THE PROHIBITION OF UNION RESTRICTIONS ON MEMBERS' RESIGNATIONS UNDER THE NATIONAL LABOR RELATIONS ACT'S POLICY OF VOLUNTARY UNIONISM: *PATTERN MAKERS' LEAGUE OF NORTH AMERICA v. NLRB*

The National Labor Relations Act (the Act)[1] provides that union membership, as a condition of employment, may require no more than the payment of union dues.[2] The policy of "voluntary unionism" im-

1. 29 U.S.C. §§ 151-66 (1982).

2. Section 7 contains what are commonly referred to under the Act as the "employees' rights." This section provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, . . . and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

29 U.S.C. § 157 (1982).

Under § 8(a)(3), the only aspect of union membership that can be required pursuant to a union security agreement is the payment of dues. Section 8(a)(3) provides in pertinent part:

> It shall be an unfair labor practice for an employer—
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . *Provided* further, that no employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues.

29 U.S.C. § 158(a)(3) (1982).

Section 8(a)(3) whittles "membership," as a condition of employment, down to its financial core. NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963). *See also* Radio Officers' Union v. NLRB, 347 U.S. 17 (1954). Employees under a union security agreement, therefore, are required to pay union dues but do not have to assume full union membership. At the same time, an employee who chooses to reduce his or her affiliation to that of being a "dues paying member only" forfeits the right to participate in or vote on union business. *See* General Drivers, Dairy Employees & Helpers Local Union No. 579 (Northern Conveyor Mfg. Corp.), 274 N.L.R.B. 22 (1985); Carpenters Dist. Council for Seattle, King County and Vicinity (Tulles Garden Constr. Inc.), 277 N.L.R.B. 19 (1985). *See supra* note 93 and accompanying text. Those who do not assume full membership are not subject to union discipline. Pattern Makers' League of

plicit in section 8(a)(3) protects an employee's decision to assume or decline the obligations of full union membership.[3] The United States Supreme Court recently recognized and enforced this policy when it found an inconsistency between voluntary unionism and union restrictions on a member's right to resign.[4] In *Pattern Makers' League of North America v. NLRB*[5] the Court held that the Act prohibits unions from fining employees who have tendered resignations that are not recognized under a restriction in the union's constitution.[6]

Pattern Makers' League of North America's[7] League Law 13 prohibited employees from resigning during a strike or when a strike is imminent.[8] The League fined ten members who, in violation of this provision, resigned during a strike and returned to work.[9] The employers' collective-bargaining agent subsequently filed unfair labor

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North America v. NLRB, 105 S. Ct. 3064, 3071 (1985). These employees are " 'members' of the union only in the most limited sense," 105 S. Ct. 3064, 3071, n.16, and, in fact, are often referred to as "financial core" members, a term first coined in the Court's interpretation of § 8(a)(3) in *General Motors*. *See* United Food & Commercial Workers Union, Local No. 115, 277 N.L.R.B. 83 (1985); United Food & Commercial Workers Union, Local No. 1439, 275 N.L.R.B. 140 (1985).

In section 8(a)(3), Congress solved union concern about "free-riders" by allowing unions to exact dues from nonmembers. Radio Officers' Union v. NLRB, 347 U.S. 17, 40-42 (1954). "Free-riders" are those employees who enjoy the benefits of union representation, but are unwilling to contribute their share of financial support to the union. *Id. See also* Wellington, *Union Fines and Workers' Rights*, 85 YALE L.J. 1022, 1050 (1976).

3. Section 8(a)(3) bans compulsory union membership by prohibiting closed shop agreements. Closed shop agreements require employers to hire and retain only full union members in good standing. Section 8(a)(3) "protects the employment rights of the dissatisfied member, as well as those of the worker who never assumed full membership." *Pattern Makers' League*, 105 S. Ct. at 3071. Implicit in this provision, therefore, is the policy of voluntary unionism, mandating that employees be free to resign from the union at any time. *Id.*

4. *Id.*

5. 105 S. Ct. 3064 (1985).

6. 105 S. Ct. at 3068.

7. Pattern Makers' League of North America is a national labor union composed of local associations [hereinafter the League].

8. The provision [hereinafter League Law 13] was an amendment to the union's constitution and provided that: "No resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent." *Id.* at 3066.

9. Upon expiration of a collective-bargaining agreement, two locals commenced a strike against several manufacturing companies who were part of a multi-employer bargaining unit. Forty-three members of the two local unions participated. Four months after the locals formally rejected a contract offer, the first of the ten members resigned

practice[10] charges with the National Labor Relations Board, which issued a complaint against the union for restricting the members' resignations.[11] The Administrative Law Judge held that League Law 13 impeded the employees' statutory right to resign union membership

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from the union and returned to work. During the next three months, the remaining nine members resigned. *Id.*

The fine levied against each of the ten employees was the approximate equivalent of his earnings during the strike. The union informed the members that their resignations had been rejected and fines were subsequently levied as sanctions for returning to work. *Id.*

10. The Rockford-Beloit Pattern Jobbers' Association represented the employers during the collective bargaining process. It filed charges with the NLRB claiming that levying fines against the employees who had returned to work was an unfair labor practice in violation of § 8(b)(1)(A). *Id.* at 3066-67.

Congress defined unfair labor practices in § 158 of the Act. Subsections (a), (b), (c), (e) and (f) of this section enumerate those forms of conduct that constitute unfair labor practices. Subsections (a) and (b) specify acts that, if engaged in by employers and labor organizations, respectively, would be unfair labor practices. It is not an unfair labor practice under subsection (c) for either party to express or disseminate their views, provided such expression does not contain threats of reprisal or promise of economic benefit. Subsection (e) prohibits secondary boycotts, making it an unfair labor practice for unions and employers to enter into agreements whereby the employer agrees not to deal with or to cease doing business with another employer. Finally, subsection (f) provides exceptions for situations in which a construction industry employer may enter into agreements with labor organizations, whose members are engaged in that industry, that would otherwise constitute an unfair labor practice under subsections (a) or (b).

11. Congress created the National Labor Relations Board (NLRB) in 1935 to investigate and remedy charges of unfair labor practices brought under Title 29. *See* 29 U.S.C. §§ 153-160 (1982). Once a charge is filed, an investigation is conducted from which a regional director of the NLRB decides whether to issue a complaint against the charged party. *Id.* § 160(b). The regional director will issue an unfair labor practice complaint if the dispute does not warrant dismissal and cannot otherwise be resolved. If an unfair labor practice complaint is issued, the matter is set for hearing before an Administrative Law Judge (ALJ), whose order the NLRB may endorse, modify, or vacate with or without further testimony or argument. *Id.* § 160(b), (c). The NLRB is required to dismiss the complaint unless its General Counsel proves by a preponderance of the evidence that an unfair labor practice has been committed. *Id.* § 160(c). If an unfair labor practice is established, the NLRB is further required to issue a "cease and desist" order and is empowered to take such remedial action as will correct the effects of the unfair labor practice. *Id.* Reinstatement of employees to their jobs and awards of backpay are among the remedial measures available to the NLRB under the Act. *Id. See also* Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941). *See generally* R. GORMAN, BASIC TEST ON LABOR LAW 7-10 (1976).

NLRB orders in unfair labor practice cases are not self-executing, but, rather, the NLRB must petition a United States court of appeals to obtain enforcement of its order. 29 U.S.C. § 160(e) (1982). The NLRB's findings of fact will stand "if supported by substantial evidence on the record considered as a whole. . . ." *Id.* See also Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951). When courts reverse a NLRB order, the issues tend to be denominated as questions of law, which prevents deference to the

and that the fines imposed violated section 8(b)(1)(A) of the Act.[12] The NLRB agreed with the Administrative Law Judge's findings.[13] On appeal, the Court of Appeals for the Seventh Circuit enforced the NLRB's order.[14]

The overall purpose of the Act is to stabilize industrial relations through collective bargaining contracts negotiated between labor and management.[15] A major premise underlying the collective bargaining concept is that through a democratically selected organization, employees can act collectively to achieve the most effective means of bargaining for their contract terms.[16] Congress provided for employee

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NLRB's findings. *See, e.g.*, NLRB v. Babcock & Wilcox Co., 351 U.S. 105 (1956); NLRB v. Erie Resistor, 373 U.S. 221 (1963).

12. *Id.* at 3067. The Administrative Law Judge issued an order for the union to cease and desist from engaging in the unfair labor practice. *Id.*

13. *Id.*

14. 724 F.2d 57, 60 (7th Cir. 1983). The court stated: [B]ecause League Law 13 completely suspends an employee's right to choose not to be a union member and thus no longer subject to union discipline, it frustrates the overriding policy of labor law that employees be free to choose whether to engage in concerted activities. *Id.*

In NLRB v. Granite State Joint Bd., 409 U.S. 213 (1972), the Court held that upon "lawful dissolution of the union-member relation, the union has no more control over the former member than it has over the man in the street." *Id.* at 217. The Court's meaning of "lawful dissolution" was not fully explained, except to the extent that a union member with no outstanding debts owed to the union may lawfully resign and terminate the parties' association. *Id.* at 215-16. *See also* NLRB v. District Lodge No. 99, 489 F.2d 769 (1st Cir. 1974).

15. *See supra* note 1 and accompanying text. Subchapter II, Section 151 of the National Labor Relations Act sets forth Congress' Findings and Declarations of Policy. The pertinent language provides as follows:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms of their employment.

29 U.S.C. § 151 (1982).

The Act's intended beneficiaries are employees, not labor unions. *See, e.g.*, NLRB v. Mid-States Metal Products, Inc., 403 F.2d 702 (5th Cir. 1968) (prohibition of unfair labor practices designed to prevent employees' free exercise in their decision to become union members was intended as a grant of rights to employees rather than a grant of power to unions); NLRB v. Local 338, Int'l Bhd. of Teamsters, 531 F.2d 1162 (2nd Cir. 1976) (subchapter II designed to permit workers to exercise their rights to join unions, to be active or passive members, or to abstain from joining any union at all without imperiling their right to a livelihood). *See also* Millan, *Disciplinary Developments Under Section 8(b)(1)(A) of the National Labor Relations Act*, 20 LOYOLA L. REV. 245 (1974).

16. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180 (1967). The effect of the

rights in section 7 of the Act[17] in order to effectuate employees' pursuit of meaningful collective activity.[18] Section 7 grants employees the right to either engage in or refrain from all concerted activities concerning self-organization and collective bargaining.[19]

Section 8(b)(1)(A) enforces section 7, making it an unfair labor practice for a union to restrain or coerce employees in the exercise of their section 7 rights.[20] Congress enacted section 8(b)(1)(A) to ensure employees' freedom from restraint or coercion in deciding whether to join the union.[21] A proviso to that section, however, allows unions to prescribe their own rules regarding membership acquisition and retention.[22] An intrinsic tension thus lies between an employee's section 7

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policy is to "extinguish the employee's power to order his own relations with his employer and create a power vested in the chosen representative to act in the interest of all employees." *Id. See also* Machinists Local 1327 v. NLRB, 725 F.2d 1212, 1216 (9th Cir. 1984) (federal labor policy restricts the employee's absolute power to order his relations with management, but rather vests his power in a collective representative who must protect the interests of everyone in the bargaining unit), *vacated*, 105 S. Ct. 3517 (1985).

17. *See supra* note 2 and accompanying text.

18. Valley Mould & Iron Corp. v. NLRB, 116 F.2d 760, 764 (7th Cir. 1940). *See also* NLRB v. Thompson Products, Inc., 130 F.2d 363, 368 (6th Cir. 1942).

19. Pattern Makers' League of North America v. NLRB, 105 S. Ct. at 3068. The "right to refrain" is not absolute. The Act authorizes union-imposed fines against full members. *See e.g.*, NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967) (Court upheld union fines of members crossing picket lines).

20. *See infra* note 22 and accompanying text.

21. Senator Smith, a co-sponsor of this provision, indicated that its purpose is to "protect employees in their freedom to decide whether or not they desire to join labor organizations, to prevent them from being restrained or coerced." 93 CONG. REC. 4435 (1947). *Allis-Chalmers*, 388 U.S. at 188.

22. Section 8(b)(1)(A) provides in pertinent part:

> (b) it shall be an unfair labor practice for a labor organization or its agents—
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> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

29 U.S.C. § 158(b)(1)(A) (1982).

Legislative history indicates that Congress, in its adoption of this section, did not intend to regulate unions' internal affairs. *See* 93 CONG. REC. 4272 (1947). The Supreme Court interprets the proviso to preserve, at minimum, the union's rights "to impose fines, as a lesser penalty than expulsion, and to impose fines which carry the explicit or implicit threat of expulsion for non-payment [of dues]." *Allis-Chalmers*, 388 U.S. at 191-92. Conversely, the words "acquisition or retention" of membership are not to be defined so broadly as to vest power in the union to discipline a member who seeks the Act's protection for a matter that is in the public domain and beyond the internal affairs of the union. NLRB v. Industrial Union of Marine & Shipbuilding Workers, 391

right to participate or refrain from participating in concerted activity and the union's rights under the proviso to determine its own conditions of membership.[23]

The first in a line of decisions addressing these conflicting rights was *NLRB v. Allis-Chalmers Manufacturing Company*.[24] In *Allis-Chalmers* a divided Court held that a fine was a proper form of union discipline.[25] The Court recognized a prevailing contract theory underlying the union-member relationship, under which union provisions defining punishable conduct and procedures for adjudicating such matters constitute part of the union-member contract.[26]

U.S. 418, 426 (1968). *See also* Carpenters Dist. Council of Southern Colorado v. NLRB, 560 F.2d 1015, 1020 (10th Cir. 1977) (proviso exempts strictly intra-union disciplinary proceedings from charges of unfair labor practices, but it does not confer carte blanche upon unions with respect to internal proceedings whenever considerations of overriding national labor policy are involved).

When adopting § 8(b)(1), Congress expressly disclaimed any intent to interfere with the unions' internal affairs. The express language of that section reinforces Congress' disclaimer by stating that labor organizations shall have the right to prescribe their own rules with respect to the acquisition or retention of membership. *Allis-Chalmers*, 388 U.S. at 192-93.

A Senate Report formally expressed the intent shared generally by members of Congress that the Act was not designed to interfere with the internal affairs of the union. S. REP. NO. 105, 80th Cong., 1st Sess. 20 (1947). *See also* 93 CONG. REC. 4318 (1947) (statement of Sen. Taft) ("The pending measure does not propose any limitation with respect to the internal affairs of unions.").

23. The Ninth Circuit feels that this "conflict is falsely created because both the employee's rights and the union's interests must—and do—coexist." *See* International Ass'n of Machinists Local 1327, 263 N.L.R.B. 984 (1982), *enf. denied*, 725 F.2d 1212, 1217 (9th Cir. 1984), *vacated*, 105 S. Ct. 3517 (1985). *See supra* notes 2, 22 and accompanying texts.

24. 388 U.S. 175 (1967).

25. Several union members refused to participate in a strike and returned to work. After the strike, the members were tried by the union on charges of violating the union constitution and bylaws. Each was found guilty and fined. Upon the members' refusal to pay, the union won enforcement of the fines in state court. *Id.* at 177.

26. *Id.* at 192. The contract theory rationale states that by joining the union, an employee enters into a contract, which terms are expressed in the union constitution and bylaws. Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1054 (1951). The recognized advantage of this theory is that it provides express standards for judicial review and thus permits the courts to avoid ruling on the merits of each dispute. *Id.* The general view among commentators, however, is that the membership contract concept is nothing but a legal fabrication producing an adhesion contract binding the member but not the union. This is the result of the vague and changeable identities of the terms and parties to the agreement. *Id.* at 1055. In support of the theory, one commentator asserts that "[t]he general contractual freedom accorded to labor unions extends to workers' Section 7 rights." Note, *A Union's Right to Control Strike-Period Resignations*, 85 COLUM. L. REV. 339, 363 (1984). Under this view, an

The Court believed that its only role was contract enforcement.[27] The Court observed that federal labor policy, coupled with the union-member contract, vests unions with the authority to order employee and employer relations.[28] Integral to this policy is the chosen union's power to protect its interest in presenting a unified front.[29] That power, indispensable during a strike, would be undermined if reasonable discipline for violating rules of membership were literally interpreted as restraint or coercion in the exercise of section 7 rights.[30]

In interpreting section 8(b)(1)(A), the Court drew a distinction between internal and external enforcement of union rules.[31] The Court considered "internal" those actions taken against full union members[32] pursuant to a nonarbitrary rule aimed at achieving a legitimate union interest.[33] By contrast, it found "external" those union actions either interfering with an employee's employment status or taken against

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employee may waive his § 7 right to refrain from union activity through the union-member agreement. *Id.* at 363-64. *See infra* note 54 and accompanying text.

27. 388 U.S. at 182. This is the Court's general view in cases in which the issue of restrictions on resignations is not involved. *See* NLRB v. Boeing Co., 412 U.S. 67, 75-76 (1973).

28. 388 U.S. at 181.

29. *Id.* The Court acknowledged that the union's interest in, and need for, solidarity is greatest when members elect to strike. An economic strike against the employer is considered to be the union's "ultimate weapon . . . for achieving agreement upon its terms." *Id.* Federal labor policy, therefore, considers it vital that unions be afforded the protected right to fine or expel strikebreakers in order to be an effective bargaining agent. *Id.*

30. *Id.* at 184.

31. *Id.* at 195. The Court concluded that the proscriptions contained in § 8(b)(1)(A) did not reach a union's internal actions. *Id.* at 191.

32. For description of "full member," see *supra* note 2 and accompanying text.

33. 388 U.S. at 194-95. *Accord* Machinists Local Lodge 1414 (Neufield Porsche-Audi, Inc.), 270 N.L.R.B. 1330, 1333 (1984). *See supra* note 15 and accompanying text.

The legislative history of § 8(b)(1)(A) shows that Congress implicitly intended to distinguish between members and nonmembers when judging the union's ability to restrict the employee's right to work. *See* 93 CONG. REC. 4435-36 (1947). With respect to this amendment's intended effect, the record is clear that the union may not prevent nonmembers from exercising their right to work. *Id.* Senator Taft acknowledged that the implication for unions may be different when limiting a member's right to work. 93 CONG. REC. 4023 (1947). Senator Taft commented further, however, that from the employee's point of view, it is clear that the two cases are parallel. *Id.*

In contrast, one commentator stated that "[i]t is ironic that in ruling that Congress did not intend to interfere with internal union affairs by enacting § 8(b)(1)(A) the Court actually invited courts to tinker with internal union affairs." Millan, *supra* note 15, at 253. The flip side of this contention, however, questions whether a union is proceeding

nonmembers in violation of section 8(b)(1) provisions.[34]

Public policy provided the Court with an alternative ground for judging the validity of union rules in *NLRB v. Industrial Union of Marine & Shipbuilding Workers*.[35] There, the Court determined whether a union rule requiring grieving members to exhaust all internal union remedies before resorting to an outside tribunal was valid under the Act.[36] The Court found that the public interest in unim-

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"internally" when it "hauls the accused from a union hearing into a court of law." Wellington, *supra* note 2, at 1023.

The Court found further support for its conclusion in the legislative history of the Labor Management Reporting and Disclosure Act. Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended in scattered sections of 29 U.S.C.). 105 CONG. REC. 15,721 (1959). This Act deals with the internal affairs of unions, including the procedures for imposing fines or expulsion. Recognizing that Congress' actions in 1959 do not establish congressional intent in the Taft-Hartley Act of 1947, the Court still considered the 1959 provisions relevant for what they reveal about Congress' reluctance toward regulating union conduct. 388 U.S. at 194-95. *See also* NLRB v. Drivers, Chauffers, Helpers Local Union No. 639, 362 U.S. 274, 291 (1960).

34. *Allis-Chalmers*, 388 U.S. at 189-90 n.25. *See supra* notes 2-3 and accompanying text. *See also* Neufield Porsche-Audi, Inc., 270 N.L.R.B. 1330 (1984).

Congress did not design § 8(b)(1)(A) to impair if the right of unions to regulate their internal affairs, provided that enforcement of internal regulations does not affect a member's employment status. 388 U.S. at 185. *See* 93 CONG. REC. 4193 (1947). The Court pointed to the difficulty in discerning Congress' intent due to the imprecise language of "restrain or coerce" used in § 8(b)(1)(A). 388 U.S. at 184. The Court contrasted this language with the explicit wording of § 8(b)(2), which provides that:

> (b) It shall be unfair labor practice for a labor organization or its agents—
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> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues.

29 U.S.C. § 158(b)(2) (1982).

This section virtually removes a union's power to compel an employer to discharge a terminated member other than for failure of the employee to pay union dues. 388 U.S. at 184. To illustrate this contrast, the Court cited a Senate Report stating:

> The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and *do not require the employer to inquire into the internal affairs of the union.*

S. REP. No. 105, 80th Cong., 1st Sess. 20 (1947) (emphasis in original).

The Court concluded from its review of §§ 8(b)(1)(A) and 8(b)(2) that, because Congress insulated an employee's membership from his job but left the union to regulate its internal affairs through self-government, § 8(b)(1)(A) cannot be read "as contemplating regulation of internal discipline." 388 U.S. at 185.

35. 391 U.S. 418 (1968).

36. *Id.* After his grievance against the union president was dismissed, a union mem-

peded access to the NLRB outweighed the union's interest in ordering its own affairs and, therefore, invalidated the rule.[37] The Court concluded that section 8(b)(1)(A)'s proviso may not be read to extend beyond internal union matters and reach into the public domain.[38]

The Court clarified and expanded the boundaries of a union's right to internally enforce its rules against current members in *Scofield v. NLRB*.[39] In *Scofield* the Court upheld a union rule imposing production ceilings and imposing fines on members exceeding those ceilings.[40] The Court characterized section 8(b)(1)(A) as taking a "dual approach" to the union-member relationship.[41] This approach permits a union to internally enforce its rules by means such as expulsion or reasonable fines, but prohibits external enforcement by means such as in-

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ber took his complaint to the NLRB without pursuing any internal union appeal procedures.

37. *Id.* at 424.

38. *Id.* The Court held that a union rule whose reach extends beyond legitimate union affairs is invalid as a contravention of public policy. *Id.* at 425.

39. 394 U.S. 423 (1969).

40. *Id.* The rule permitted members to produce as much as they liked each day, but imposed a ceiling pay rate. The company "banked" the additional production. The company retained production wages and paid out to the employee for days in which the production ceiling was not reached. The company would comply with an employee's demand to be paid in full over the ceiling rate, but the union assessed a fine of one dollar for each violation. Failure to pay the fine could lead, as it did in this case, to expulsion. *Id.* at 424-25.

41. That section, which outlaws the restraint or coercion of employees in the exercise of their rights, allows a union, through reasonable means, to internally enforce its rules. Section 8(b)(1)(a) explicitly prohibits a union from externally enforcing its rules. 394 U.S. at 428.

The purpose of this dual approach is to further the Act's policy of insulating employees' jobs from their organizational rights. *Id.* at 429 n.5. *See also* Radio Officers' Union v. NLRB, 347 U.S. 17, 40 (1954) (the Act was designed to allow employees to freely exercise their right of free association with the union—to join or resign—without imperiling their livelihood).

One aspect of the § 8(b)(1)(A) dual approach is that a union rule might be administered internally but with an intended impact beyond the confines of the union organization. The Court noted, however, that § 8(b)(1)(A) is not violated simply because enforcement of the rule has an external effect. 394 U.S. at 432.

The Court summarized its holding in *Scofield* in a later opinion:

> The underlying basis for the holding of *Allis-Chalmers* and *Scofield* was not that reasonable fines were noncoercive under the language of Section 8(b)(1)(A) . . . , but was instead that those provisions were not intended by Congress to apply to the imposition by the union of fines, not affecting the employer-employee relationship and not otherwise prohibited by the Act.

NLRB v. Boeing Co., 412 U.S. 67, 73 (1973).

ducing an employer to exclude a member from the work force.[42]

The Court articulated a two part test to evaluate the lawfulness and enforceability of union rules.[43] First, the test allows a union to pursue legitimate ends with properly adopted rules that do not contravene congressional labor law policies.[44] Second, the union must reasonably enforce such rules against union members who are free to leave the union and escape the rule.[45] In *Scofield*, the union rule survived scrutiny under the dual approach because the union internally enforced it to protect a legitimate interest against members who had a choice to remain full members.[46]

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42. 394 U.S. at 428.

43. *Id.* at 430. This test can technically be broken down into four parts, permitting enforcement of a union rule when the rule: (1) is properly adopted; (2) reflects a legitimate union interest; (3) impairs no policy Congress has embedded in the labor laws; and (4) is reasonably enforced against union members who are free to leave the union and escape the rule. *Id.*

44. *Id.*

45. *Id.* The principles set forth in both *Allis-Chalmers* and *Marine Workers* are incorporated in the *Scofield* test. The test draws from *Allis-Chalmers* the principle that the § 7 right to refrain from collective activity does not grant union members the freedom to disregard the union's rules with impunity. Unions must have freedom to apply internal disciplinary measures directed at a valid interest. *See Allis-Chalmers*, 388 U.S. at 194-96. The existence of a legitimate union interest, however, is nothing more than a threshold issue in determining the lawfulness of a union rule. Dalmo Victor II, 263 N.L.R.B. 984, 992 (1982) (Chairman Van de Water and Member Hunter, concurring). The test also incorporates the message from *Marine Workers* that if the rule frustrates an overriding policy of the labor laws, enforcement will be denied regardless of whether the means would otherwise be considered internal and the end legitimate. 394 U.S. at 429. The Court essentially adopted the NLRB's view that § 8(b)(1)(A) does not necessarily prohibit internal union rules that carry incidental external effects. The NLRB has specifically stated:

> We fully recognize that an internal union rule such as that in *Scofield* may well have incidental external impact. The fundamental difference between such a rule with incidental external effects and a rule restricting resignations, however, is that the latter rule constitutes a unilateral reordering of the basic employee-union relationship that directly and fundamentally redraws the line between internal and external actions. Admittedly, this line is not always a clear one. It is clear to us, however, that a union does not have the authority to determine unilaterally where the line should be drawn.

Neufield Porsche-Audi, Inc., 270 N.L.R.B. 1330 (1984).

46. 394 U.S. at 436. The Court said that § 8(b)(1)(A) is not necessarily violated when a union rule has an impact beyond the confines of the union organization, provided that enforcement of the rule does not contravene a statutory labor policy. *Id.* at 432.

Scofield stands, in part, for the proposition that a union's power over the member is no greater than the union-member contract. NLRB v. Granite State Joint Bd., 409 U.S. 213, 217 (1972). The key to the Court's decision, therefore, was the member's freedom

NLRB v. Granite State Joint Board[47] tested the voluntary nature of the union-member relationship. In *Granite State* a union sought to enforce a rule that punished employees for returning to work during a strike.[48] The Court applied the *Scofield* test and concluded that a member's lawful resignation dissolves the union-member relationship.[49] To support this conclusion, the Court also relied on the contract principles of the union-member relationship established in both *Allis-Chalmers* and *Scofield*.[50] The Court concluded that when a resigned member later engages in conduct proscribed by a union rule, union attempts to enforce fines against the resigned member for this conduct constitute an unfair labor practice.[51]

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to leave the union and avoid the obligations of the union-member contract. 394 U.S. at 430. The Court asserted that where the union has imposed no restrictions on its members' resignations, "the validity of § 7 requires that the member be free to refrain in November from the actions he endorsed in May and that his § 7 rights are not lost by a union's plea for solidarity." *Granite State*, 409 U.S. at 217-18. *See supra* note 21 and accompanying text.

Given this power of choice, the member could not complain of restraint or coercion within the meaning of § 8(b)(1)(A). 394 U.S. at 435-36. The Court pointed out that those members who are prevented from obtaining all that their collective-bargaining agreement has to offer have elected this condition in choosing to become and remain union members. If a member is unable to effect a change in the rule, nothing precludes him from leaving to earn what he can. *Id.* at 435.

47. 409 U.S. 213 (1972).

48. *Id.* at 214. Shortly after the union commenced an economic strike against the employer, the union held a meeting at which the membership resolved that any member aiding or abetting the employer during the strike would be subject to a $2,000 fine. *Id.*

49. *Id.* at 216-17.

50. *Id.*

51. *Id.* at 217. The union argued that employees waived § 7 rights by voting for the strike and authorizing strikebreaking fines. *Id.* The vote, the union urged, created a mutual reliance among union members, with each sharing in the duties and risks of a strike.

The rationale underlying the theory is that upon joining a union an employee enters into a contract, the terms of which are expressed in the union's constitution and bylaws. Summers, *supra* note 26, at 1054.

The Court dismissed this "waiver-estoppel" theory, ultimately placing the individual's rights above the union's institutional needs. 409 U.S. at 217-19. Unlike the lower court, the Supreme Court gave little weight to the fact that the resigning employees had participated in the vote to strike. *Id.* The waiver-estoppel theory, as applied in the union-member context, also recognizes the voluntariness of the union-member relationship. In doing so, however, it maintains that an individual cannot escape the obligations he freely entered into. As expected, unions assert this standard argument when attempting to enforce members' previous strike votes at some point in the future. *Id.* at 217. The NLRB does not consider the argument valid because the employee's right to resign, as it is guaranteed under national labor policy, outweighs legitimate interests of

Past NLRB rulings on unions' ability to restrict a member's right to resign have also favored the individual employee's rights.[52] According to the NLRB, these restrictions are prohibited under section 8(b)(1)(A).[53] The NLRB reached this conclusion by balancing con-

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the union. *See, e.g.*, Dalmo Victor II, 263 N.L.R.B. 984, 986 (1982), *enf. denied*, 725 F.2d 1212 (9th Cir. 1984); Neufield Porsche-Audi, Inc., 270 N.L.R.B. 1330 (1984).

The Court agreed with the NLRB that voluntariness means that an individual is free to leave the association when he or she can no longer accept its policies. The Court rationalized its position as follows:

> Events occurring after the calling of a strike may have unsettling effects, leading a member who voted to strike to change his mind. The likely duration of the strike may increase the specter of hardship to his family; the ease with which the employer replaces the strikers may make the strike seem less provident. We do not now decide to what extent the contractual relationship between the union and member may curtail the freedom to resign. But where, as here, there are no restraints on the resignation on members, we conclude that the vitality of Section 7 requires that the member be free to refrain in November from the actions he endorsed in May and that his Section 7 rights are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime.

409 U.S. at 217-18.

A subsequent application of *Granite State* occurred in Booster Lodge No. 405 v. NLRB, 412 U.S. 84 (1973). There, the Court reaffirmed the policy that absent any contractual restrictions on members' resignations from the union, they are free to resign at will. *Id.* In *Booster Lodge* a group of full union members had crossed the union's picket line to return to work. All employees in the group had resigned from the union either before or after returning to work. *Id.* at 85-86. The union imposed fines on all strikebreaking employees regardless of whether, or when, they had resigned. *Id.* at 86.

A unanimous Court held it an unfair labor practice for a union to seek court enforcement of fines imposed for strikebreaking activities by employees who have resigned from the union, even though the union constitution expressly prohibits members from strikebreaking. *Id.* at 85. Union constitutions generally define strikebreaking as crossing a picket line to accept employment in an establishment where a strike or lockout exists. *Id.* at 86.

The union argued that, as a matter of contract law, the union's constitutional provision imposing an obligation on its members to refrain from strikebreaking is binding because it was established while the employer was a member. *Id.* at 88-89. The Court rejected the argument because members were not put on notice that the "misconduct of a member" provision would be interpreted as imposing such an obligation on a resigned member. *Id.* at 89. The Court stated that an implied post-resignation commitment would no more be found in this fashion than it will be from an employee's participation in the strike vote and ratification of penalties in *Granite State*. *Id.* at 89-90.

52. In the NLRB's view, § 8(b)(1)(A) prohibits these restrictions. *See, e.g.*, Dalmo Victor II, 263 N.L.R.B. 984 (1982), *enf. denied*, 725 F.2d 1212 (9th Cir. 1984); Neufield Porsche-Audi, Inc., 270 N.L.R.B. 1330 (1984).

53. Despite previous decisions in which the NLRB took the view that neither of these two interests is absolute, the NLRB's decision in *Pattern Makers' League* indicates that an employee's right to refrain, particularly the right to resign, is absolute. *See supra* note 48 and accompanying text.

flicting principles of labor law. The NLRB has ultimately held that the employee's freedom to pursue his individual interests is paramount to the union's interest in being an effective representative for its members.[54]

Two Circuit Courts reviewing NLRB invalidation of a union's contractual restriction on a member's freedom to resign have taken conflicting approaches. Applying a contract law approach, the Ninth Circuit[55] denied enforcement of the NLRB's order and upheld a union-member agreement that conditioned the members' freedom to resign on their promise not to break the strike.[56] The court ruled that members who broke the rule breached their membership contract with the union. Imposing a fine on these members was a reasonable, if not the only, means of union contract enforcement.[57] In a similar case, the Seventh Circuit[58] adopted the NLRB's position, holding that the section 7 right to refrain from union activities included the members' unqualified right to resign from the union.[59]

The Supreme Court resolved the conflict between the Seventh and Ninth Circuits in *Pattern Makers' League of North America v. NLRB*.[60] In determining whether a union may restrict its members' right to resign, the Court reasoned that NLRB decisions are entitled to

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54. *See Neufield Porsche-Audi*, 270 N.L.R.B. 1333-34. At least two members of the NLRB refuted the notion that the NLRB's decisions have been the result of "balancing competing rights" of the individual and the union. *See* Dalmo Victor II, 263 N.L.R.B. 984, 991 (Chairman Van de Water and Member Hunter, concurring). Stating the equation as a balance, they asserted, implicitly equates the employee's express § 7 rights with a union's institutional interest in strike solidarity. *Id.* at 990. Framed in this fashion, the equation ignores the fact that what is involved is not a conflict between competing "rights":

> [T]he express Section 7 rights of employees are surely more than mere "interests" subject to limitation because their operation somehow impinges upon the institutional desires of a union. Conversely, a union's institutional *interests* . . . have never been elevated to the point where they stand on equal footing with, and, indeed, override and negate the fundamental protections of Section 7.

Id. at 991. A NLRB majority adopted the *Dalmo Victor II* concurrence in *Neufield Porsche-Audi*, 270 N.L.R.B. 1330-34.

55. Dalmo Victor II, 263 N.L.R.B. 984 (1982), *enf. denied*, 725 F.2d 1212 (9th Cir. 1984).

56. 725 F.2d at 1218.

57. *Id.*

58. Pattern Maker's League of North America v. NLRB, 265 N.L.R.B. 1332 (1982), *enforced*, 724 F.2d 57 (7th Cir. 1983).

59. *Id.* at 61.

60. 105 S. Ct. 3064 (1985).

deference because the Court had traditionally yielded to NLRB decisions on whether union fines "restrained or coerced" employees and because the NLRB had consistently construed section 8(b)(1)(A) to prohibit the imposition of fines on employees whose resignations were invalid under union constitution.[61] The Court began by distinguishing *Allis-Chalmers* and *Granite State*, reasoning that neither case involved a provision like League Law 13, which restricted a member's right to resign.[62] In the Court's opinion, League Law 13 forbade union members resignations, thereby frustrating the congressional policy of voluntary unionism implicit in section 8(a)(3).[63] The Court reasoned that because section 8(a)(3) eliminated compulsory full union membership as a condition of employment, an employee's decision to resign and give up his full union membership must also remain unimpeded.[64] The Court then refuted the union's assertion that the voluntary unionism policy was not contravened simply because the employees' employment rights were not impaired.[65]

The remainder of the Court's opinion addressed the union's three primary arguments.[66] First, the union maintained that League Law 13 was merely a rule aimed at the retention of membership within the meaning of section 8(b)(1)(A)'s proviso.[67] The Court, however, rejected the union's reading of the proviso.[68] Rather, the Court asserted

61. *Id.* Such deference is appropriate in view of the "special competence" the NLRB holds in the field of labor relations. *See* NLRB v. Boeing Co., 412 U.S. 67, 74-75 (1973) (a consistent and contemporaneous construction of a statute by the agency charged with its enforcement is entitled to great deference by the courts). *See also* Allis-Chalmers Mfg. Co. v. NLRB, 388 U.S. 175 (1967); Scofield v. NLRB, 394 U.S. 423 (1969).

62. 105 S. Ct. at 3068. The Court's earlier finding in *Allis-Chalmers* that Congress disclaimed an intent to interfere with unions' internal affairs does not indicate that Congress intended to authorize such restrictions. *Id.*

63. *Id.* at 3071. *See supra* notes 2, 51 and accompanying texts.

64. 105 S. Ct. at 3070.

65. *Id.* at 3071. The Court was not persuaded by the union's argument that because the employee was not discharged, League Law 13 did not interfere with the employee's employment rights. In the Court's opinion, a union has not left a "worker's employment rights inviolate when it exacts [his entire] paycheck in satisfaction of a fine imposed for working." *Id.* (quoting Wellington, *supra* note 2, at 1023).

66. 105 S. Ct. at 3071-76.

67. *Id.* at 3072.

68. *Id.* The Court pointed out that the union's interpretation would authorize any union restriction on the right to resign. *Id.* at 3071 n.19. The Court also refuted the dissent's view that restrictions on resignation would not be permitted if they "furthered none of the purposes of collective action and self-organization." *Id.* at 3084 n.5. "This

that the proviso contemplates only those rules providing for admission and expulsion.[69] Second, the union contended that the Act's legislative history shows that Congress made a conscious decision not to protect union members' rights to resign.[70] The union referred to the Senate's omission of a detailed bill of rights from a House bill that contained a provision making any restriction on a member's right to resign an unfair labor practice.[71] The Court concluded, however, that Congress included the "right to resign" in the original House bill as a means of protecting workers unable to resign because of "closed shop" agreements.[72] The Act's elimination of the "closed shop" made an explicit provision protecting the right to resign unnecessary.[73]

Finally, the union argued that labor unions should be allowed the same power to restrict the right to resign other voluntary associations are permitted under common law.[74] The Court found that the union's reading of *Granite State* was incorrect.[75] Although the Court acknowledged that past opinions, including *Granite State*, were consistent with the common law rule,[76] it noted that common law doctrines should not

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limitation is illusory," the Court noted, for such restrictions will always enhance a union's collective bargaining power. *Id.* at 3072 n.19.

69. *Id.* at 3072. The Court read the legislative history to illustrate Congress' intent to insulate, from the proscriptions of § 8(b)(1)(A), rules addressing admission or expulsion. *Id. See* 93 CONG. REC. 4271 (1947). The Court found confirmation of this fact in the legislative history of the Labor Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended in scattered subsections of 29 U.S.C. § 401 (1982)).

70. 105 S. Ct. at 3073.

71. The interpretive dispute between the majority and the dissent centered on the House report, which stated that the specific prohibitions of that section were "omitted . . . as unfair labor practices." H.R. CONF. REP. No. 510, 80th Cong., 1st Sess. 46 (1947). The majority interpreted the report as having merely an advisory purpose, informing House members that the detailed prohibitions had been removed from the bill. 105 S. Ct. at 3073. The dissent contended that the only permissible interpretation of that language is an unequivocal rejection on the merits of those detailed prohibitions, leaving unions to impose restrictions on resignations. *Id.* at 3084. The dissent disputed the majority's finding that omission of the "right to resign" provision represents the House's concession for having gained proscription of the closed shop. In the dissent's view, this illustrates the Senate's willingness to prohibit the closed shop but its unwillingness to impose contractual conditions on the relationship between the union and its members. *Id.*

72. 105 S. Ct. at 3073. *See supra* note 71 and accompanying text.

73. 105 S. Ct. at 3073. *See supra* note 2 and accompanying text.

74. 105 S. Ct. at 3074. *See supra* note 51 and accompanying text.

75. 105 S. Ct. at 3074-75.

76. *Id.* at 3075.

determine the validity of restrictions on the right to resign.[77] Despite common law doctrine, the Court reaffirmed that the NLRB's interpretation of the Act warrants deference from the judiciary.[78] The Court held, accordingly, that the NLRB was justified in concluding that, by restricting the right to resign, League Law 13 contravened the Act's policy of voluntary unionism.[79]

Justice Blackmun's dissent offered a different interpretation of the Act's legislative history and adopted a rigid contract theory to analyze the parties' competing rights and obligations.[80] Justice Blackmun began his analysis with the proviso to section 8(b)(1)(A),[81] classifying League Law 13 as a legitimate internal union rule aimed at acquiring and retaining union membership.[82] The dissent described two distinct kinds of union rules which the Court had previously distinguished under the proviso. The first type included reasonable rules representing members' voluntarily incurred obligations. The second type included rules utilizing the employer's power over the employee's employment status to coerce the employee.[83] In the dissent's view, League Law 13 did not fall within the proscribed second category of rules.[84] Rather, it represented a valid exercise of the union's power to govern itself as a voluntary association.[85]

The dissent's second major departure from the majority involved the

77. *Id.*

78. *Id.* at 3076.

79. *Id.* at 3070. Justice White concurred, stating that the relevant sections of the Act and their legislative history were susceptible to either parties' construction. Deference to the Board was, therefore, not only appropriate but necessary because the agency is responsible for administering the Act and its interpretation in the instant case was a permissible one. *Id.* at 3076-77.

80. *Id.* at 3077-85. *See supra* notes 68-71 and accompanying text.

81. 105 S. Ct. at 3077.

82. *Id.* at 3078-79. *See supra* note 68 and accompanying text.

83. 105 S. Ct. at 3078. In its second category, the dissent recognized those rules that would be in violation of § 8(b)(2). The dissent failed, however, to include those rules interfering with an employee's employment status, and thus invalid under the *Scofield* test. *See supra* notes 43-46 and accompanying text.

84. 105 S. Ct. at 3078. The dissent determined that League Law 13 did not in any way affect the employee-employer relationship:

> An employee who violates the rule does not risk losing his job, and the union cannot seek an employers' coercive assistance in collecting any fine that is not imposed. The rule neither coerces a worker to become a union member against his will, nor affects an employee's status as an employee under the Act.

Id. at 3079.

85. *Id.*

majority's position that League Law 13 contravenes the federal labor policy of voluntary unionism. Justice Blackmun felt that Congress shielded members' employment rights from a union's disciplinary rules when it banned "closed shops."[86] According to the dissent, the exclusive means by which an employee's employment rights are impaired is union inducement of the employer to use his or her influence to enforce union rules against employees.[87] Absent this effect, union rules do not interfere with the policy of voluntary unionism.[88]

The dissent finally argued that union membership is a freely chosen membership in a voluntary association.[89] Justice Blackmun placed great weight on the union's legitimate interest in imposing conditions of membership, like League Law 13, on its members.[90] Blackmun expressed specific concern over members' interest in the right to strike and members' reliance on the reciprocal decisions of fellow workers to honor the strike.[91] Justice Blackmun maintained that Congress did not intend that the right to refrain guaranteed under section 7 should be interpreted to impede the right to strike.[92] The dissent emphasized the union's need to be able to adopt reasonable means to insure that the organization's collective and voluntary decision to strike would not be

86. *Id.* at 3080-81. The dissent viewed § 8(a)(3) and the proviso to § 8(b)(1)(A) as having two fundamentally different purposes. With the adoption of § 8(a)(3), the only means by which unions could interfere with an employee's employment rights (employer assistance in enforcing union rules) was removed. *Id.* at 3082. Section 8(b)(1)(A)'s proviso assures all membership associations the basic right to establish their own membership rules. For the dissent, League Law 13 does not implicate § 8(a)(3), but instead represents an enforceable commitment. *Id.* The dissent characterizes the majority's understanding of voluntariness as the freedom from enforceable commitment which threatens the union's power to act collectively. *Id.* at 3081.

87. *Id. See supra* notes 83-86 and accompanying text.

88. 105 S. Ct. at 3081.

89. 105 S. Ct. at 3082.

90. *Id.* Referring to League Law 13's evident objective of sustaining a united front, the dissent stated:

> Such a rule protects individual union members' decisions to place their own and their families' welfare at risk in reliance on the reciprocal decisions of their fellow workers, and furthers the union's ability to bargain with the employer on equal terms, as envisioned by the Act. As such, the rule comports with the broader goals of federal labor policy, which guarantees workers the right to collective action and, in particular, the right to strike.

Id.

91. *Id. See supra* note 29 and accompanying text.

92. 105 S. Ct. at 3082. Justice Blackmun relied on § 163 of the Act, which provides: "Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to

subverted.[93] On balance, the dissent viewed the individual's interest in resigning to return to work as subordinate to the union's interest in solidarity. Justice Blackmun concluded that solidarity could be achieved only through the collective membership's reciprocal promise that membership conditions will be honored.[94]

The Court's decision in *Pattern Maker's League* reaffirms a central tenet of labor law—that the union-member relationship is a voluntary one. Congress' abolition of the closed shop conclusively supports the Court's finding that this fundamental policy of labor law, which the Court characterized as "voluntary unionism," protects an unqualified right to resign.[95] The Court correctly recognized that Congress' elimination of compulsory full union membership as a condition of employment removed the need for an express provision in the Act preserving the right to choose or reject full membership.[96] Implicit in the Court's

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strike, or to affect the limitations or qualifications on that right." 29 U.S.C. § 163 (1982).

The dissent found a certain fundamental fairness in a union rule restricting a member's right to resign during a strike. 105 S. Ct. at 3082. The majority, on the other hand, noted that the NLRB's decision preserved the right to strike. Those who wish to strike may still do so. What the NLRB and the Court are outlawing are those forms of "restraint and coercion as would prevent people from going to work if they wished to go to work." 105 S. Ct. at 3072. *See* 93 CONG. REC. 4436 (1947) (remarks of Senator Taft).

93. 105 S. Ct. at 3079. The dissent referred to the "snowball effect" that results when an increasing number of members return to work. A typical response to the "snowball" argument is to point out the disincentives of resigning one's membership. As one commentator notes:

> The decision to resign and abandon a strike is not one which the individual employee will make lightly. By resigning the individual loses the right to participate in union meetings at which policies are determined, the right to vote in union elections for officers of the organization which acts as his exclusive representative, and the right to run for those offices himself. Moreover, he may lose all the fringe benefits attached to union membership. Finally, the resignee subjects himself to the social stigma of having abandoned his fellows in the midst of their battle.

Millan, *supra* note 15, at 265.

94. 105 S. Ct. at 3082. *See supra* note 2 and accompanying text.

95. *See supra* note 71 and accompanying text.

96. The Court's decision avoids the impractical and harsher consequences of giving the Act's "acquisition and retention of membership" language a literal reading. First, any rule the union should wish to prescribe could be designed to fit such an interpretation. Second, for the Court to conclude otherwise would be inconsistent with two historical mandates of labor law: (1) Congress' intent that the Act works for the primary benefit of the individual employees, who collectively make up the union; and (2) the cardinal principal of *Scofield* that members must be "free to leave the union and escape the rule."

reasoning is its recognition of the employee's inferior bargaining position relative to the union's when the two parties are forming the terms of their relationship.[97]

The Court's decision in *Pattern Makers' League* is consistent with prior case law. The Court uses the dichotomy of internal and external enforcement of union rules established in *Allis-Chalmers*. Reiterating its belief that the Act recognizes two degrees of union membership, full members and dues-paying only members, the Court permitted enforcement of reasonable sanctions only against full members. The Act's guarantee to unions that they may freely govern their "internal" affairs does not authorize restrictions on the right to resign. In addition, the policy of voluntary unionism in *Pattern Makers' League* fortifies the *Scofield* test's second prong, thus clarifying the Act's guarantee to employees that they shall have an absolute right to choose between the two levels of membership.

Without question, the Court's decision potentially reduces the force of a union's strike option in terms of bargaining power, particularly when the union is small and more sensitive to losses in membership. Although the individual prevailed against the union in *Pattern Maker's League*, the union's power to govern its internal affairs as the employees' exclusive bargaining agent and the right to strike are preserved. Considering the financial and social disincentives a member faces when deciding to resign union membership,[98] it is premature to conclude that *Pattern Makers' League* completely undermines the union's primary collective-bargaining weapon, the power to strike.

The result in *Pattern Makers' League* promotes the Act's original intent to provide a vehicle through which individual employees can shape their own employment relations.[99] The fact that the decision is split, however, suggests that there is no clear consensus regarding what forms of deterrents or incentives unions may adopt to discourage a member's decision to resign short of interfering with a member's right to resign. *Pattern Makers' League* clearly makes it more difficult for

97. *See supra* notes 26, 51 and accompanying text.

98. *See supra* note 93 and accompanying text.

99. The contract theory is ill-suited for application to the union-member relationship. First, the terms of a union-member relationship are established and amended pursuant to a majority rule vote, while a standard contract requires assent by all parties to the agreement. Second, nowhere does the Act refer to the union-member relationship as being contractual in nature or that its provisions can be modified or waived through union-member agreements.

labor organizations to achieve parity with employers when engaged in collective bargaining.

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