatory.).

62. *See* Krause v. Sander, 66 Misc. 601, 604, 122 N.Y. Supp. 54, 56 (Sup. Ct. 1910).

63. Callahan v. Order of Railway Conductors, 169 Wis. 43, 171 N.W. 653 (1919).

64. Manning v. Klein, 1 Pa. Super. 210, 217 (1896).

in his dues. Dues were assessed twice a year, the first period ending in June, the second in December. The member died in October owing four dollars for the first term. The organization tribunal ruled his dues were six months in arrears and refused to grant the policy benefits to his widow. The court overruled the tribunal decision on the ground that the association cannot construe its rules in any way other than their plain and unambiguous meaning.[65] The court said:

> They [the organization] cannot be permitted to interpret the contract as they please, and become their own judges of what they mean by the use of words employed that have either a technical or well-defined signification, known of all men who use the language.[66]

In this case there was obviously an unreasonable construction of the by-law, and this construction was certainly in derogation of the widow's property rights.

The third situation involving lack of jurisdiction is closely akin to the requirement of a fair procedure. In disciplinary proceedings involving property rights, the union must give the member notice, hearing and an opportunity to defend in the tribunal proceeding, notwithstanding the absence of such provisions in the union by-laws.[67] By analogy to the jurisdictional requirements of the civil courts, it can be said that the failure of a union to accord a member these opportunities results in the union's failure to perform the procedural prerequisites for it to obtain jurisdiction over the person of the member involved, even though the tribunal may have jurisdiction over the subject matter of the controversy.[68] Thus, a summary removal of one from his union office without trial has been held an unfair procedure,[69] the same as a summary proceeding to discipline a member for violation of the union rules and regulations.[70] Similarly a summary proceeding against a member for alleged violations of union orders was held invalid although the union by-laws made no provision for notice and hearing. The court said:

> [T]he law insures to every member of such an association a fair trial, not only in accordance with the constitution and by-

65. Wiggin v. Knights of Pythias, 31 Fed. 122 (W.D. Tenn. 1887).

66. *Id.* at 124.

67. Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921); *see* Blek v. Kirkman, 148 Misc. 522, 523, 266 N.Y. Supp. 91, 92 (Sup. Ct. 1933).

68. The courts, however, generally speak of notice and hearing as a procedural rather than a jurisdictional problem. See, *e.g.*, Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921); Browne v. Hibbets, 25 N.Y.S.2d 573 (Sup. Ct. 1941); Cotton Jammers' & Longshoremen's Ass'n v. Taylor, 23 Tex. Civ. App. 367, 56 S.W. 553 (1900).

69. Browne v. Hibbets, 25 N.Y.S.2d 573 (Sup. Ct. 1941).

70. Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921).

> laws of the association, but also with the demands of fair play, which in the final analysis is the *spirit* of the law of the land. [Italics added.][71]

This case exemplifies the critical scrutiny to which the courts subject tribunal procedure in order to insure a fair trial for the member in accordance with natural justice, notwithstanding an omission of a provision for notice and hearing in the by-laws.[72] By the same token, any by-law which assumes to dispense with notice and hearing would be unreasonable and void.[73]

Once having acquired jurisdiction to hear the case, the tribunal must proceed in compliance with the union constitution and by-laws. Generally, substantial rather than strict compliance with the union constitution and by-laws will suffice[74] as long as the proceeding is consonant with the conception of due process and natural justice,[75] and gives the member notice, hearing and opportunity to defend.[76] Thus, a minor irregularity such as the council rather than an individual member preferring charges would not upset the proceeding;[77] but to allow the accuser to sit on the trial board is an irregularity barring a fair trial.[78] Interested parties other than the accuser have also been held disqualified to sit on the trial board.[79] It has further

71. Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921).

72. Bricklayers', Plasterers' & Stonemasons' Union v. Bowen, 183 N.Y. Supp. 855, 861 (Sup. Ct. 1920), *aff'd without opinion*, 198 App. Div. 967, 189 N.Y. Supp. 938 (4th Dep't 1921). The by-laws were silent on the subject; the court said, "The fact that no such restriction [notice and hearing] upon the power of the executive board is . . . contained within the book does not relieve it from like obligation of fair play." To the same effect is Cotton Jammers' & Longshoremen's Ass'n v. Taylor, 23 Tex. Civ. App. 367, 56 S.W. 553 (1900); Blek v. Kirkman, 148 Misc. 522, 523, 266 N.Y. Supp. 91, 92 (Sup. Ct. 1933) (by-laws specifically provided for summary expulsion).

73. Blek v. Kirkman, 148 Misc. 522, 523, 266 N.Y. Supp. 91, 92 (Sup. Ct. 1933). *But cf.* People *ex rel.* Schults v. Love, 199 App. Div. 815, 192 N.Y. Supp. 354 (1st Dep't 1922) (court sustained a by-law dispensing with notice and hearing when passed upon by three-fourths of the membership where the evidence was unquestionable and the circumstances required immediate action). Even though a fair trial is imperative in labor union disciplinary proceedings, the duty of a fair trial is generally not imposed on other voluntary associations such as religious and fraternal organizations. See Kovner, *The Legal Protection of Civil Liberties Within Unions*, [1948] WIS. L. REV. 18 and n.1.

74. Davis v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators, 60 Cal. App. 2d 713, 141 P.2d 486 (1943); Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 41 A.2d 32 (Ch. 1945); *see* Gaestel v. Brotherhood of Painters, Decorators & Paperhangers, 120 N.J. Eq. 358, 363, 185 Atl. 36, 38 (Ch. 1936); Callahan v. Order of Railway Conductors, 169 Wis. 43, 47, 171 N.W. 653, 654 (1919).

75. Davis v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators, 60 Cal. App. 2d 713, 141 P.2d 486 (1943); Dragwa v. Federal Labor Union, 136 N.J. Eq. 172, 41 A.2d 32 (Ch. 1945).

76. *Ibid.*

77. Gaestle v. Brotherhood of Painters, Decorators & Paperhangers, 120 N.J. Eq. 358, 185 Atl. 36 (Ch. 1936).

78. *Ibid. Cf.* Brotherhood of Painters, Decorators & Paperhangers v. Boyd, 245 Ala. 227, 16 So.2d 705 (1944).

79. Bricklayers', Masons' & Plasterers' International Union v. Bowen, 278 Fed. 271 (S.D. Tex. 1922).

been held that failure to object to an improperly selected board is not a waiver of the right to have the board selected as prescribed by the union constitution since

> the formation of the trial body in accordance with the contract rights of the accused member is not a mere matter of form or procedure but is a substantive right of which he should not be lightly deprived.[80]

Judicial scrutiny of the evidence to determine whether it is substantial enough to warrant the tribunal decision rendered is actually no more than a branch of the requirement that the union give a member a fair hearing in accordance with its by-laws. A finding contrary to the evidence is clearly arbitrary action by the union, and will not be binding on the courts. This is illustrated by the case in which the union attempted to deny union insurance policy benefits to a member's widow on the basis of their finding, contrary to the facts, that the member was six months delinquent in his dues.[81]

Union tribunal procedure which violates a member's rights secured to him by a state or the federal constitution or statute are, of course, properly reversible by the court because of the violation alone, and one does not have to look for lack of jurisdiction or other indicia of arbitrariness. Thus, a construction of a by-law to proscribe conduct which is properly within the ambit protected by the law of the land has resulted in union action being set aside. In one instance a union expelled a member for voting in favor of an opposing union in an election held by the Railroad Labor Board to determine the bargaining representative for the employees. The Board had the authority to hold the election under the Transportation Act of 1920.[82] The union's purpose was to obtain and hold agreements such as the one voted upon. The by-law on which the expulsion was based provided that conduct detrimental to the purpose for which the union was created is grounds for expulsion. The court held that the member was under the duty to express his preference and had a legal right to do so, hence there was no violation of the by-law.[83] The court

80. Taylor v. Marine Cooks & Stewards Ass'n of Pacific Coast, 117 Cal. App. 2d 556, 560, 256 P.2d 595, 598 (1953) (hearing committee was to be elected by the membership). *But cf.* People *ex rel.* Schults v. Love, 199 App. Div. 815, 192 N.Y. Supp. 354 (1st Dep't 1922) (member's failure to object to an improperly selected tribunal was considered a waiver since the trial was before the union as a whole and the only objection was that the tribunal consisted of officers improperly elected).

81. Wiggin v. Knights of Pythias, 31 Fed. 122 (W.D. Tenn. 1887).

82. 41 STAT. 470 (1920).

83. Ray v. Brotherhood of R.R. Trainmen, 182 Wash. 39, 44 P.2d 787 (1935); *cf.* Abdon v. Wallace, 95 Ind. App. 604, 165 N.E. 68 (1932) (member testified before I.C.C. in a manner unfavorable to union); Angrisani v. Stearn, 167 Misc. 728, 3 N.Y.S.2d 698 (Sup. Ct. 1938) (member brought court action against fraudulent union officials *contra* to resolution that he must first submit grievance to union tribunal or be suspended); St. Louis S.W. Ry. of Tex. v. Thompson, 102 Tex. 89, 113 S.W. 144 (1908) (member testified against employer to the consequent injury of the union).

did not specify the right encroached upon; however, the author assumes that it was a right given by the Transportation Act in aid of the duties of the Railroad Labor Board to promptly settle labor disputes.[84]

Similarly, the Pennsylvania Supreme Court found it necessary to declare totally unenforceable a by-law which provided for the expulsion of any member using his influence to defeat action taken by the union legislative representative (lobbyist).[85] In this case the member signed a petition asking the legislature to reconsider a "Full Crew Law," the repeal of which would work a hardship on the union. The court said that the Pennsylvania Constitution provides for referendum and free speech; therefore, any by-law provision which compels a citizen to forego this constitutionally inviolate right is unreasonable, and a tribunal decision under it is a nullity. The court further held that the member cannot be said to have delegated these rights to the union by virtue of the by-law provision.

b. Interference in non-tribunal union action

Union practice, other than tribunal proceedings, involving arbitrary discrimination against union members has also been subject to judicial scrutiny. In one instance the local had a contract with its members which purported to vest the local with control of all jobs within its jurisdiction. The jobs were doled out arbitrarily to the injury of many members. The court held the contract void as repugnant to public policy since it established a labor monopoly, and unconstitutional because it impeded the right of the member to contract for his own labor, a right protected by the New Jersey Constitution.[86] The New Jersey court similarly held a contract void as against public policy where the local reserved, in their contracts with the union members, the right to arbitrarily classify members as "junior" and "senior."[87]

84. 41 STAT. 470 (1920). The Railroad Labor Board was replaced with the Board of Mediation by the enactment of the Railway Labor Act, 44 STAT. 577 (1926). The Board of Mediation was later abolished by the establishment of the National Mediation Board. See 48 STAT. 1197 (1934), 45 U.S.C. § 154 (1952).

85. Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 Atl. 70 (1921). *But cf.* Pfoh v. Whitney, 62 N.E.2d 744 (Ohio App. 1945).

86. Walsche v. Sherlock, 110 N.J. Eq. 223, 159 Atl. 661 (Ch. 1932).

87. Cameron v. International Alliance of Theatrical Stage Employees & Moving Picture Operators, 118 N.J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935); *cf.* Collins v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators, 119 N.J. Eq. 230, 182 Atl. 37 (Ch. 1935).

It is interesting to note that unions have the right to modify or abrogate a member's seniority rights as long as the modification is done in good faith. Capra v. The Brotherhood of Locomotive Firemen & Enginemen, 102 Colo. 63, 76 P.2d 738 (1938); Ryan v. New York Central R.R., 267 Mich. 202, 255 N.W. 365 (1934). This right is based on the rationale that a member has no inherent right to seniority since it arises out of a contract between the union and the employer rather than with the individual members. This reasoning has prevailed even when the effect of the modification was a member's loss of employ-

In contrast to union discrimination against "members," is the problem with which the courts are faced in dealing with union discrimination against "membership." Theoretically, a union, being a voluntary association and likened to fraternal and church groups,[88] should have the power to determine its own qualifications for membership and should have the right to segregate its members into separate lodges. The Supreme Court of Kansas, however, felt that the segregation of Negroes into another lodge, and a by-law provision restraining the Negro members from any participation in bargaining as prescribed under the Railway Labor Act gave proper grounds for judicial intervention.[89] The court reasoned that a union may lawfully segregate its members in wholly local activity, but segregation which lends itself to inequality in affairs relating to matters of employment is within the scope of the Railway Labor Act and the discriminatory acts are affected with a public interest.[90] In the Kansas case, the court's decision rested on the ground that the collective bargaining in question was affected with a public interest because it was within the scope of the Railway Labor Act.

Even in the absence of a statute, the California Supreme Court held collective bargaining to be affected with a public interest where there is a labor monopoly created by a closed shop because the closed shop precludes workers from obtaining employment unless they are union members. The Court held a closed "union" to be *incompatible* with a closed "shop,"[91] saying:

> Where a union has attained a monopoly of the supply of labor by means of closed shop agreements and other forms of collective labor action, such a union occupies a quasi public position similar to that of a public service business and it has certain corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs or fraternal

ment. See Hartley v. Brotherhood of Ry. & Steamship Clerks, Freight Handlers, Express & Station Employees, 283 Mich. 201, 277 N.W. 885 (1938). In the *Hartley* case, economic conditions forced the employer to reduce the number of employees. An agreement was reached whereby married women were to be discharged regardless of seniority rights. *But cf.* Nord v. Griffen, 86 F.2d 481 (7th Cir. 1936), where the National Railroad Adjustment Board, a government agency, awarded union members certain seniority rights to the detriment and imminent loss of employment of a non-union employee. The court held that the Board could not make such an award, saying that the right to earn a living is a property right encompassed by the Fifth Amendment and enforced by the courts.

88. See note 7 *supra*.

89. Betts v. Easley, 161 Kan. 459, 169 P.2d 831 (1946).

90. *Id.* at 465, 169 P.2d at 837. In Steele v. Louisville & N. R.R., 223 U.S. 192 (1944), the union was designated as the exclusive bargaining agent under the Railway Labor Act. The Supreme Court analogized the union's discrimination against Negroes to a state's denying a citizen equal protection of the laws, and held that any union which has the exclusive bargaining power under the R.L.A. must represent all employees equally, whether or not they are union members. For a general discussion of leading cases on discrimination under the Railway Labor Act see Comment, [1953] WIS. L. REV. 516.

91. James v. Marinship Corp., 25 Cal. 2d 721, 155 P.2d 329 (1944).

> organizations. Its asserted right to choose its own members does not merely relate to social relations; it affects the fundamental right to work for a living.[92]

In this case, the union had attempted to set up an auxiliary lodge for Negroes under similar circumstances as did the union in the Kansas case. On this issue the court held that failure to provide the Negro lodge with privileges equal to those extended members of the white lodge is in fact a complete denial of membership to the Negro. The union could not exclude Negroes from membership and it cannot do indirectly what it is precluded from doing directly.[93] Although the "closed" shop in businesses engaged in interstate commerce is now outlawed by the Taft-Hartley Act,[94] both the California and Kansas cases are extremely significant in that these courts have honestly faced the problem of handling unions as one distinct from the problems created by voluntary associations. It is also likely that the California court would treat a similar problem arising in a "union" shop in the same way.

A recent amendment to the Railway Labor Act[95] legalizing union shops in organizations under the Act's jurisdiction may present a similar problem to the one in the Kansas and California cases above. No cases have been found presenting this problem but one may predict that the federal courts will handle the question as did the California court.[96]

CONCLUSION

Approximately eighty years ago, labor unions were a new phenomenon on the American judicial scene. The courts, striving for order within the existing juridical framework, classified unions as voluntary associations and imposed upon them the rules of law governing such associations. One of the prominent features of the law of voluntary associations is the hesitancy of the courts to intervene in the internal affairs of such an organization.

In 1935, with the passing of the Wagner Act, unions began to enjoy a tremendous growth in membership and in economic power. Along with this growth in membership there has been a correlative growth in the union's influence over the economic destiny of millions of workers. In such a system, if not controlled by the courts, there is the constant danger of arbitrary and unfair discipline by the union against the member. Many courts, recognizing the need for judicial control, have imposed the requirement of a fair trial in union disciplinary proceedings, although such a trial is generally not nec-

92. James v. Marinship Corp., 25 Cal. 2d 721, 731, 155 P.2d 329, 335 (1944).
93. *Id.* at 737, 155 P.2d at 338.
94. See note 5 *supra.*
95. 64 STAT. 1238 (1951). For a discussion of the jurisdictional aspects of the amendment see 5 LABOR L.J. 209 (1954).
96. See discussion in note 7 *supra.*

essary in the disciplinary proceedings of fraternal and religious organizations.[97] Suffice it to say, these courts have taken cognizance of the present labor situation and in so doing have found it necessary to deviate from the basic tenets of the law of voluntary associations, since the application of that body of law would often result in a denial of justice.

It is to be remembered that the great bulk of cases involving judicial intervention in internal union affairs are equity cases where the courts are asked to enjoin or restrain certain union action. Thus, the majority of the courts feel compelled to conform to the traditional grounds for equity jurisdiction. However, the fact that equity will not intervene in the absence of a threatened loss of a member's property rights has not been a deterrent to judicial action in any case where the facts manifest unfairness to the member.

The law as applied to labor organizations is not based on inflexible legal rules; it has an elastic application to meet the exigencies of each case. It is hardly an accurate statement today to say that labor unions are governed by the law of voluntary associations. The law of voluntary associations has been the historical starting point in a body of law which today has grown into what may more accurately be classified as the law of labor associations. Today, in the law of labor associations, the law of voluntary association is merely a conceptual starting point in the attempt to formulate a coherent body of law to meet the perplexities of intra-union government.

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97. See discussion in note 73 *supra*.