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Labor Law--Member's Right to Presence of Counsel in Union Hearing

David Ray Rexroad

West Virginia University College of Law

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Despite the statute the court held that the demurrer should have been sustained because the statement unexplained by innuendo was not defamatory and that the declaration alleged no state of facts which would justify the meaning the plaintiff was attempting to attach. This inconsistent position is noted in the opinion of City of Mullens v. Davidson, supra, but the Parker case was not overruled.

The language of Argabright v. Jones, 46 W. Va. 144, 32 S.E. 995 (1899) does not seem to fall within the statute. In this instance, the West Virginia Supreme Court reversed the decision because of failure to sustain a demurrer. The demurrer was grounded upon the theory that there was no basis for inferring that the statement applied to the plaintiff. In reversing the decision, the court said: "Looking, then, at the article as it appeared, we cannot say that it warrants the construction sought to be placed upon it by innuendoes." The added significance of the Argabright decision is that the factual situation is analogous to the type of case where the Illinois court has applied the innocent construction rule. The similitude involves an attempt by a plaintiff not a target of the defamation to attach defamatory meaning by innuendo.

These decisions seem to indicate a desire of the court to retain some control over construction despite the statute. Supporting this viewpoint is the following statement by the court in Alderson v. Kahle, 73 W. Va. 690, 80 S.E. 1109 (1914): "The defendant is not necessarily held to accountability for the use of words in their technical or even ordinary meaning." The language and actions of the West Virginia court are perhaps an indication that the court follows the Illinois doctrine in form if not in expressed theory.

Ellen Fairfax Warder

Labor Law—Member’s Right to Presence of Counsel in Union Hearings

P, a union member, sought injunctive relief and damages from an alleged denial of a "full and fair" hearing in a union disciplinary proceeding. He contended that it was impossible to have had a fair hearing because he was not permitted the presence of counsel from outside the union membership in his behalf. P further asserted that the sixth amendment to the United States Constitution guaran-
teed him procedural due process, which includes a right to have counsel present at the hearing. Held, complaint dismissed. The sixth amendment does not apply to hearings before labor unions. Furthermore, as the union constitution prohibits outside counsel from being present, P had no valid complaint upon which relief could be granted. Cornelio v. Metropolitan Dist. Council of Philadelphia and Vicinity, United Bhd. of Carpenters, 243 F. Supp. 126 (E.D. Pa. 1965).

The Labor-Management Reporting and Disclosure Act (LMRDA) provides that with respect to disciplinary proceedings, the constitution and by-laws of the union must not be inconsistent with the provisions of the act. A union member must demonstrate that the union constitution violates the LMRDA in order to get relief. The LMRDA further provides that no member shall be fined, suspended, expelled or otherwise disciplined unless he has been served with specific written charges, given a reasonable time to prepare his defense and afforded a "full and fair" hearing. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411 (Supp. V, 1959).

The union constitution and by-laws provide that the accused may appear before the trial committee either in person or by counsel (who shall be a member of the United Brotherhood) and shall be entitled to be present at all times when evidence is being presented. Constitution and Laws of the United Bhd. of Carpenters and Joiners of America § 56(I). This provision, in effect, prohibits a union member from having an attorney of his choice present at the hearing.

It is recommended in the AFL-CIO Codes of Ethical Practices that a member be given "fair" treatment in disciplinary proceedings. The Codes state, however, that no particular formality is required and that lawyers need not be used. AFL-CIO Codes of Ethical Practices, in Wollett & Aaron, LABOR RELATIONS AND THE LAW 85 (2d ed. 1960).

Based on the provisions of the union constitution, the LMRDA and the Codes of Ethical Practices, it is manifest that a valid decision was reached by the court in the principal case. Nevertheless, research has disclosed no cases deciding this precise point.

In the past, courts have been quite reluctant to interfere with the internal affairs of voluntary associations. Often a court decision
would only further embitter the feud. This is especially true of disputes within fraternal and church groups. Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1050-51 (1951). This same reluctance was early applied to labor union disputes. *Mayer v. Journeymen Stonecutters' Ass'n*, 47 N.J. Eq. 519, 20 Atl. 492 (1890).

But the courts gradually recognized that abuse of union power could impose hardships upon the members unless legal relief could be obtained. The courts consequently adopted two theories upon which to justify intervention. First, they determined that membership in a labor union is a property right and must be protected against unlawful interference. Second, they reasoned that membership in a union arises from a contract. Thus, any improper discipline is a breach of that contract for which the law will give relief. Summers, *supra* at 1051.

When the property rights of a union member are involved, he usually can get relief in a court. In an expulsion case, one court held that so long as the member is in good standing and has paid all dues and assessments, he has valuable rights which will be protected by the courts. *Spayd v. Ringing Rock Lodge*, 270 Pa. 67, 113 Atl. 70 (1921). Even when property rights are involved, however, the member must first exhaust his remedies within the union. The court will then take jurisdiction only of the questions affecting property rights directly involved. *Crutcher v. Eastern Div., No. 321, Order of Ry. Conductors*, 151 Mo. App. 622, 132 S.W. 307 (1910); *Elfer v. Marine Eng'rs Beneficial Ass'n*, 179 La. 383, 154 So. 32 (1934).

Still other courts disregard the "property right theory" and base their decisions on the "contract theory." Summers, *supra* at 1054. The rationale of this theory is that the member, when joining the union, agrees to be bound by the provisions of the constitution and by-laws of the union. He may consent to suspension or expulsion according to the provisions of his contract, but the courts will order him re-instated if he is disciplined in violation of the union constitution and by-laws. *Snay v. Lovely*, 276 Mass. 159, 176 N.E. 791 (1931). One court has held that even when property rights are involved, it will make no judicial decision if the constitution and by-laws by which the member had agreed to be governed stipulate

Usually the two theories are fused and form one theory. The thought is that the property rights are derived from the contract. Shadley v. Grand Lodge of Bhd. of R.R. Trainmen, 212 Mo. App. 653, 666, 254 S.W. 363, 365 (1923). Holders of rights guaranteed in the constitution and by-laws are entitled to the protection of the courts if there is a threat of impairment or destruction of these rights, as the member is dependent upon his good standing in the union for his livelihood. Dingwall v. Amalgamated Ass'n of St. Ry. Employees, 3 Cal. App. 453, 88 Pac. 597 (1906).

In the principal case, the decision was based upon the contract theory. In one sense, the decision was not without precedent. The Wisconsin court in State ex rel. Dame v. LeFevre, 251 Wis. 146, 28 N.W.2d 349 (1947), held that the due process clauses of state and federal constitutions do not apply to contracts between individuals. But perhaps it could be argued that a union member is swayed by coercion, especially in union shop states, when he enters into a union agreement and is not fully cognizant of all the consequences. It is conceivable that a union member would agree to almost anything in order to get a job. If so, perhaps he should be protected by federal and state constitutional safeguards in hearings arising from union employment.

Even if courts remain reluctant to extend constitutional guarantees to quasi-judicial proceedings, an indirect remedy may be close at hand. The federal government's anti-poverty program indicates a tendency to recognize the need for an attorney in many different types of judicial and quasi-judicial proceedings. Davis, Administrative Law 182 (1965 ed.); Paulsen, The Expanding Horizons of Legal Services-II, 67 W. Va. L. Rev. 267 (1965). It seems reasonable to suggest that someday "outside" counsel may be available to assist indigent union members at union disciplinary hearings. If so, perhaps the unions will re-examine their "full and fair" hearing requirements and alter their procedures to take advantage of the situation. It is possible that in the future no one will be denied the presence of counsel in any trial or trial-type atmosphere.

David Ray Rexroad