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LABOR LAW - UNINCORPORATED UNIONS AS ENTITIES FOR THE PURPOSE OF BEING MADE PARTIES DEFENDANT

Rex B. Martin
University of Michigan Law School

LABOR LAW — UNINCORPORATED UNIONS AS ENTITIES FOR THE PURPOSE OF BEING MADE PARTIES DEFENDANT—Union officials wrongfully discharged plaintiffs from the union. Plaintiffs, being unable to procure employment in a "closed-shop" trade, asked for a writ of mandamus to direct defendants, as representatives of the association, to reinstate plaintiffs and recompense them for damages suffered. *Held*, that a reinstatement order and a damage judgment against the union should be granted. *Nissen v. International Brotherhood of Teamsters, etc.*, (Iowa, 1941) 295 N. W. 858.

Historically courts of law would not permit a suit against an unincorporated union in its common or association name.[1] As such organizations grew in size and power, made important contracts, committed torts causing excessive damages and assumed many of the attributes of corporations,[2] courts began to search for methods by which the association could be held an entity. Assuming that public policy would favor the adoption of the rule that voluntary associations, particu-

[1] Baskins v. United Mine Workers, 150 Ark. 398, 234 S. W. 464 (1921); Grand International Brotherhood of Locomotive Engineers v. Green, 206 Ala. 196, 89 So. 435 (1921). While the general principles apply to all types of associations, this note is written chiefly to show the status of unions when made party defendants in suits.

[2] Consider the enormous importance of the collective bargaining contracts of some of the unions. In United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 42 S. Ct. 570 (1921), a union of approximately 450,000 persons was concerned in a $600,000 damage action.

larly trade unions, were entities capable of being sued, several theories are suggested upon which that result might be based. At an early date equity allowed *representative suits* against individuals on behalf of the whole membership.[3] Unfortunately this method of reaching union funds is limited to disputes over which equity has jurisdiction, since law courts do not recognize the class-suit doctrine.[4] The *Coronado Coal Co.* decision indicated that an association may be treated as a unit where it is recognized as such by statute.[5] This view has prevailed in the federal courts, but has not been completely followed in the state tribunals.[6] This theory would necessitate the continuance of the common-law doctrine until state statutes have become numerous and specific enough in their recognition of association unity to permit the courts to rule that such groups are really entities. Some courts are committed to the proposition that an association's action as a group lends itself to *estoppel* when the association later pleads that it is not an entity.[7] This theory approaches the basis of the *Coronado* case and differs only in that it relies on the actual position of the unions, while the *Coronado* decision relied on legislative pronouncements. Estoppel is also closely analogous to the basis on which *"de facto" corporations* may be held liable. Corporations not properly formed may become "persons" in the eyes of the courts because others rely on their apparent resemblance to "de jure" corporations.[8] Estoppel can be satisfactorily applied to contract cases, but is difficult to use in the field of torts where the factor of reliance is almost impossible to prove. Where estoppel

[3] Oster v. Brotherhood of Locomotive Firemen & Enginemen, 271 Pa. 419, 114 A. 377 (1921); Maisch v. Order of Americus, 223 Pa. 199, 72 A. 528 (1909); Branson v. Industrial Workers of the World, 30 Nev. 270, 95 P. 354 (1908).

[4] Baskins v. United Mine Workers, 150 Ark. 398, 234 S. W. 464 (1921).

[5] United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 42 S. Ct. 570 (1921). See Sturges, "Unincorporated Associations as Parties to Actions," 33 YALE L. J. 383 (1924).

[6] District No. 21, United Mine Workers v. Bourland, 169 Ark. 796, 277 S. W. 546 (1925).

[7] Fitzpatrick v. Rutter, 160 Ill. 282, 43 N. W. 392 (1896). Clark v. Grand Lodge of Brotherhood of Railroad Trainmen, 328 Mo. 1084 at 1104, 43 S. W. (2d) 404 (1931), states, "We think also that the doctrine of estoppel might well be applied to a case like this. The association, having over one hundred thousand members with regularly constituted officers and a perfect working organization, has the appearance, form, and method of doing business of a corporation or legal entity. It has chosen a name and does business as a legal entity under and by use of that name. It holds itself out as capable of contracting in that name and by that name does enter into insurance contracts and in that name collects the premiums and accumulates the funds to meet such contract obligations. When sued on such contracts in the name which it has used in making same, it ought not be allowed to say that it is a mere myth—an intangible non-entity incapable of being sued."

[8] Reynolds v. St. John's Grand Lodge, A. F. & A. M., 171 La. 395 at 399, 131 So. 186 (1930), "There is no reason in law or in equity why persons who are associated together under color of lawful authority as a corporation and deal as such with a stranger to the corporation cannot be estopped from disputing the fact that it is properly incorporated." See also 7 MINN. L. REV. 42 (1922).

fails, the doctrine of *waiver* might apply.[9] If a group adopts a common name, exerts a common pressure, seeks rights for itself as an organization, and refers to itself as a unit, it can reasonably be argued that it has waived any right to disclaim its unity to escape paying for any harm caused by the organization.[10] Any method which permits the association funds to be applied to meet a judgment which could not have been executed against every individual member, however, is in derogation of the common law. At common law no member's interest in the fund could be reached separately because his interest was not a possessory or an individual one.[11] Yet if every member were liable, each could be held for the whole debt.[12] The present tendency is to hold each member liable only for damages he actually caused, and to hold the joint funds liable for any association action though every member did not approve of it. This view does not necessitate indiscriminate recoveries against unions for all wrongs of its officials or individual members.[13] The principles of agency would still apply and authorization or ratification of a union official's actions may be harder to prove than corporate approval of directorate action.[14] The principal case reflects the growing utilization of the representative suit to procure damage judgments against union funds.[15] The court properly applied the representative suit test,

[9] While this is seldom expressed directly by the courts, it would explain cases where the unions were held liable although it would be difficult to show any reliance on union unity. Pandolfo v. Bank of Benson, (C. C. A. 9th, 1921) 273 F. 48.

[10] Referring to an unconstitutional statute which made unincorporated unions suable entities, the court in Syz v. Milk Wagon Drivers' Union, (Mo. App. 1930) 24 S. W. (2d) 1080 at 1082 said, "But the defendant union, being a voluntary association having powers and privileges not possessed by individuals or partnerships, is a suable entity without the aid of said statute."

[11] 7 C. J. S. 69 (1937): "By becoming a member of an association a person ordinarily acquires, not a severable right to any of its property or funds, but merely a right to the joint use and enjoyment thereof so long as he continues to be a member. Accordingly, the rights of an individual member are not transmissible by assignment on his part during his lifetime. So long as he remains a member of the association, however, he has an absolute right, which the courts will protect, to have its property and funds controlled and administered according to its organic plan, and to participate in its affairs in harmony therewith." Local Union No. 1, Textile Workers v. Barrett, 19 R. I. 663, 36 A. 5 (1896); Branagan v. Buckman, 67 Misc. 242, 122 N. Y. S. 610 (1910).

[12] Nolan v. McNamee, 82 Wash. 585 at 587, 144 P. 904 (1914): "the liability of the members of a voluntary association is joint and several, and that each member is individually liable for all of the debts of the association to third parties."

[13] The City of Reading, (D. C. Pa. 1900) 103 F. 696; Coney v. Brennan, 167 N. Y. S. 903 (S. Ct. 1917).

[14] Sweetman v. Barrows, 263 Mass. 349 at 355, 161 N. E. 272 (1928), quoted in Malloy v. Carroll, 287 Mass. 376 at 391, 191 N. E. 661 (1934): "Mere membership in a voluntary association does not make all the members liable for acts of their associates done without their knowledge or approval." For a full discussion of this point, see 38 COL. L. REV. 454 (1938).

[15] The court's order here directed the union officials to deposit all union funds they had or might in the future acquire with the clerk of court until sufficient monies had been deposited to satisfy the judgment.

but gave no thought to the difficult problem of the "principal-agent" relationship between the union and the officials. Any limitation on the old common-law view to permit suit against unions as entities would appear more equitable if the courts at the same time applied agency principles more strictly.[16]

Rex B. Martin

[16] See generally 37 MICH. L. REV. 141 (1938) and Dodd, "Dogma and Practice in the Law of Associations," 42 HARV. L. REV. 977 at 1007 ff. (1929).