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Labor Law - LMRA - Duty of Certified Union to Represent Bargaining Unit Fairly

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LABOR LAW—LMRA—DUTY OF CERTIFIED UNION TO REPRESENT BARGAINING UNIT FAIRLY—Local *N*, composed entirely of Negroes, and Local *W*, composed entirely of whites, and both affiliated with the same international union, had been certified by the National Labor Relations Board as the joint bargaining representatives for the bargaining unit. Subsequent to this certification, the two locals allegedly agreed between themselves that they would be represented by one bargaining committee elected by a

majority vote of the unit, and that there would be but one line of seniority in any agreement negotiated by this committee. The committee which was elected consisted solely of members of Local *W*. It was further alleged that, under the agreement subsequently negotiated with the employer, two lines of seniority were in fact established and that this arrangement discriminated against Negro employees solely because of their race. Members of Local *N*, alleging jurisdiction based on a federal question,[1] sought an injunction in a federal district court to prevent enforcement of the agreement,[2] and damages.[3] The district court dismissed for lack of jurisdiction. The court of appeals affirmed,[4] holding that, as the plaintiffs were voluntarily members of the union, any duty to represent them fairly was imposed, if at all, by the common law of the state and not the amended National Labor Relations Act[5] or the Federal Constitution, and that, under the facts alleged, the plaintiffs' cause of action, if any, was in a state court for breach of contract. On certiorari to the Supreme Court, *held*, reversed and remanded. The Court did not explain its decision other than to cite three similar cases[6] arising under the Railway Labor Act[7] in which a duty was imposed to represent nonmembers of the union fairly. *Syers v. Oil Workers International Union, Local No. 23*, 350 U.S. 892, 76 S.Ct. 152 (1955).

The Court's reversal, although cryptic, is authority for the proposition that a union certified under either the Railway Labor Act or the amended National Labor Relations Act[8] has a statutory duty to represent all employees in its bargaining unit fairly, whether they are union members or not. Although the Court, in the cases cited by it, bases this duty upon the implied intent of Congress,[9] it is doubtful that Congress consciously in-

1 "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy . . . arises under the Constitution, laws or treaties of the United States." 28 U.S.C. (1952) §1331.

2 The Norris-LaGuardia Act, 47 Stat. L. 70 (1932), 29 U.S.C. (1952) §§101-115, is not applicable when an injunction is sought to compel compliance with a statute enacted for the protection of the same group that that act was enacted to protect. Virginia R. Co. v. System Federation, 300 U.S. 515, 57 S.Ct. 592 (1937).

3 If a federal statute imposes a duty but does not specify a remedy, it may be held to contemplate ". . . resort to the usual judicial remedies of injunction and award of damages. . . ." Steele v. Louisville and Nashville R. Co., 323 U.S. 192 at 207, 65 S.Ct. 226 (1944).

4 (5th Cir. 1955) 223 F. (2d) 739 (one judge dissenting).

5 61 Stat. L. 136 (1947), 29 U.S.C. (1952) §§141-168.

6 Steele v. Louisville and Nashville R. Co., note 3 supra; Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U.S. 210, 65 S.Ct. 235 (1944); Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 72 S.Ct. 1022 (1952). However, as pointed out in these cases, a union has no statutory duty not to discriminate in admitting members.

7 44 Stat. L. 577 (1926), 45 U.S.C. (1952) §§151-163.

8 In Williams v. Yellow Cab Co., (3d Cir. 1952) 200 F. (2d) 302 at 306, cert. den. sub nom. Dargan v. Yellow Cab Co., 346 U.S. 840, 74 S.Ct. 52 (1953), relied upon by the court of appeals in the principal case, the amended National Labor Relations Act was distinguished from the Railway Labor Act as being ". . . directed primarily to the prevention of unfair labor practices in order to open the way for free collective bargaining rather than to the regulation of the course of such bargaining and the settlement of disputes."

9 See Steele v. Louisville and Nashville R. Co., note 3 supra, at 232.

tended to impose such a judicially enforceable duty. On the contrary, it may be argued in the case of the amended National Labor Relations Act that Congress, by listing specific union unfair labor practices,[10] which do not include racial discrimination, intended to preclude federal jurisdiction over unlisted union activity. And even assuming that Congress did intend to impose an implied duty upon a certified union, it is arguable that decertification,[11] as an available administrative remedy, was meant to preclude or be prerequisite to the jurisdiction of the federal courts.[12] On the other hand, even as to union members, certification of a union by the National Labor Relations Board does more than merely protect rights that the union already possesses at common law. Certification makes the union the exclusive bargaining representative[13] for a unit defined by the Board.[14] The employer must bargain with this union to the exclusion of bargaining with another representative or with individual employees, at least as to matters properly within the scope of collective bargaining.[15] Because of sanctions provided by the act,[16] the individual employee is, in effect, bound by the collective agreement regardless of the terms of his union membership. At common law, the union may have the right to represent the individual union member in dealings with his employer, and the correlative duty to do so fairly. But it does not have the power to compel an employer to bargain with it, let alone to do so to the exclusion of individual bargaining, nor does it have the power to bind an individual beyond the scope of his consent. Even absent proof of congressional intent, equity alone should require that a certified union exercise its additional powers fairly, at least in regard to those whom it represents as a statutory agent. In one of the cases cited in the principal case the Court has gone even further and held that a certified union has an implied duty, when exercising its statutory powers, not to practice racial discrimination against any workers, including those not represented by it.[17] Although the Court

10 Labor-Management Relations Act, 1947, 61 Stat. L. 140, 29 U.S.C. (1952) §158 (b).

11 As a result of its power to certify a union [Labor-Management Relations Act, 1947, 61 Stat. L. 144, 29 U.S.C. (1952) §159 (c)], the Board has claimed the implied power to decertify a union which is not performing its statutory obligations. Hughes Tool Co., 104 N.L.R.B. 318 (1953). However, the adequacy of this remedy is open to serious question, as it provides no assurance that the majority of the unit will choose another representative which would not discriminate, nor would it necessarily invalidate the discriminatory contract. See the dissent in the court of appeals opinion in the principal case, note 4 supra, at 747.

12 A union member might also be required to exhaust internal union remedies, though not if such an attempt would clearly be futile. Naylor v. Harkins, 11 N.J. 435, 94 A. (2d) 825 (1953).

13 Labor-Management Relations Act, 1947, 61 Stat. L. 143, 29 U.S.C. (1952) §159 (a).

14 Labor-Management Relations Act, 1947, 61 Stat. L. 143, 29 U.S.C. (1952) §159 (b).

15 J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 64 S.Ct. 576 (1944).

16 See United Packinghouse Workers v. N.L.R.B., (8th Cir. 1954) 210 F. (2d) 325, where employees striking in violation of the notice requirements of the act were held to lose their status as employees for the purposes of the act.

17 Brotherhood of Railroad Trainmen v. Howard, note 6 supra, at 774. There was a vigorous dissent in this case to the effect that certification does not transform a private organization into a public agency, and that prohibition of racial discrimination in indus

again relied upon a nebulous congressional intent to reach this conclusion, the result actually seems to support the view that a federally certified union is, in effect, a quasi-governmental agency, the actions of which are subject to the limitations of the Fifth Amendment.[18]

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try generally by private parties is the object of the fair employment practices laws urged upon Congress but as yet not enacted by it.

[18] For authority in support of this view, see Betts v. Easely, 161 Kan. 459, 169 P. (2d) 831 (1946), and the concurring opinion of Justice Murphy in Steele v. Louisville and Nashville R. Co., note 3 supra, at 208. Cf. Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757 (1944); Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836 (1948).