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Labor Relations—Court Enforcement of Union Fines

In 1959 and 1962 the United Auto Workers called strikes against the Allis-Chalmers Manufacturing Company's plants at La Crosse and West Allis Wisconsin. During the strikes certain members of the union crossed the picket lines and continued to work. The union brought disciplinary actions against the strikebreakers by fining them in amounts ranging from $20 to $100. Some of the members refused to pay the fines and the union brought a test suit in a state court to collect them. Judgment for the fine was rendered in favor of the union. During the pendency of the state court appeal from that judgment, Allis-Chalmers brought a complaint before the National Labor Relations Board charging the union with commission of unfair labor practices in violation of section 8(b)(1)(A) of the National Labor Relations Act. The Board dismissed the case on the ground that even if the union action constituted coercion under section 8(b)(1)(A) it was excepted under the "Union Rules" proviso in the section. Allis-Chalmers then filed a petition for review with the United States Circuit Court of Appeals for the Seventh Circuit. The Court reversed and held that the union had committed an unfair labor practice. The Board then petitioned the United States Supreme Court for a writ of certiorari. Held, reversed by 5-4 decision. The imposition of a court enforceable fine is not an unfair labor practice in violation of section 8(b)(1)(A) of the National Labor Relations Act. National Labor Relations Board v. Allis-Chalmers Manufacturing Company, 18 L. Ed. 2d 1123 (1967).

This decision represents an attempt to resolve a conflict between section 8(b)(1)(A) of the National Labor Relations Act and the proviso to that section. Section 8(b)(1)(A) provides:

It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: 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...²

¹ 358 F.2d 656 (7th Cir. 1966).
In two recent cases the courts have upheld court enforcement of union fines imposed to punish employees for an infraction of internal discipline. In these two cases the courts relied somewhat upon the "contract theory" to support their holdings. The essence of the "contract theory" is that the relationship between the employee and his union constitutes a contract which can be judicially upheld. Previously the "contract theory" had been utilized, but not in actions concerning court enforcement of union fines.

In one of the recent cases a busdriver was fined for entering a dispatcher's office and answering the telephone. The court held that such conduct was in violation of a union prohibition, the fine related to purely internal affairs and could be enforced in the courts. In UAW v. Woychik a union member was fined for crossing his union's picket line during a strike. There the court upheld the validity of the fine on the ground that the constitution and by laws of the union calling for such a fine constituted a contract between the union and its members.

In those cases where the courts were unable to find an authorization for a fine in the contract between the employee and the union the enforcement of such fines has been denied. In United Glass Workers' Local 188 v. Seitz a union member was fined for violation of his agreement not to work behind a picket line. In the contract there was no provision for enforcing the fine other than suspension or expulsion. The court held that the fine could not be enforced in a civil proceeding.

In deciding the principal case, the Court partially relied upon the "contract theory" although it was not the controlling factor.

6 Id.
7 5 Wis. 2d 528, 93 N.W.2d 338 (1958).
8 65 Wash. 2d 640, 399 P.2d 74 (1965).
The Court recognized the fact that although the courts have been reluctant to interfere with internal union affairs, they have nonetheless done so in order to uphold the provisions of the contract between the employee and the union.\textsuperscript{10}

The dissent contended that the Court had utilized the "contract theory" to rationalize the vast difference between a fine enforced through the union and a fine enforced in the court. It argued that the "contract theory" is a legal fiction and that any imposition of such a fine is without merit.\textsuperscript{11} The feeling of the dissent on the validity of the "contract theory" was summarized: "[C]ongress did not intend to insulate union coercion from the literal language of § 8(b)(1)(A) merely because the union has secured a 'full' but involuntary contract from those it desires to coerce."\textsuperscript{12}

In the principal case, Allis-Chalmers had a union security clause in their contract with the union which made it mandatory that all company employees affiliate themselves with the union to the extent of paying dues. Thus, there was no disagreement between the majority opinion and the dissent over the fact that the employees had no choice but to join the union.\textsuperscript{13}

That a union security agreement cannot be used for any purpose other than to compel the payment of union dues and fees was pointed out by the dissent. This point is substantiated by the Supreme Court decision in \textit{Radio Officers' Union} v. NLRB,\textsuperscript{14} in which the Court held that section 8(b)(2)\textsuperscript{15} prohibits a union from forcing an employer to discharge an employee for failure to pay a fine. The Court further held in \textit{Radio Officers' Union} v.

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\textsuperscript{11} Id. at 1143 n. 6. The dissent quoted from Summers, \textit{Legal Limitations on Union Discipline}, 64 Harv. L. Rev. 1049, 1055-56 (1951):
\begin{quote}
The contract of membership is... a legal fabrication... what are the terms of the contract? The constitutional provisions... are so notoriously vague that they fall short of the certainty ordinarily required of a contract. The member has no choice as to terms but is compelled to adhere to the inflexible ones presented... [T]he union... retains the unlimited power to amend any terms at any time.... In short, membership is a special relationship. It is as far removed from the main channel of contract law as the relationship created by marriage. ...
\end{quote}
\textsuperscript{12} NLRB v Allis-Chalmers Mfg. Co., 18 L. Ed. 2d 1123, 1143 (1967).
\textsuperscript{13} Id. at 1147.
\textsuperscript{14} 347 U.S. 17, 41 (1953).
\begin{quote}
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
NLRB\textsuperscript{16} that a union shop clause could be used only to compel payment of "periodic dues and initiation fees." Thus the dissent in the principal case reasoned that by resorting to the courts to collect the fines, the union had placed its conduct in direct opposition to the Supreme Court's interpretation of the section 7\textsuperscript{17} union shop authorization.

The fact that the employees had failed to prove that they enjoyed anything other than full union membership was the basis for the Court's finding that the employees were not limited to the sole obligation of paying dues. In taking issue with this contention, the dissent pointed out that few if any employees were aware of the fact that they would have to limit their membership in order to avoid the punishment of court ordered fines.\textsuperscript{18} It also pointed out that even those employees who would be willing to acquire only a limited membership would not know how to do so.\textsuperscript{19}

In reaching its decision, the Court relied heavily on the legislative history of the Taft-Hartley Act. It attempted to point out that the use of court enforced fines was never specifically prohibited in the Act itself nor in the legislative testimony and discussion which preceded it. In developing its argument, the Court placed great emphasis on the fact that the debates and testimony preceding the passage of section 8(b)(1)(A) contained not a single word referring to any prohibitive effect on "traditional internal union discipline."\textsuperscript{20} The Court pointed out that the sponsors of

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against an employee is violation of subsection (a)(3) 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 and the initiation fees uniformly required as a condition of acquiring or retaining membership.

\textsuperscript{16} 347 U.S. 17 (1953).
\textsuperscript{17} Labor Management Relations Act (Taft-Hartley Act) § 7, 29 U.S.C. § 157 (1964):
Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all 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).
\textsuperscript{18} NLRB v. Allis-Chalmers Mfg. Co., 18 L. Ed. 2d 1133, 1147 (1967).
\textsuperscript{19} Id.
\textsuperscript{20} The dissent took issue with this point. It contended that in 1947, court enforced fines were neither traditional nor common-place. It reasoned that Congress was unfamiliar with such innovations as court enforced fines
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the bill assured the Congress that section 8(b)(1)(A) was not meant to regulate the internal affairs of the union.\(^2\) The Court supported its interpretation by pointing out that the internal union affairs regulations came in the Landrum-Griffin Act in 1959 after section 8(b)(1) was enacted in 1947.

The Court also noted that when Senator Pepper expressed fear that section 8(b)(2) might allow federal intervention into internal union affairs, he was reassured by Senator Taft that the proposed section would not limit the union in this respect. Senator Taft went on to explain that a union would still be allowed to discipline its own members.\(^3\) The only conduct, he explained, to be prohibited after the enactment of the bill would be that a union would not be allowed to cause an employer to discharge an employee for any reason other than for non-payment of union dues.\(^4\) Thus the Court stated that since section 8(b)(2) "insulated an employee's membership from his job,"\(^5\) it left the union free to discipline its members. According to the Court's reasoning, the statement of purpose outlined by Senator Taft was clear evidence that section 8(b)(1)(A) did not prohibit the union from using fines to discipline its members. This idea followed the premise that since the proviso to section 8(b)(1)(A) allows the union to prescribe its own rules in maintaining membership, the union will also be allowed to expel its members for breaking its rules.

In reaching its decision the Court took certain matters of policy into consideration. It recognized the fact that the union's strength is derived from its ability to bargain collectively. It also pointed out that if the union is to sustain its strength in this area, it is imperative that it be allowed to maintain discipline within its ranks. This is especially true with respect to a validly called strike, a union's most effective and most protected weapon. The majority undoubtedly felt that any rules and regulations which protected this union weapon were reasonable. It is then not too difficult to go one step further and say that court enforcement of fines levied for violation of reasonable union rules and regulations is not coercion.

and that their failure to distinguish between internally enforced and court enforced fines could not support the premise that Congress in 1947 "was unconcerned with the means' used to enforce its fines." NLRB v. Allis-Chalmers Mfg. Co., 18 L. Ed. 2d 1123, 1142 (1967).

\(^2\) Id. at 1131.

\(^3\) 93 Cong. Rec. 4193 (1947) (remarks of Senator Taft).

\(^4\) Id.

If this case stands for the proposition that section 8(b)(1)(A) cannot be used to regulate activities of unions against members, as it appears to do, then it is a unique interpretation which may have far-reaching effects.

By this decision, the union has gained a new source of strength and the employee has lost a great measure of his freedom to refrain from engaging in concerted union activities. The decision has the effect of placing in the hands of the union a powerful weapon which may be used to enforce their will upon the employee. Henceforth, the court enforced fine will no doubt deter a great deal of rebellion within the inner ranks of the union. It will certainly strengthen the union in its struggle against management. It may even have the long range effect of winning more benefits for the worker. But the worker may find that these new benefits are a poor substitute for the loss of individual freedom which he will suffer because of this decision.

Thomas M. Chattin

Legislation—Validity of Special Acts When A General Law Already Exists

The West Virginia Legislature passed a special act authorizing the Greenbrier County Court to create an airport authority to construct, maintain, and operate an airport. An airport authority was created and construction of an airport begun. To finance the construction of the airport, the airport authority authorized the sale of revenue bonds. The Secretary of the airport authority was the only officer empowered to sign the certificate authorizing the sale of the bonds; he refused to do so. The airport authority brought an original proceeding in mandamus to compel its Secretary to sign the certificate. Prior to this a citizen of Greenbrier County had instituted a civil action to have the act declared unconstitutional as contrary to article VI section 39 of the West Virginia Constitution. The trial court declared the special act valid. Held, reversed, writ denied. The existence of a general law relating to airports indicates that the Legislature recognizes that a general law is applicable to the subject. Therefore, since there is no doubt that a general law is applicable, the necessity for a special act is precluded, and the special act is void. The Legislature could