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LABOR LAW - LIABILITY OF LABOR UNION TO MEMBER FOR MODIFICATION OF COLLECTIVE AGREEMENT NEGOTIATED WITH EMPLOYER

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LABOR LAW — LIABILITY OF LABOR UNION TO MEMBER FOR MODIFICATION OF COLLECTIVE AGREEMENT NEGOTIATED WITH EMPLOYER — Plaintiff, a married woman, was a member of an unincorporated labor union

which in 1921 negotiated a collective agreement with a railroad company, of which plaintiff was an employee, and under which agreement plaintiff acquired a preferred seniority standing. Subsequently, as a result of agitation against the employment of married women during periods when single women were being discharged, the union and the employer by mutual action modified the agreement of 1921 in regard to the seniority provisions, the new agreement providing that married women should be relieved of service irrespective of seniority. As a consequence of this action, plaintiff was dismissed from employment, and brought suit against the union to recover damages. *Held*, that the plaintiff had no cause of action. *Hartley v. Brotherhood of Railway & Steamship Clerks*, 283 Mich. 201, 277 N. W. 885 (1938).

Whether or not a collective agreement creates contractual rights [1] in the individual employee-member of the union against the employer is in large degree immaterial in deciding the issue involved in this case. In any case the union's action injures the member, and the question is whether, by virtue of the relationship between the member and the union, the latter's action is privileged. Such relationship is largely controlled by the constitution and by-laws of the union. In seeking judicial protection of his rights under a collective agreement against interference by the union, the employee-member meets serious obstacles. One is the rule that he must first exhaust the internal procedure set up for complaints by the union by-laws and regulations,[2] and that in the absence of fraud, arbitrariness, or grave procedural defect the determination of the union concludes the member.[3] And there is considerable case authority supporting the

[1] A collective agreement entered into between employer and union commonly gives rise to three relationships with possible legal consequences: (1) individual employee and employer; (2) union and employer; (3) union and the members thereof. See 24 COL. L. REV. 409 (1924). The right of the employee to enforce the terms of a collective agreement against the employer has been sustained upon the theory that the collective agreement creates a custom or usage, the terms of which are incorporated into the contract of hire between the employee and the employer [see Moody v. Model Window Glass Co., 145 Ark. 197, 224 S. W. 436 (1920)]; or that the employee is a third party beneficiary of the agreement between employer and union and entitled to enforce the same [see H. Blum & Co. v. Landau, 23 Ohio App. 426, 155 N. E. 154 (1926)]; or that the union acts as agent for its members in negotiating the agreement, and therefore the agreement is the employee's individual contract of employment [see A. A. Barnes & Co. v. Berry, (C. C. Ohio 1907) 156 F. 72]. For a fuller discussion of the enforceability of collective agreements, see 41 YALE L. J. 1221 (1932); 24 COL. L. REV. 409 (1924); 31 COL. L. REV. 1156 (1931).

[2] Harris v. Missouri Pac. R. R., (D. C. Ill. 1931) 1 F. Supp. 946; Crisler v. Crum, 115 Neb. 375, 213 N. W. 366 (1927).

[3] McMurray v. Brotherhood of Railroad Trainmen, (D. C. Pa. 1931) 50 F. (2d) 968; Ryan v. New York Cent. R. R., 267 Mich. 202, 255 N. W. 365 (1934). In proceedings before the National Railroad Adjustment Board, seniority has been held to be a property right in the sense that it is entitled to the protection of due process of law, and an award may not be made unless the employee has had notice and hearing. Nord v. Griffin, (C. C. A. 7th, 1936) 86 F. (2d) 481; Estes v. Union Terminal Co., (C. C. A. 5th, 1937) 89 F. (2d) 768. These cases have been taken as authority for the proposition that in a suit to prevent the carrying out of an order of the union affecting seniority rights of the complainants, every person whose rights would be

proposition that modification in the seniority structure may be effected by agreement duly entered into by the employer and the union, and that if the union observes the procedure set forth in its constitution and by-laws and acts in good faith, the modification is binding upon the individual employee-member.[4] The social validity and usefulness of collective agreements covering terms and conditions of employment rests upon the view that they are a convenient device for meeting new social and economic conditions as they arise, peacefully, and without the loss occasioned by strikes and other violent features of economic competition, and that they meet the needs and protect the well-being of the group as opposed to special benefits to the few. If the unions in negotiating such agreements are unable to make concessions to changing circumstances, or must forego the general good in favor of the well-being of a few individuals, the usefulness of the collective agreement will be greatly impaired. Accordingly, the court in the principal case, it is submitted, reached a sound result.

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affected by such a determination must be a party to the suit. Brotherhood of Railroad Trainmen v. Price, (Tex. Civ. App. 1937) 108 S. W. (2d) 239. Where modification of seniority schedules would affect the rights of many persons, this rule presents serious procedural difficulties.

[4] Aden v. Louisville & N. R. R., (Ky. 1921) 276 S. W. 511; Hunt v. Dunlap, (Tex. Civ. App. 1923) 248 S. W. 760. These cases turn on the proposition that the employee-member has agreed with the union to certain procedure, and if his rights are determined in accordance with that procedure, he has no recourse to the courts. The fact that seniority constitutes a property right for certain purposes does not require that it be regarded as a "vested right" in the sense that it cannot be modified. See Burger v. McCarthy, 84 W. Va. 697, 100 S. E. 492 (1919), in which the court held that rights of preference in selection of employees to man certain trains, acquired by virtue of seniority regulations, were not such vested rights as could not be modified by a subsequent regulation adopted by the union and the railroad. To same effect, see Shaup v. Grand International Brotherhood of Locomotive Engineers, 223 Ala. 202, 135 So. 327 (1931). However, equity has jurisdiction to enjoin interference with seniority rights in violation of the constitution of the union. See Gleason v. Thomas, 117 W. Va. 550, 186 S. E. 304 (1936); Piercy v. Louisville & N. Ry., (Ky. 1923) 248 S. W. 1042.