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Constitutional Law- Civil Rights - Union Use of Dues for Political Action

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CONSTITUTIONAL LAW—CIVIL RIGHTS—UNION USE OF DUES FOR POLITICAL ACTION—Defendant unions under the authority of section 2, Eleventh of the Railway Labor Act[1] obtained union shop agreements from defendant railroads. Non-union employees sought to enjoin enforcement of the agreements because the unions used periodic dues, fees, and assessments to support political doctrines and candidates opposed by plaintiffs. The trial court dismissed for failure to state a cause of action, but the Supreme Court of Georgia overruled the dismissal and remanded.[2] The lower court then ruled that petitioners were denied constitutional liberties and issued the injunction. On appeal, *held,* affirmed. Enforcement of union shop contracts requiring employees to pay periodic dues, fees and assessments, portions of which are used to support political programs and candidates op-

1 64 Stat. 1238 (1951), 45 U.S.C. (1958) §152, Eleventh. Prior to 1951 the Railway Labor Act expressly prohibited union shops in the railroad industry. Section 2, Eleventh, adopted in 1951, removed the restriction. Notwithstanding any state or federal law, union shops were made valid.

2 Looper v. Georgia Southern & Florida Ry. Co., 213 Ga. 279, 99 S.E. (2d) 101 (1957).

posed by certain employees, deprives those employees of their freedom of speech and freedom to contract under the First and Fifth Amendments to the Federal Constitution. *International Association of Machinists v. Street,* 215 Ga. 27, 108 S.E. (2d) 796 (1959), probable jurisdiction noted 28 U.S. LAW WEEK 3108 (1959).

The use of dues, fees and assessments in the principal case presents no Fifth Amendment issue. It was decided by the Supreme Court in *Railway Employes' Department, A.F.L. v. Hanson*[3] that required financial support of a union by employees receiving the benefits did not violate the Fifth Amendment. The important issue in the principal case is whether the use of union funds for political purposes violates the First Amendment. Section 2, Eleventh of the Railway Labor Act authorizes union shop, notwithstanding contrary state law or policy. Contracts made in states having no law or policy opposed to union shop carry no imprint of federal authority.[4] The *Hanson* case presented a clash between Nebraska's right to work law[5] and the notwithstanding any state or national law language[6] of section 2, Eleventh. The Court upheld section 2, Eleventh as a proper exercise by Congress of the commerce power. The effect of the holding was to negate state right to work laws in so far as they conflict with section 2, Eleventh. In *Hanson* plaintiffs argued that compulsory membership would be used to impair freedom of speech. The Court said that no First Amendment question was presented because Congress had safeguarded against infringement by limiting union power to deny or terminate membership to cases in which employees refused to tender periodic dues, initiation fees and assessments. Judgment was expressly reserved on the enforceability of a union shop agreement ". . . if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment. . . ."[7] The Georgia court thought that the facts of the principal case brought it within the *Hanson* reservation.[8] Whether this position is correct depends on what activities the United

[3] 351 U.S. 225 (1956). See also Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949), holding that a Nebraska right to work law, which limited employer-employee freedom to arrange conditions of work by prohibiting union shops, did not deprive unions or management of liberty or due process.

[4] Otten v. Staten Island Rapid Transit Ry. Co., (2d Cir. 1956) 229 F. (2d) 919, cert. den. 351 U.S. 983 (1956); Wicks v. Southern Pacific Co., (9th Cir. 1956) 231 F. (2d) 130, cert. den. 351 U.S. 946 (1956); Otten v. Baltimore & O. R. Co., (2d Cir. 1953) 205 F. (2d) 58. The Georgia court found that the enforcement of union shop agreements was contrary to the constitution, law and public policy of Georgia and contrary to the statutes or laws of the other states in which defendant railroads operated.

[5] Neb. Rev. Stat. (1943; reissue, 1952) §48-217.

[6] "Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State . . ." See note 1 supra.

[7] 351 U.S. 225 at 238 (1956). Judgment was also reserved on cases involving conditions of membership other than periodic dues, initiation fees, and assessments.

[8] *Contra:* Sandsberry v. Intl. Assn. of Machinists, 156 Tex. 340, 295 S.W. (2d) 412 (1956); Allen v. Southern Ry. Co., 249 N.C. 491, 107 S.E. (2d) 125 (1959). Both hold that the questions reserved in Hanson were not intended to include cases in which union dues were used in political activities.

States Supreme Court would deem attempts to force ideological conformity. The language in *Hanson* indicates that the Court was not referring to union activities germane to collective bargaining.[9] The proposition that considerable expenditure of funds for political purposes is germane seems to have become established. For example, in cases involving alleged violations of what is now section 610 of the United States Criminal Code,[10] it has been consistently held that union use of funds to publish union newspapers with political overtones does not constitute a violation.[11] However, the Supreme Court has ruled that union sponsorship of television broadcasts which involved political advocacy intended to influence the voting public and affect the results of an election stated an offense under the prohibitions of section 610.[12] In the principal case it was stipulated that funds exacted from plaintiffs were used for lobbying in state legislatures, and the trial court found that funds were also being used in substantial amounts to support political campaigns of candidates for federal and state offices. There seems to be little argument that lobbying is germane to collective bargaining, but direct contributions to campaign funds are questionable. But even if union political activities are not germane it is still difficult to find forced ideological conformity.[13] No belief is required as a condition of employment. The employees remain free to advocate the cause of their choice. Therefore, the *Hanson* reservation would seem inapplicable. However, even if it were found that defendant unions are forcing ideological conformity, it would still be necessary to determine whether this violates the First Amendment. If the federal government cannot force ideological conformity, unions through contracts bearing the imprint of federal authority should not be allowed to do so. Although fear of disturbing the country's economic well being by uprooting union shop might seem to direct a contrary conclusion, the principal case may not have such an effect since it is doubtful that a determination of unconstitutionality would affect industries not subject to the Railway Labor Act.[14] Cases arising under the act reach a constitutional question because the notwithstanding clause of section 2, Eleventh imparts to union shop the imprint of federal authority. The Labor-Management Relations Act of 1947[15] contains no provision identical in content to section 2, Eleventh. Section 8 (a) (3) provides only

[9] See 351 U.S. 225 at 235 (1956).

[10] 18 U.S.C. (1958) §610; formerly §313 of the Corrupt Practices Act of 1925 (43 Stat. 1074) as amended by §304 of the Labor-Management Relations Act of 1947 (61 Stat. 159).

[11] E.g., United States v. Congress of Industrial Organizations, 335 U.S. 106 (1948).

[12] United States v. Intl. Union United Automobile, Aircraft and Agricultural Implement Workers of America, 352 U.S. 567 (1957). But see United States v. Painters Local Union No. 481, (2d Cir. 1949) 172 F. (2d) 854.

[13] Cf. Everson v. Board of Education, 330 U.S. 1 (1947), dealing with coercion of conscience in regard to use of tax monies to reimburse parents for the cost of sending children to private or parochial schools via a public bus system.

[14] It is also doubtful that there would be any very significant effects in the railway industry. Union shop was prohibited until 1951; the unions achieved their power and growth without the aid of union shop contracts.

[15] 61 Stat. 136 (1947), 29 U.S.C. (1958) §§151-168.

that nothing in the act shall preclude an employer from entering into union shop agreement.[16] State law and policy are not displaced.[17] Therefore it seems that union shop contracts other than those made under the Railway Labor Act carry no imprint of federal authority and thus remain entirely a matter of private contract.[18] Under such an analysis no question under the First Amendment would ever be presented.

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16 61 Stat. 140 (1947), 29 U.S.C. (1958) §158 (a) (3).

17 Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., note 3 supra; American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949). Both held that in absence of conflicting federal legislation, it is a valid exercise of state police power to prohibit union or closed shop.

18 But see American Communications Assn., C.I.O. v. Douds, 339 U.S. 382 (1950), expressing the idea that privileges and protection given unions by the federal government change unions' private character—perhaps sufficiently to render union action governmental for purposes of the First Amendment. See also Steele v. Louisville & Nashville R. Co., 323 U.S. 192 (1944), which held that union authorized by Railway Labor Act as sole bargaining agent is under a duty to represent all employees in its craft without discrimination because of race.