Vanderbilt Law Review

Volume 12
Issue 3 *Issue 3 - Symposium on Professional Negligence*

Article 17

6-1959

Rights and Remedies of Members in Internal Union Controversies in the Southern Jurisdictions

Fred Graham

RIGHTS AND REMEDIES OF MEMBERS IN INTERNAL UNION CONTROVERSIES IN THE SOUTHERN JURISDICTIONS*

There is a traditional reluctance on the part of judges to involve the courts in the internal affairs of labor unions. Consequently, a judge will often pause in the course of an opinion adjudicating a union controversy with an aside to the effect that:

> Of course, it is well understood that courts are indisposed to interfere with the internal management of an unincorporated, voluntary association as is here involved. We have held that the right of a voluntary association to interpret and administer its own rules and regulations is as sacred as the right to make them, and there is no presumption against just and correct action or conduct on the part of its supervising or appelate authorities and tribunals. However . . . .[1]

By such statements the courts pay homage to the institutional ancestor of the present-day labor unions—the clubs and churches which were governed by the law applicable to voluntary associations. But since the modern union is neither strictly voluntary nor primarily social, very often the courts will follow such a disclaimer by directly intervening in the union's internal affairs.[2] The result is a large and apparently growing number of situations in which the courts will intervene. A study of the Southern cases indicates a tendency of the courts to lag in certain areas of this development (possibly because of the low volume of cases) to the point that courts will sometimes fail to give relief to a wronged union member where courts in regions which have experienced more union litigation would intervene. But in general the authority in the Southern jurisdictions is in line with the prevailing doctrines of internal union intervention.

The cases fall generally into two classes. One group concerns questions of the naked right to belong—*i.e.*, matters of discriminatory exclusion and expulsion from membership. The remedies and procedures applicable to these situations are relatively well-defined; often the injured member wants only pecuniary damages, and, if equitable relief is necessary, it can be carried out by a simple order to admit the wronged party.

---

* This note was originally prepared as a research paper for the seminar in Legal Problems of Regional Economic Development at Vanderbilt University School of Law. The Southern states included in the study are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

1. Local 57, Brotherhood of Painters v. Boyd, 245 Ala. 227, 16 So. 2d 705, 711 (1944). See generally DANGEL & SHRIBER, THE LAW OF LABOR UNIONS 208-11 (1941); WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS § 58 (2d ed. 1923); Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993 (1930).

2. *E.g.*, Local 57, Brotherhood of Painters v. Boyd, *supra*, at 713.

The second group of cases concerns situations where the complaining parties are secure in their membership, but seek court intervention to compel the union officials to conduct union business in a certain way. This obviously raises serious considerations, both of the right of a voluntary association to be free from judicial intermeddling and of the wisdom of judicial involvement in sensitive intra-union disputes.

Exclusion and Expulsion

Legally, there is a basic difference in result between exclusion from membership and expulsion from a labor union. As voluntary associations, labor unions may refuse to admit any person for any reason.[3] This is said to be subject to the limitation that a closed union shall not coincide with a closed shop,[4] but a recent Tennessee case,[5] upholding the right of a "father and son"[6] union to exclude outsiders despite the fact that non-members were obviously being barred from work, illustrates the reluctance of courts to force admission even in these situations. However, this freedom may be abridged by statute, and eighteen states have passed acts forbidding discriminatory exclusions of applicants from union membership.[7] While the federal courts will act to prevent unions from signing collective bargaining agreements which discriminate against excluded workers in the bargaining unit,[8] at present they will not command the union to admit workers who are in the unit but are denied membership because of their race, religion or national extraction.[9] Since none of the Southern states have passed fair employment practices acts and federal relief is not available, there is no judicial redress in these states for discriminatory exclusion from membership.

Contrariwise, once a worker has been admitted to a union, he acquires membership rights which the courts will protect against wrongful expulsion. Aside from the fact that he very probably will

3. See Dangel & Shriber, The Law of Labor Unions, *op. cit. supra* note 1, at 168-70.

4. See James v. Marinship Corp., 25 Cal. 2d 721, 155 P.2d 329 (1944); Summers, *The Right to Join a Union*, 47 Colum. L. Rev. 33 (1947).

5. Bryan v. International Alliance, 306 S.W.2d 64 (Tenn. App. 1957).

6. Local unions which give first preference in membership to relatives of existing members are often called "father and son" locals.

7. None of the Southern states have enacted fair employment practices legislation. For a detailed discussion of the statutes in effect, see 3 Race Rel. L. Rep. 1085 (1958). Query: Assuming a jurisdiction was subject to a statute which prohibited discrimination on the basis of race, and assuming also that it followed the attitude of the *Bryan* case toward "father and son" unions, could not a union refuse to admit a Negro on the ground that he was not a son of one of the members?

8. Steele v. Louisville & N. R.R., 323 U.S. 192 (1944).

9. Oliphant v. Brotherhood of Locomotive Firemen, 156 F. Supp. 89 (N.D. Ohio), *cert. denied*, 355 U.S. 893 (1957), *aff'd*, 262 F.2d 359 (6th Cir. 1958), *cert. denied*, 27 U.S. L. Week 3249 (U.S. March 10, 1959). The court said: "In view of the abstract context in which the questions sought to be raised are presented by this record, the petition for certiorari is denied."

not be allowed to work without his union status,[10] the member may lose accrued health, pension, burial, and other benefits as a result of his expulsion. These losses are always compensable in damages.

Actions for Damages

A member may be legally expelled for violating any of the provisions in the constitution, by-laws or rules of the union for which expulsion is the punishment, or for conduct which violates the objects of the union.[11] Workers expelled for other reasons may sue for damages,[12] basing their cause of action on any one or more of several grounds.

Defamation: If the union wrongfully expels a member and procures his discharge by communicating the fact of his expulsion to the employer, a cause of action for libel[13] or slander[14] will lie, on the theory that the expulsion action is a nullity and the plaintiff is, in truth, still a member of the union. However, plaintiffs have tended to come to grief using this theory in the Southern jurisdictions because of the traditional limitations of a defamation action and the fact that the damage does not arise from the falsity of words but from the pressures used to procure the discharge. The artificiality of this theory was pointed out by an opinion of the Louisiana Supreme Court which required proof of malicious intent by the union officials, although this is an immaterial element in a true defamation action.[15]

Conspiracy: The expelled member may join several individuals in an action in tort for conspiring to cause his expulsion.[16] This again misses the point when the bulk of the damages arise from the loss of employment, because the plaintiff must still prove a causal connection between the conspiracy and the discharge. Also, the conspiracy in itself is not a true tort, and the plaintiff must still prove a wrongful act in his expulsion from membership.

Wrongful expulsion: The relation between union and member is one of contract, based on the provisions of the constitution and by-laws. When a member has been expelled in violation of these provisions, he

10. The cases indicate this is true in many industries in the Southern states, despite the fact that all but one of the Southern states (Kentucky) have "right to work" laws. See note 18 *infra.*

11. See DANGEL & SHRIBER, THE LAW OF LABOR UNIONS, *op. cit. supra* note 2, at 194.

12. The general topic of union liability for unlawful expulsion is discussed in Annot., 62 A.L.R. 315 (1929).

13. *E.g.,* Jones v. Hanson, 220 La. 673, 57 So. 2d 224 (1952).

14. *E.g.,* Dukes v. Brotherhood of Painters, 191 Tenn. 495, 235 S.W.2d 7 (1950), 26 A.L.R.2d 1223 (1952).

15. Jones v. Hanson, note 13 *supra.* See also PROSSER, TORTS 593-94, 601-02 (2d ed. 1955).

16. *E.g.,* Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, 186 Ga. 811, 199 S.E. 146 (1938); Edgar v. Southern Ry., 213 S.C. 445, 49 S.E.2d 841 (1948); Gallop v. Sharp, 179 Va. 335, 19 S.E.2d 84 (1942). See generally 12 VAND. L. REV. 958 (1959).

can recover his losses in an action for breach of the contract. If there is a union-security contract and he loses his job as a result of the expulsion, he can also recover for lost wages.[17]

Procuring breach of contract: The widespread adoption of "right-to-work" statutes in the South[18] has created an anomalous situation with respect to wages lost as a result of union expulsion. Most of these statutes are drawn to prohibit "any firm, person, corporation or association of any kind . . ."[19] from excluding a worker from employment for non-membership in a union. Although the wording might bear a broader interpretation, it is construed to give no right of action against the offending union.[20] The new Louisiana statute specifically provides a civil remedy for violation of the act, and adds "labor organization" to the list, apparently avoiding the result obtained in the other jurisdictions.[21] The existence of these statutes can make it more difficult for the worker to recover from the union for his loss of wages, since it declares that he shall not lose his employment as a result of union expulsion. Thus, he cannot allege simply expulsion resulting from breach of contract, with consequent loss of employment under a union security agreement between the union and employer. The Tennessee Supreme Court was faced with this problem in *Dukes v. Brotherhood of Painters,*[22] where the plaintiff based his suit on a slander theory but failed to allege either words slanderous *per se* or special damages. The court held that the gravamen of the action was the tort of procuring the discharge of another, so that the union plaintiff was liable to the lost wages, despite the fact that the employer could have discharged him at any time without liability.

These theories of recovery apply equally to actions at law for damages,[23] and as incidental relief in proceedings for mandamus,[24] re-

17. *E.g.,* Brotherhood of Locomotive Eng'rs v. Green, 210 Ala. 496, 98 So. 569 (1923); Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, *supra;* Schneider v. Local 60, United Ass'n of Journeymen Plumbers, 116 La. 270, 40 So. 700 (1906).

18. ALA. CODE ANN. tit. 26, §§ 375(1)-(7) (Supp. 1958); ARK. STAT. ANN. § 81, 202 (1947); FLA. CONST. DECL. OF RIGHTS, § 12 (Supp. 1958); GA. CODE ANN. §§ 54-901 to -908 (Supp. 1958); MISS. CODE ANN. § 6984.5 (Supp. 1958); N.C. GEN. STAT. §§ 95-78 to -84 (Repl. 1958); S.C. CODE § 40-46 to -46.11 (Supp. 1958); TENN. CODE ANN. §§ 50-210 to -212 (1956); VA. CODE ANN. §§ 40-68 to -74 (Repl. 1953). The Louisiana statute covers only agricultural workers. LA. REV. STAT. ANN. §§ 23:881-89 (Supp. 1958). See generally, Powell, *The Right to Work Laws,* 15 FED. B.J. 54 (1955); Woll, *State Anti-Union Security Laws—A Tragic Fraud,* 15 FED. B.J. 68 (1955).

19. TENN. CODE ANN. § 50-210 (1956).

20. *E.g.,* Dukes v. Brotherhood of Painters, 191 Tenn. 495, 235 S.W.2d 7 (1950), 26 A.L.R.2d 1223 (1952).

21. LA. REV. STAT. ANN. § 23:886 (Supp. 1958).

22. See note 20 *supra.* See also Annot., 26 A.L.R.2d 1227 (1952); Evans v. Swaim, 245 Ala. 641, 18 So. 2d 400 (1944).

23. *E.g.,* Brotherhood of Locomotive Eng'rs v. Green, 210 Ala. 496, 98 So. 569 (1923); Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, 186 Ga. 811, 199 S.E. 146 (1938); Edgar v. Southern Ry., 213 S.C. 445, 49 S.E.2d 841 (1948); Gallop v. Sharp, 179 Va. 335, 19 S.E.2d 84 (1942).

24. *E.g.,* Monroe v. Colored Screwmen's Benev. Ass'n, 135 La. 893, 66 So. 260 (1914).

ceivership,[25] or injunction.[26] Upon the theory that the plaintiff should be put in the same position as that in which he would have been had he not been excluded from membership, he may recover for the loss of membership privileges as well as lost wages.[27] As a general rule the plaintiff must attempt to mitigate damages,[28] and deductions will be made for dues that would have been paid during the expulsion period.[29] Membership losses include participation in higher earnings resulting from collective activity,[30] cancelled insurance policies, and other accrued benefits.[31] In proper cases the plaintiff may be awarded punitive damages,[32] compensation for mental anguish,[33] and attorney fees.[34]

Granted that well-settled grounds for recovery exist, there remain isolated procedural and theoretical defenses which may apply to bar recovery in these cases. A particularly objectionable one originates from the common law concept that unincorporated associations are legal nonenties and therefore cannot sue or be sued in the civil courts. There appears to be no practical reason for continuing to apply the rule, and Alabama, Florida, North Carolina, South Carolina, Tennessee and Virginia have abolished it by statute.[35] The Kentucky courts reluctantly applied the rule for years before finally abolishing it in 1948 by judicial fiat.[36] Arkansas, Georgia, Mississippi and Louisiana still follow the old rule.[37] When specific relief is required this situation

25. *E.g.*, Nyland v. United Bhd. of Carpenters, 156 La. 604, 100 So. 733 (1924).

26. *E.g.*, Local 57, Bhd. of Painters v. Boyd, 245 Ala. 227, 16 So.2d 705 (1944); Bonham v. Brotherhood of Railroad Trainmen, 146 Ark. 117, 225 S.W. 335 (1920); Edrington v. Hall, 168 Ga. 565, 148 S.E. 403 (1929); Schneider v. Local 60, United Ass'n of Journeymen Plumbers, 116 La. 270, 40 So. 700 (1906).

27. Some of the cases indicate that expelled members are undershooting by suing only for actual wages lost to the time of the suit. By analogy to the cases of employees suing for breach of contract of employment where the trial precedes the expiration of the term, the worker should be compensated for probable loss of future wages. 5 WILLISTON, CONTRACTS §§ 1361-62 (rev. ed. 1937).

28. *E.g.*, Malloy v. Carroll, 287 Mass. 376, 191 N.E. 661 (1934). *But see* Brotherhood of Railroad Trainmen v. Barnhill, 214 Ala. 565, 108 So. 456 (1926) (when suing for promised strike benefits, plaintiff did not have to allege an attempt to find work to mitigate damages, since he had a vested right in the strike fund).

29. *E.g.*, Malloy v. Carroll, *supra*.

30. *E.g.*, Edrington v. Hall, 168 Ga. 565, 148 S.E. 403 (1929).

31. *E.g.*, Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, 186 Ga. 811, 199 S.E. 146 (1938).

32. *E.g.*, Local 57, Bhd. of Painters v. Boyd, 245 Ala. 227, 16 So.2d 705 (1944); Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, *supra;* Schneider Local 60, United Ass'n of Journeymen Plumbers, 116 La. 270, 40 So. 700 (1906).

33. *E.g.*, Malloy v. Carroll, 287 Mass. 376, 191 N.E. 661 (1934).

34. *Ibid;* Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, *supra* note 31.

35. ALA. CODE ANN. tit. 7, § 142 (1940); FLA. STAT. ANN. § 447.11 (1952); N.C. GEN. STAT. § 1-69.1 (Supp. 1957); S.C. CODE § 10-429 (1952); TENN. CODE ANN. § 20-223 (1956); VA. CODE ANN. § 40-74.4 (Supp. 1958).

36. Jackson v. International Union of Operating Eng'rs, 307 Ky. 485, 211 S.W.2d 138 (1948) (officers represent the union under the class suit theory).

37. Baskins v. United Mine Workers, 150 Ark. 398, 234 S.W. 464 (1921);

is relatively unimportant, since the individual officers can be ordered to do or cease from doing the proscribed activity. But it is an inexcusable disadvantage to the worker whose injury resulted from the power of the union as an entity, but must rely on the assets of the individual wrongdoers for relief.[38]

Another defense frequently raised is that the plaintiff has not exhausted administrative remedies available within the union organization. While this is always a pertinent defense to an equitable action, most courts hold that it should not be a prerequisite to a suit for damages.[39] Many of the cases which require exhaustion of internal remedies fail to distinguish between damage suits and equitable intervention, and sometimes internal exhaustion is required because damages would necessitate a receivership or other equitable relief.[40] The most convincing argument for court relief (when the claim is for damages alone) is that the unions do not provide an internal remedy to exhaust.[41]

Actions for Reinstatement

A suit for reinstatement is in effect a plea for court review of the union's action of expulsion. Generally speaking, a court may interfere if (a) the conduct for which the member was expelled was not, or for policy reasons cannot be, a punishable offense by the union laws; or

---

Spence v. The Woodman Co., 213 Ga. 573, 100 S.E.2d 435 (1957); Varnado v. Whitney, 166 Miss. 663, 147 So. 479 (1933). In Louisiana a union can be sued only for debts incurred for the benefit of the association. LA. CIV. CODE ANN. art. 446 (1952), LA. REV. STAT. ANN. § 13.3471(22) (1950); State *ex rel.* Doone v. General Longshore Workers, 61 So. 2d 747 (La. App. 1952).

38. Professor Chafee reasoned that the association should not have to pay damages for wrongful expulsion, since the members who voted against expulsion would thereby be punished with the guilty parties. Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993 (1930). However, Professor Chafee dealt with associations as if they were a homogeneous group of institutions, without distinguishing the peculiar problems of labor unions, and he seemed to be thinking of "associations" in the sense of clubs and churches. Actually, a distinct body of law applicable to labor unions seems to be developing, evidenced by the large amount of literature on the subject, and the fact that the courts cite largely labor union cases and resort to other association authority only when there are no established labor union precedents.

39. *Compare* Brotherhood of Locomotive Eng'rs v. Green, 210 Ala. 496, 98 So. 569 (1923); Bonham v. Brotherhood of Railroad Trainmen, 146 Ark. 117, 225 S.W. 335 (1920); and Walker v. Grand Int'l Bhd. of Locomotive Eng'rs, *supra* note 31 (no exhaustion of remedies required), *with* Nyland v. United Bhd. of Carpenters, 156 La. 604, 100 So. 733 (1924) (plaintiff must exhaust internal remedies). The requirement for exhaustion of internal remedies is discussed in detail at pp. 895-96 *infra*.

40. *E.g.*, Nyland v. United Bhd. of Carpenters, *supra*, where the plaintiff requested a receiver to take over the union's assets.

41. See Brotherhood of Locomotive Eng'rs v. Green, *supra* note 23, at 572. *Cf.* Wilson v. Miller, 194 Tenn. 390, 250 S.W.2d 575 (1952) (plaintiff sought accounting, court excused his failure to resort to ineffectual internal audit procedure).

(b) if the proceeding was so defective as to render the tribunal's decision void.[42]

The case of *Schneider v. Local 60, United Ass'n of Journeymen Plumbers*[43] is a leading case for the first proposition. The plaintiffs had been expelled in a proper proceeding for resisting the union's efforts to control their votes as members of the city plumbing board. The court granted a decree of reinstatement on the grounds that the union's disciplinary power extends only to lawful orders and the plaintiffs were justified in disobeying. More difficult cases arise when the workers' conduct is not so clearly outside the pale of legitimate union control. Typical of this situation was *Edrington v. Hall*,[44] where the Georgia Supreme Court considered the propriety of the common union rule which prohibits criticism of the organization's leaders, and held for the member on the ground that the union cannot arbitrarily restrict his freedom of speech. In similar situations the Arkansas[45] and Louisiana[46] courts have held that unions may legally expel members for this offense.

If the plaintiff alleges a defect in the expulsion action, he must show that his conduct was not against the union's rules; or that the expulsion procedure violated the union's constitution or by-laws; or that the procedure, while technically proper, did not afford him a fair hearing. The courts are not picayune about requiring procedural niceties, as has been indicated by the Alabama Supreme Court:

> The constitution, laws, and regulations of such associations are in the nature of a contract between it and its members, and they, as well as the association, are bound thereby; and the expulsion of a member, if for cause within the jurisdiction of the tribunal of the association by which it is pronounced, after notice and opportunity to be heard and a trial conducted in accordance with the constitution, laws and regulations of the association, is conclusive upon the civil courts. But, as we have previously observed, the courts are largely in accord that such associations must act in good faith.[47]

---

42. See Annot., 21 A.L.R.2d 1397 (1952). See generally Chamberlin, *The Judicial Process in Labor Unions*, 10 BROOKLYN L. REV. 145 (1940); Cox, *The Role of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609, 613-20 (1959); Kovner, *The Legal Protection of Civil Liberties Within Unions*, 1948 WIS. L. REV. 18; Wellington, *Union Democracy and Fair Representation: Federal Responsibility in a Federal System*, 67 YALE L. REV. 1327 (1958); Comment, 45 YALE L.J. 1248 (1936).

43. 116 La. 270, 40 So. 700 (1906).

44. 168 Ga. 565, 148 S.E. 403 (1929). *Cf.* Underwood v. Maloney, 14 F.R.D. 222 (E.D. Pa. 1953) (member granted equitable relief despite initiation contract not to sue union).

45. Love v. Brotherhood of Locomotive Eng'rs, 139 Ark. 375, 215 S.W. 602 (1919).

46. Elfer v. Marine Eng'rs Beneficial Ass'n, 179 La. 383, 154 So. 32 (1934).

47. Local 57, Bhd. of Painters v. Boyd, 245 Ala. 227, 16 So. 2d 705, 711 (1944). *Cf.* Jetton-Dekle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 590 (1907) (court enjoined union from intimidating non-union painters, but refused to enjoin it from expelling members who worked with non-union men).

In the final analysis, the element of good faith is the decisive factor in most of the cases. Although it is often said that "a court will not review the case on its merits though it may review the form of the proceedings. . . ."[48] The fact is that the courts must review the merits to the extent necessary to determine good faith, and, since there is no written record of the union proceeding, the parties often get a trial *de novo* before the courts.[49]

The element of good faith has also become the determining factor in what was once a formal prerequisite to specific relief—the requirement that the member exhaust all administrative remedies within the union before resorting to the courts. In theory this requirement was calculated to give the union an opportunity to correct its own mistakes, and to ease the burden on the courts, but in practice the unrealistic procedures offered by the unions were the source of much hardship. Typically the union requires the member to appeal the local's action to the international president or executive board, and then make a final appeal to the international union's convention.[50] This involves a long delay without work for the expelled member, and often the appellate bodies are controlled by the faction which caused the member's expulsion.[51]

As a result the courts have developed a series of exceptions which have all but eliminated the rule. Thus, if the appeal would be futile[52] or would cause oppressive delay,[53] or if the union's action was outside its jurisdiction,[54] the ousted member may go to court, even in violation of an express agreement to exhaust internal remedies.[55] Professor Summers points out that this approach allows courts to justify inter-

48. DANGEL & SHRIBER, THE LAW OF LABOR UNIONS 211 (1941). *Accord,* MCCLINTOCK, EQUITY § 161 (2d ed. 1948).

49. *E.g.,* Holmes v. Brown, 146 Ga. 402, 91 S.E. 408 (1917); State *ex rel.* Curtis v. Stevedore's and Longshoreman's Benev. Ass'n, 43 La. Ann. 1098, 10 So. 169 (1891). *Compare* Wilson v. Miller, 194 Tenn. 390, 250 S.W.2d 575 (1952), *with* Liming v. Maloney, 32 Tenn. App. 632, 225 S.W.2d 276 (1949).

50. See Chamberlain, *The Judicial Process in Labor Unions,* 10 BROOKLYN L. REV. 145, 153-56 (1940).

51. The United Auto Workers union has adopted a novel system of internal appeals in an attempt to correct these weaknesses. The plan provides for (a) the selection of the local union trial committees by lottery rather than by election, and (b) a Public Review Board of outstanding citizens, which gives the members an external appellate tribunal and avoids the delays inherent in the convention system. See *External Review of Union Internal Actions,* CHAMBERLAIN, SOURCEBOOK ON LABOR 208 (1958).

52. *E.g.,* Wilson v. Miller, 194 Tenn. 390, 250 S.W.2d 575 (1952).

53. *E.g.,* Local 4, Nat'l Organization of Masters v. Brown, 258 Ala. 18, 61 So. 2d 93 (1952) (delay of two years); Local 57, Bhd. of Painters v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944) (delay of two months).

54. *E.g.,* Edrington v. Hall, 168 Ga. 565, 148 S.E. 403 (1929) (plaintiffs alleged the union was "acting without its scope"); State *ex rel.* Willis v. General Longshore Workers, 202 La. 277, 11 So. 2d 589 (1942) (plaintiff was expelled without a trial, court held there were no proceedings for the internal tribunals to review).

55. See Note, 1954 WASH. U.L.Q. 440, 441-47.

vention "in all cases where the union has acted wrongfully," and reports that out of more than two hundred New York cases, only twenty were dismissed for failure to exhaust remedies.[56] The Southern jurisdictions have not been so liberal. Out of twenty-nine cases found involving pleas for specific internal intervention, seven were dismissed for failure to comply with this requirement. A close analysis of these cases indicates that the courts require detailed allegations of specific union abuses, and not mere accusations of wrongful or fraudulent conduct.[57] In only one case did the court persist in the exhaustion requirement in the face of detailed allegations of arbitrary actions by the union leadership.[58] On the other hand, the courts apply the other side of the good faith coin and require the member to exhaust his remedies in lieu of bad faith, even if the expulsion procedure was irregular and the result harsh.[59]

Usually the specific relief sought is an injunction in equity. Experience has shown that a plea for reinstatement invariably fulfills the prerequisites for equitable jurisdiction, since the expelled member can always show that his injury is irreparable and his legal remedy inadequate. As for the requirement that a property interest be involved, the plaintiff need only recite the loss of some membership benefit.[60] Thus, the courts have held union insurance benefits,[61] burial and pension benefits,[62] seniority rights,[63] participation in higher wages procured through collective bargaining,[64] and the right to work[65] to be property rights justifying equitable intervention.

If the union is incorporated the plaintiff may obtain specific relief

56. Summers, *Judicial Settlement of Internal Union Disputes*, 7 BUFFALO L. REV. 405, 410 (1958).

57. Stanton v. Harris, 152 Fla. 736, 13 So. 2d 17 (1943); Nyland v. United Bhd. of Carpenters, 156 La. 604, 100 So. 733 (1924).

58. Elfer v. Marine Engineers Beneficial Ass'n, 179 La. 383, 154 So. 32 (1934).

59. Bonham v. Brotherhood of Railroad Trainmen, 146 Ark. 117, 225 S.W. 335 (1920) (member expelled for committing adultery with his brother's wife was not allowed to testify at union hearing); Bradford v. Grand Int'l Bhd. of Locomotive Eng'rs, 188 La. 819, 178 So. 362 (1937) (international union was in good faith but used irregular procedure in reversing convention decision favorable to plaintiff); Bryan v. International Alliance, 306 S.W.2d 64 (Tenn. App. 1957) (plaintiffs had been informally notified by international officer that their appeal would be denied).

60. One study disclosed only five recorded cases in which the requisite property rights were not found by the courts. Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1052 n.11 (1951).

61. *E.g.*, Edrington v. Hall, 168 Ga. 565, 148 S.E. 403 (1929); Bonham v. Brotherhood of Railroad Trainmen, 146 Ark. 117, 225 S.W. 335 (1920).

62. *E.g.*, Holmes v. Brown, 146 Ga. 402, 91 S.E. 408 (1917); Elfer v. Marine Eng'rs Beneficial Ass'n, 179 La. 383, 154 So. 32 (1943).

63. *E.g.*, Gregg v. Starks, 188 Ky. 834, 224 S.W. 459 (1920). *Contra*, Shaup v. Grand Int'l Bhd. of Locomotive Eng'rs, 223 Ala. 202, 135 So. 327 (1931).

64. *E.g.*, Edrington v. Hall, 168 Ga. 565, 148 S.E. 403 (1929).

65. *E.g.*, Adair v. United States, 208 U.S. 161 (1908); Local 4, Nat'l Organization of Masters v. Brown, 258 Ala. 18, 61 So. 2d 93 (1952).

by a writ of mandamus,[66] but the existence of this remedy does not preclude equitable relief.[67] Mandamus is not a proper remedy when the union is unincorporated.[68] Certiorari is not available because the decision of a union tribunal cannot be treated as a judgment of a legal tribunal.[69]

Court Regulation of Internal Matters

If the complaining party is secure in his membership but seeks court intervention to force union officials to conduct the organization's affairs in a certain way, he is in an entirely different position from the expelled member seeking reinstatement. Since the worker's job is not at stake, his controversy with the union leadership takes on more of the aspects of an intrachurch or club wrangle. Also, these internal matters tend to be much more complicated than expulsion cases, and the courts must consider the correspondingly reduced effectiveness of their intervention and the wisdom of involving the courts in sensitive intra-union controversies.

The Southern cases bear out the increased reluctance of the courts to intervene in non-expulsion situations.[70] Even in actions for damages they are much less likely to give a judgment for the member. Here the courts are faced with impressive theoretic difficulties inherent in the member-association relationship. For instance, is not the member in a situation analogous to that of the partner suing the partnership, thereby suing himself? The courts have not been so doctrinaire.[71]

They have responded, however, to the argument that the membership contract requires the surrender of certain rights—even property rights—to the group. Thus, in *Brotherhood of Raiload Trainmen v. Williams*[72] the plaintiffs, former members of a local which had had its charter revoked for an illegal strike, were thwarted in their attempt

66. *E.g.*, Medical & Surgical Soc. v. Weatherly, 75 Ala. 248 (1883); State *ex rel.* Curtis v. Stevedore's & Longshoreman's Benev. Ass'n, 43 La. Ann. 1098, 10 So. 169 (1891).

67. *E.g.*, Local 57, Bhd. of Painters v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944) (mandamus considered an inadequate remedy at law for purposes of establishing equity jurisdiction because it was "too slow").

68. *E.g.*, Francis v. Scott, 260 Ala. 595, 72 So. 2d 98 (1954); Holmes v. Brown, 146 Ga. 402, 91 S.E. 408 (1917).

69. Pratt v. Rudisule, 249 App. Div. 305, 292 N.Y. Supp. 68 (1936).

70. Court Decisions on Internal Union Controversies in the Southern Jurisdictions

	member	*union*
Expulsion		
Damages	5	3
Specific Relief	3	5
Internal Affairs		
Damages	1	3
Specific Relief	4	17

71. Grand Int'l Bhd. of Locomotive Eng'rs v. Couch, 236 Ala. 611, 184 So. 173 (1938); Varnado v. Whitney, 166 Miss. 663, 147 So. 479 (1933).

72. 211 Ky. 638, 277 S.W. 500 (1952).

to recover purely local funds which had been taken over by the international union. The court held that

> such societies may, by the adoption of a constitution or other general rules, determine finally the property rights and interests of a member or of a subordinate lodge. . . .[73]

The Alabama Supreme Court reasoned likewise when a member sued for accrued strike benefits promised in his initiation contract.[74] However, if the union is guilty of bad faith, the courts will act to protect even less substantial property rights, as did the Louisiana Supreme Court when it awarded a union officer damages for salary lost as a result of his removal without a hearing.[75]

When the plaintiff asks for specific relief his chances are even less promising. In internal matters the union's discretion seems to be unlimited, as long as it is exercised in good faith. Thus, a Kentucky court recently upheld a union in its refusal to arbitrate the individual rights of an employee.[76] Without considering the merits of the particular worker's grievance, the court held that the union's discretion was limited only by its duty to act fairly and without hostile discrimination among the employees.[77] Much litigation has centered around the authority of a union to change seniority policies and thus retroactively affect the seniority positions of the workers. Here the courts are almost unanimous in holding that seniority rights are not vested contractual or property rights justifying the court's intervention, and therefore the union can modify these rights at any time, as long as it is not guilty of fraud or bad faith.[78] Likewise, the courts will not act to prevent a union from disciplining its members under its rules,[79] nor

73. *Id.* at 503.

74. Brotherhood of Railroad Trainmen v. Barnhill, 214 Ala. 565, 108 So. 456 (1926). *Cf.* Bryan v. International Alliance, 306 S.W.2d 64 (Tenn. App. 1957).

75. State *ex rel.* Willis v. General Longshore Workers, 202 La. 277, 11 So. 2d 589 (1942).

76. Renzi v. Oertel Brewing Co., 36 CCH LAB. CAS. ¶ 65,118 (Jefferson, Ky. Cir. Ct. C.A. 1958).

77. *Cf.* Grand Int'l Bhd. of Locomotive Eng'rs v. Couch, 236 Ala. 611, 184 So. 173 (1938) (union did not abuse its discretion in refusing to press the grievance of an employee fired for insulting female railroad passengers).

78. Steele v. Louisville & N. R.R., 245 Ala. 113, 16 So. 2d 416 (1944); Shaup v. Grand Int'l Bhd. of Locomotive Eng'rs, 223 Ala. 202, 135 So. 327 (1931); Louisville & N. R.R. v. Bryant, 263 Ky. 578, 92 S.W.2d 749 (1936); Cannon v. Brotherhood of Railroad Trainmen, 262 Ky. 113, 89 S.W.2d 620 (1935); Aulich v. Craigmyle, 248 Ky. 676, 59 S.W.2d 560 (1933); McGregor v. Louisville & N. R.R., 244 Ky. 696, 51 S.W.2d 953 (1932); Haynes v. United Chemical Workers, CIO, 190 Tenn. 165, 228 S.W.2d 101 (1950); McClure v. Louisville & N. R.R., 16 Tenn. App. 369, 64 S.W.2d 538 (1933). *Contra,* Piercy v. Louisville & N. R.R., 198 Ky. 477, 248 S.W. 1042 (1923), 33 A.L.R. 322 (1924). See generally Christenson, *Seniority Rights Under Labor Union Working Agreements,* 11 TEMPLE L.Q. 355 (1937); Annot., 142 A.L.R. 1055 (1942).

79. Miami Federation of Musicians v. Wompearce, Inc., 76 So. 2d 298 (Fla. 1954); Harper v. Hoecherl, 153 Fla. 29, 14 So. 2d 179 (1943); Jetton-Dekle Lumber Co. v. Mather, 53 Fla. 969, 43 So. 590 (1907).

will they enjoin union action merely on the allegation that it is irregular or not clearly authorized by the constitution or bylaws.[80]

Although there are few reported cases in which Southern courts have intervened in purely internal matters, all the jurisdictions acknowledge the power to interfere, and they have not been timid when exercising this power. Thus, in *Wilson v. Miller*,[81] the Tennessee Supreme Court joined the ranks of the few courts that have authorized court-supervised union elections. A rank-and-file member of the operating engineers alleged that the officers of a Memphis local were systematically robbing the treasury, holding crooked elections and terrorizing the members. The court waived the necessity for exhausting internal remedies, authorized an accounting, and ordered the election. Also, in two recent cases the Alabama Supreme Court has upheld intervention in internal union matters. In *Local 4, Nat'l Organization of Masters v. Brown*[82] it abolished a union hiring hall system which was clearly inconsistent with the union's agreement with the employer. In *Francis v. Scott*[83] the court held that the Journeymen Barbers International union had acted in violation of its constitution in revoking the charter of a local union and attempting to dictate pricing policies, and ordered the international to return all rights of membership to the local.

The most extreme form of judicial intervention into union affairs is the receivership device, whereby the court appoints a receiver to take over the assets of the union and manage its affairs until the internal organization is purged of corrupt influences. Such drastic relief is never granted unless there is imminent danger of irreparable injury to the members which could not be dealt with by less extreme measures.[84] Although the relief granted in *Wilson v. Miller* was almost tantamount to a receivership, there have been no reported cases in the Southern jurisdictions in which a receivership was decreed in an internal dispute.[85] In *Nyland v. United Bhd. of Carpenters*[86] the Louisiana Supreme Court denied a request for a receiver on the grounds that the plaintiff had not exhausted his internal remedies. The rationale of the case seems erroneous, since the prevailing view is that a delay in such an emergency situation would be in effect a

80. Bradford v. Grand Int'l Bhd. of Locomotive Eng'rs, note 59 *supra;* Local 76, United Bhd. of Carpenters v. United Bhd. of Carpenters, 143 La. 901, 79 So. 532 (1918) (international union acted under authority of ambiguous constitutional provision).

81. 194 Tenn. 390, 250 S.W.2d 575 (1952).

82. 258 Ala. 18, 61 So. 2d 93 (1952).

83. 260 Ala. 595, 72 So. 2d 98 (1954).

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

85. *But cf.* District 21, United Mine Workers v. Bourland, 169 Ark. 796, 277 S.W. 546 (1925) (court appeared to accept theory of receivership but denied relief because unincorporated association could not be a party).

86. 156 La. 604, 100 So. 733 (1924).

denial of any remedy.[87] But the probable reason for the decision was that the plaintiff alleged merely general mismanagement, and failed to state such specific serious grounds to justify a receivership.

STATE STATUTORY REGULATION

Two Southern states, Alabama and Florida, have statutes on the books which purport to regulate some of the internal affairs of labor unions.[88] However, a close study of these laws indicates that they were motivated more by the desire to obstruct unionism than to regulate it for the protection of the members, and they have been singularly ineffective in practice.

The Alabama statute[89] requires local unions to file copies of their constitutions and by-laws, and requires detailed annual financial reports to be submitted to the Department of Labor and the membership. The penalty for violation is a maximum fine of one thousand dollars. The weakness of the act is that there is no machinery to insure that copies of the financial statement are actually distributed to the members, where it might be of some value, and the state officials have no way of knowing whether or not it is being complied with. There have been no prosecutions for violations of this statute.[90]

Florida has enacted a rather confusing assortment of regulatory provisions,[91] some of which appear to be geared toward obstructing union organization efforts, while others are calculated to protect members' rights. One section requires all unions to comply with certain registration formalities, and requires the licensing of all business agents. In addition, any prospective business agent must convince a licensing board that he is a citizen of the United States and a resident for more than ten years, that he has not been convicted of a felony, and that he is a person of good moral character. In *Hill v. Florida*[92] the United States Supreme Court held these provisions in conflict with the full freedom of choice guaranteed to workers by the National Labor Relations Act, and invalid to the extent that they prevent the union and the business agent from functioning as such

87. MATHEWS, LABOR RELATIONS AND THE LAW 932 (1953). See also Cosentino v. Goldman, 183 Misc. 539, 49 N.Y.S.2d 467 (Sup. Ct. 1944).

88. For a comparison of the various state statutes, see Aaron & Komaroff, *Statutory Regulation of Internal Union Affairs*, 44 ILL. L. REV. 425, 451-62 (1949).

89. ALA. CODE ANN. tit. 26, § 382 (Cum. Supp. 1955).

90. Letter from Olin B. Brooks, Director of Labor of the State of Alabama, to the *Vanderbilt Law Review*, Feb. 13, 1959.

91. FLA. STAT. ANN. §§ 447.01-.15 (1952).

92. 325 U.S. 538 (1945). Section 305 of the Kennedy bill before the 86th Congress is based on essentially the same theory as the Florida provision. It bars persons from holding union office who have been convicted of committing certain specified crimes, or who have failed to file the reports required by the bill. S. 505, 86th Cong., 1st Sess. (1959).

without compliance. Apparently both the Alabama and Florida statutes are valid in merely requiring the filing of information, and presumably Florida may still apply its full sanction to unions in intra-state enterprises which are not covered by the NLRA.

Since Alabama and Florida passed their statutes in 1943 the Taft-Hartley Act has imposed similar filing requirements on all unions subject to the NLRA.[93] Thus, each union must file with the Secretary of Labor copies of its constitution and by-laws, and a description of its internal organization and procedures. The unions must submit annual reports to the Secretary of Labor and to the members showing the source and amount of all receipts, total assets and liabilities, and the amount and purpose of all disbursements during the year. In practice, however, the unions have been able to get by with only vague disclosures of their financial transactions, and it is felt that the requirements have not had the desired effect of raising union accounting standards.[94]

The Florida statute includes three other provisions apparently calculated to protect rank-and-file workers' rights. Section 447.05 specifies that no initiation fee shall be in excess of fifteen dollars. Section 447.07 requires all unions to keep detailed financial records, and provides that members shall be allowed to inspect these records at all reasonable times. Section 447.09 attempts to preserve members' civil liberties by making it unlawful for any person:

> (1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

The act requires that the elections be by secret ballot.[95] There are no reported cases of prosecutions under any of these provisions, and it is obvious that they have added no significant rights for the protection of labor union members in any event, a study of existing and proposed federal legislation indicates that state legislation in these areas will soon be superseded or outmoded by federal law.

---

93. 61 Stat. 143 (1947), 29 U.S.C. § 159(f)-(h) (1952).

94. See Taft, *Internal Affairs of Unions and the Taft-Hartley Act*, 11 IND. & LAB. REL. REV. 352, 355-57 (1958).

95. Opponents of secret ballot requirements often point out that, while corrupt leaders can intimidate members in open elections, they can also juggle the results of unsupervised secret balloting. See Cox, *The Role of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609, 628-29 (1959).

EFFECT OF FEDERAL LEGISLATION

Until recently the shadow of federal pre-emption under the Labor Management Relations Act clouded the law of union membership rights. Since section 8(b)(2)[96] of the LMRA protects the worker who is denied admission to or expelled from a union, to the extent of barring the union from interfering with his employment, many expulsions are tantamount to unfair labor practices. But in 1958 the United States Supreme Court declared in *International Ass'n of Machinists v. Gonzales*[97] that, although the union's conduct may involve an unfair labor practice and potential NLRB action, a state court may award both damages and a reinstatement decree. The Court reasoned that a contract action for wrongful expulsion—since it carries a possibility of damages for mental and physical suffering—is a more comprehensive remedy than the reimbursement for lost wages possible under a NLRB decree. Therefore, the possibility of obtaining partial relief from the NLRB does not deprive the party of available state remedies for all damages suffered.[98]

The enactment of proposed federal legislation will almost certainly raise new pre-emption issues. However, it appears that the *Gonzales* case will not be disturbed, since none of the proposed acts include any provisions relating to exclusion or expulsion from membership. This area of litigation will remain primarily in state hands. Rather, the more noticeable impact of the new legislation will be in the area of internal union elections and trusteeships.

Both the Kennedy bill[99] and the Administration bill[100] require that internal union elections be by secret ballot, with various other safeguards specified. The Kennedy bill provides that a member may, after he has exhausted his internal remedies,[101] initiate proceedings through the Secretary of Labor to have the election declared invalid and a new election conducted. Section 303 makes exclusive the election remedies provided by the bill. The Administration bill, on the other hand, specifies that any violation of its election regulations which is not the subject of pending action by the Secretary of Labor may be the subject of an action in any court of competent jurisdic-

96. "It shall be an unfair labor practice for a labor organization or its agents . . . (2) to cause or attempt to cause an employer 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 and the initiation fees formerly required as a condition of acquiring or retaining membership," 61 Stat. 141 (1947), 29 U.S.C. § 158(b)(2) (1952).

97. 356 U.S. 617, 12 VAND. L. REV. 287 (1958).

98. *Id.* at 620-23.

99. S. 505, 86th Cong., 1st Sess. § 301 (1959).

100. S. 748, 86th Cong., 1st Sess. § 302 (1959).

101. This requirement is dispensed with if the union has not reached a final decision within four months. Section 302.

tion.[102] Thus the union members may enforce their rights created by the federal act through the speedy processes of the state courts, including the ability of the state courts to issue injunctions before a fraudulent election is held. It appears that the need for consistency would not be sufficient to justify pre-emption here, as long as inconsistencies in the state procedures do not undermine the federal program. Contrariwise, the pre-emption clause of the Kennedy bill might eliminate valuable state remedies and create a "no man's land" where no relief would be available.[103]

Both bills set up machinery for regulating trusteeships imposed on local unions, and both specify that existing remedies shall not be superseded. However, the non-statutory remedies available in state courts have proved to be awkward and largely ineffectual, and have been rarely used,[104] so these new rights will provide welcome added protection to the members. Both bills attempt to tighten up the filing requirements for financial reports, provide machinery to assure that members are given copies, and provide that the information may be published as public information.[105]

CONCLUSION

It is not surprising that the federal government is moving vigorously into the areas of internal union regulation in which the states have failed to develop effective remedies. However, there remains a vital role for the states to play in providing forums for the largest single class of cases—the expulsion controversies. The preceding review of the case law of the Southern jurisdictions indicates that the courts provide an expelled union member with adequate remedies at law and equity, consistent with the basic right of a union to be free from judicial interference in its good faith dealings with its members. As for the states with antiquated procedural methods, the most onerous objections could be removed by two acts of statutory streamlining:

(1) All the states should provide that unions may sue or be sued.

(2) The exhaustion of remedies muddle could be clarified by abandoning the system of *ad hoc* exceptions in favor of a stated period during which the union must provide internal review or surrender the controversy to the jurisdiction of the courts.[106]

---

102. S. 748, 86th Cong., 1st Sess. § 302(a) (1959).

103. See Summers, *The Role of Legislation in Internal Union Affairs,* 10 LAB. L.J. 115, 161 (1959).

104. See Cox, *The Role of Law in Preserving Union Democracy,* 72 HARV. L. REV. 609, 638-41 (1959).

105. S. 505, 86th Cong., 1st Sess. § 104 (1959), S. 748, 86th Cong., 1st Sess. § 209 (1959).

106. The Senate version of the Kennedy bill, passed since the text of this note was written, incorporated this principle into its "Bill of Rights of Mem-