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Labor Law - LMRA - Status of Union Official as an "Employee Representative" for Purposes of Prosecution Under Section 302

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LABOR LAW — LMRA — STATUS OF UNION OFFICIAL AS AN "EMPLOYEE REPRESENTATIVE" FOR PURPOSES OF PROSECUTION UNDER SECTION 302 — The appellant was president of the International Longshoreman's Association, the recognized bargaining agent for longshore labor in the Port of New York. An officer of several of the employer members of the New York Shipping Association paid the appellant $5500 in six yearly "Christmas presents." The appellant was convicted[1] of violating section 302 of the Labor-Management Relations Act, which makes it a misdemeanor for "any representative of any employees" to receive or agree to receive money from his employer, subject to certain exceptions.[2] On appeal, *held,* reversed. The word "representative" is a term of art used throughout the act to mean a collective bargaining representative. Although the appellant is an officer of the union, the union itself is the collective bargaining agent. *United States v. Ryan,* (2d Cir. 1955) 225 F. (2d) 417, cert. granted 350 U.S. 860, 76 S.Ct. 103 (1955).

In 1946 the United Mine Workers demanded an employer-supported union welfare fund with no restrictions on the discretion of the union officials who administered it. As a result of this demand, section 302 of the Taft-Hartley Act was enacted.[3] Prior to the lower court decision in the principal case, most of the adjudicated problems under this section involved welfare funds.[4] The principal case is the most prominent of a new group of cases in which the government has utilized the criminal sanctions of section 302 in an effort to curb employer bribes to union leaders.[5] Bribes to union members or officers were previously dealt with as employer unfair labor practices under the National Labor Relations Act.[6] The problem which has

1 (D.C. N.Y. 1955) 128 F. Supp. 128.

2 61 Stat. L. 157 (1947), 29 U.S.C. (1952) §186.

3 See 93 CONG. REC. 4746-4747, 4678 (1947).

4 E.g.: United Marine Division v. Essex Transportation Co., (3d Cir. 1954) 216 F. (2d) 410; William Dunbar Co. v. Painters & Glaziers District Council, (D.C. D.C. 1955) 129 F. Supp. 417; United Garment Workers v. Jacob Reed's Sons, (D.C. Pa. 1949) 83 F. Supp. 49. The only other section 302 cases involved union checkoff procedures. See, e.g., State v. Montgomery Ward, 120 Utah 294, 233 P. (2d) 685 (1951), cert. den. 342 U.S. 869, 72 S.Ct. 111 (1951).

5 Other cases in the series are United States v. Connelly, (D.C. Minn. 1955) 129 F. Supp. 786, and United States v. Brennan, (D.C. Minn. 1955) 28 CCH Lab. Cas. ¶69,457.

6 See, e.g.: West Kentucky Coal Co., 10 N.L.R.B. 88 (1938) (union officers promised a building for their personal use); Armory Garment Co., 80 N.L.R.B. 182 (1948) (attempted bribe to influence employee not to testify); E. A. Laboratories, Inc., 80 N.L.R.B. 625 (1948) (union leader offered position in company union). There has been no successful use of section 302 in extortion cases, probably because this offense, involving as it does the use of force or fear, is already interdicted by the Hobbs Anti-Racketeering Act and the Anti-Kickback Act. Compare United States v. Connelly, note 5 supra, at 789, with the principal case at 424. The Hobbs Act, 18 U.S.C. (1952) §1951, is directed at extortion from an employer. In Bianchi v. United States, (8th Cir. 1955) 219 F. (2d) 182, cert. den. 349 U.S. 915, 75 S.Ct. 604 (1955), the court clearly indicates that the Hobbs Act covers entirely separate ground from the bribery encompassed by section 302 of Taft-Hartley. See also United States v. Dale, (7th Cir. 1955) 223 F. (2d) 181. The Anti-Kickback Act, 18 U.S.C. (1952) §874, is directed at the foreman who extorts money from employees. See, e.g.: United States v. Carbone, 327 U.S. 633, 66 S.Ct. 734 (1946); United States v. Price, (D.C. Tenn. 1954) 122 F. Supp. 593.

split the courts in the new cases under section 302 is that of defining "representative." There are two diametrically opposed views on this problem. One is that the term "representative" includes not only any collective bargaining representative but also a union officer.[7] The arguments for this view are primarily: (1) the Taft-Hartley Act's preamble shows that one of the purposes of the act was to eliminate detrimental practices of unions and union officers;[8] (2) the general definition of "representative" as including "any individual or labor organization"[9] does not exclude the use of the word in its ordinary non-collective bargaining sense; (3) viewing the act as a whole, the term "representative" is almost invariably qualified by the addition of such words as "collective bargaining,"[10] and this indicates that Congress intended a simple meaning for the unqualified term;[11] (4) the crucial words of section 302 (b)—"any representative of any employees"[12] —were often interpreted in congressional debates as meaning "union representative";[13] (5) an attempt to limit the term to "collective bargaining representatives" would exclude some of the very individuals Congress principally intended to regulate, i.e., the welfare fund trustees who are obviously not engaged in collective bargaining.[14] The second view is that "representative" includes only those engaged in collective bargaining under the provisions of section 9 of the amended NLRA,[15] and not union officers as such. The arguments for this view, as presented in the principal case, are (1) a specific definition of "representative" which could have been interpreted to include union officers was omitted from the final act;[16] (2) the term "representative" is used throughout the act as a term of art to indicate an exclusive collective bargaining representative;[17] (3) since the primary purpose of section 302 was to regulate union welfare funds, the words of the

7 This view is adhered to by Judge Hand who dissented in the principal case, Judge Palmieri who wrote the lower court opinion in the principal case, and Judge Devitt in United States v. Brennan, note 5 supra.

8 Labor-Management Relations Act, 1947, 61 Stat. L. 137, 29 U.S.C. (1952) §151.

9 61 Stat. L. 138 (1947), 29 U.S.C. (1952) §152(4). Compare the discussions on the semantics of this definition in the majority and minority opinions of the principal case.

10 E.g.: 61 Stat. L. 140-144 (1947), 29 U.S.C. (1952) §§157, 158(a) and (d), 159(a), (b) and (c).

11 "Representative" is used by itself, in a non-collective bargaining sense, in several sections of the act. E.g.: 61 Stat. L. 141, 156 (1947), 29 U.S.C. (1952) §§158 (b)(1)(B), 181(a) and (b).

12 It should be noted that "any" is not used to modify "representative" elsewhere in the Taft-Hartley Act. Cf. Ex parte Collett, 337 U.S. 55 at 58, 69 S.Ct. 959 (1949), where heavy emphasis is placed upon the broad effect of the word "any."

13 See, e.g.: remarks of Senator Taft, 93 CONG. REC. 4746 (1947); remarks of Senator Byrd, 92 CONG. REC. 4891, 4900 (1946).

14 This argument was well received in United States v. Brennan, note 5 supra.

15 61 Stat. L. 143 (1947), 29 U.S.C. (1952) §159.

16 Section 302(g) of Senator Byrd's proposal contained this definition. 92 CONG. REC. 5040-5041 (1946). However, it was replaced by a reference to the definition cited in note 9 supra.

17 But see the instances cited in note 11 supra.

section should not be extended to include bribery of union officers. The court in the principal case made no reference to the fact that the appellant was not only the union's president but also an important member of its wage scale committee, which did the collective bargaining for the union. By contrast, the lower court emphasized this fact as an indication that this "representative," more than any other, must have been of the kind which Congress intended to include within the terms of section 302.[18] The Second Circuit either ignored this fact, in order to avoid the necessity of drawing a future line based on a union officer's importance, or it simply did not wish to extend the criminal sanctions of section 302 into an area already regulated by other legislation.[19]

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[18] Note 1 supra, at 132.
[19] See note 6 supra and adjacent text.