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# Labor Law—Union Member's Remedies for Wrongful Expulsion

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Two conflicting state policies were pitted against each other in this case. Following the lead of the federal government, New York enacted legislation in 1935 (Civil Practice Act §876-a) taking away from the courts the power of injunction where labor disputes were involved except where very limiting prerequisites were met. Previously, the state had adopted a statute[17] providing for the enforcement of executory arbitration agreements and of arbitrators' decisions themselves.[18] This statute was amended five years after passage of the anti-injunction legislation so as to specifically validate arbitration agreements in labor situations.[19]

The Court had on previous occasions sustained the enforcement of mandatory injunctions issued by arbitrators,[20] but this is the first case to have involved restraining injunctions against a labor union. The defendant unions argued that the enforcement of an arbitrator's injunction by the lower court was equivalent to the issuance of an injunction by the court and invalid under §876-a. But the Court considered that the purpose of that section was to free unions from judicially imposed injunctions and did not reach to an arbitration relationship voluntarily entered into by the union, particularly in view of the statutory arbitration provisions. As long as the arbitrator's award is within his authority as defined in the contract, his determination could be enforced even though a different result would obtain had the controversy been initially submitted to the courts.[21]

## Union Member's Remedies for Wrongful Expulsion

In a landmark decision, the Court this term determined that one wrongfully expelled from a union may sue the union for damages from its general funds even though he cannot sustain an action against all of the members.[22] The general rule, obtaining under the common law, was that voluntary associations, being

17. N. Y. ARBITRATION LAW OF 1920 (now N. Y. CIV. PRAC. ACT, Art. 84).

18. The common law rule in New York discouraged arbitration agreements by refusing to specifically enforce agreements to arbitrate differences. It was to permit such specific enforcement and thereby to encourage reliance upon executory arbitration agreements that impelled adoption of the arbitration statute. See *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109 (1924), which deals with the New York statute.

19. N. Y. CIV. PRAC. ACT §1448.

20. In re Devery, 292 N.Y. 596, 55 N.E.2d 370 (1944); In re United Culinary Bar Grill Employees, 299 N.Y. 577, 86 N.E.2d 104 (1949).

21. The problem of pre-emption was not adverted to in the decision, although the employees were presumably engaged in interstate commerce. In *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), the Supreme Court decided that under §301 of the Taft-Hartley Act, federal common law applied in breach of contract cases brought before federal courts. Although not yet decided, it would seem that this would mean that pre-emption would apply and remove cases such as *In re Ruppert* from state jurisdiction. In connection with pre-emption, see next preceding case note.

22. Madden v. Atkins, 4 N.Y.2d 283, 174 N.Y.S.2d 633 (1958).

neither legal entities nor partnerships, could only be sued by suing all of the members.[23] This proved virtually impossible in many cases, where, for example, a union with many members was involved. The difficulty of service was lessened by §13 of the General Associations Law which permits service and suit of an officer of the association as a representative of the members. However, this statute has been treated as one of procedural convenience only and not as changing the substantive law.[24] Thus, it was still necessary for recovery that all of the members be liable, and their liability had to have arisen out of participation in and approval or else ratification of the act complained of.[25] However, the Court, torn by conflicting considerations of policy,[26] did not adhere to any consistent policy and in several cases allowed damages even though liability of all the members of the union concerned was not shown.[27]

The case *Madden v. Atkins*[28] for the first time attempts to resolve the previous inconsistency. Several members of a local union were expelled in accordance with the procedure of the union's constitution but without approval of every member. The expellees had opposed current union management at the polls, and after defeat there, had formed a "party" within the union to carry on further intra-union political activity. This, labeled as "dual unionism" was the basis of the expulsion.[29]

The constitution of an association creates a contract between the members, and it has long been accepted that the privilege of expelling members in accordance with the contract is inherent in the association.[30] The courts will not inject themselves into such a controversy unless it is clearly apparent that the expulsion or disciplinary action was capricious and without foundation, and then only after the claimant has exercised all reasonable efforts to exhaust his appellate remedies within the organization.[31] In the instant case, however, the Court found the expulsion to have been completely arbitrary and unreasonable and, hence, wrongful.

With respect to the damages demanded, the Court held that they would be available to a plaintiff in an expulsion case, even though they could not assert

23. Martin v. Curran, 303 N.Y. 276, 280, 101 N.E.2d 683, 685 (1951).
24. McCabe v. Goodfellow, 133 N.Y. 89, 92, 30 N.E. 728, 728-729 (1892); Martin v. Curran, 303 N.Y. 276, 281, 101 N.E.2d 683 ,685 (1951).
25. Glauber v. Patoff, 294 N.Y. 583, 63 N.E.2d 181 (1945); Browne v. Hibbets, 290 N.Y. 459, 467, 49 N.E.2d 713, 717 (1943); Schouten v. Alpine, 215 N.Y. 225, 109 N.E. 244 (1915).
26. See Summers, *Judicial Settlement of Internal Union Disputes*, 7 BUFFALO L. REV. 405 (1958).
27. Blek v. Wilson, 262 N.Y. 253, 186 N.E. 692 (1933); Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931).
28. 4 N.Y. 2d 283, 174 N.Y.S.2d 633 (1958).
29. *Ibid.*
30. Wilcox v. Royal Arcunan, 210 N.Y. 370, 104 N.E. 624 (1914).
31. Browne v. Hibbets, 290 N.Y. 459, 49 N.E.2d 713 (1943).

liability upon each and every member of the union, provided that the expulsion had been "brought about by action on the part of the membership, at a meeting or otherwise, in accordance with the union constitution. . . ."[32] The Court cites appropriately a case awarding damages where the claimant was unjustly expelled by the *executive board* of the union, and it thus appears that "action on the part of the membership" in the standard given is to be applied according to the delegation of authority made in the union constitution and not restricted to specific actions of the union, considered at membership meetings.[33]

The Court is here applying a shifting standard whereby enough liability is imputed to the members to render the funds of the unions subject to judgment under §13 of the General Association Law, but not enough liability is imputed to render the members themselves liable in an action directly against them. In so doing, the Court reaches a desirable result in accord with current realities. Although a labor union, unlike a corporation, is not a legal entity, its ability to inflict injury as a unit is no less effective.[34] Mere restoration to membership without award of damages would be small compensation where, as in this case, claimants have incurred severe economic sanctions resulting from the union's tortious acts.

The extent of the influence which the instant case will have is not clear. The Court had held in a recent case involving a libel suit against a union for an alleged libel which had been published in the union official paper that the action could not be sustained unless the plaintiff proved the individual liability of each member.[35] Judge Fuld, at one point in the *Madden* decision, suggests that the difference in the result there is a difference in the tort committed, damages being permissible for wrongful expulsion but not for libel.[36] Later, however, he says that the libel case was dismissed simply because the complaint in that action failed to allege authorization by the membership and left open the question as to what "nature of . . . proof" would be necessary to find such authorization in fact.[37] Thus, it may be that the Court will apply the more liberal rule in cases coming before it in the future. Manifestly, the difference ought not to be merely that one is a *Tort A* case and another a *Tort B* problem. Recovery ought to hinge on the reality of damage, not the nature of the tort. On the other hand, it may be that the Court is merely saying that it will apply a less rigid standard to find

32. Madden v. Atkins, 4 N.Y.2d 283, 296, 174 N.Y.S.2d 633, 642 (1958).
33. *Ibid.*
34. Proceedings in the House of Commons, 1904, quoted in *Unions as Juridical Persons*, 66 YALE L. J. 712 (1957):

> Sir R. Reid interrupting: The trade unions are not corporations.
> Prime Minister Balfour: I know; I am talking English, not law.

See also United Mine Workers v. Coronado Coal Co., 259 U. S. 344 (1922).
35. Martin v. Curran, 303 N.Y. 276, 280, 101 N.E.2d 683, 685 (1951).
36. Madden v. Atkins, 4 N.Y.2d 283, 294-295, 174 N.Y.S.2d 633, 641 (1958).
37. *Id.* at 296, 174 N.Y.S.2d at 642.

authorization in cases involving internal union disputes than in cases where a union is sued by an outside party. This distinction would seem to rest on sheer and transparent policy, however, and, it is to be hoped, will not be relied upon.

The Court's decision is a welcome stride forward from the position that a union is not liable except as all of its members are. Even if provisions in the General Associations Law are purely procedural, there is no reason why the substantive law of associations cannot develop in pace with changing societal conditions, rather than continue to sustain a rule of law " . . . for no better reason . . . than that so it was laid down in the time of Henry IV."[38]

### Application of Statute to Employer and Domestic

Section 240 of the Labor Law imposes a duty upon employers of persons employed to, inter alia, clean buildings and structures, to furnish safe equipment for such work, including scaffolding, ladders, etc. A domestic who, while cleaning windows on a private dwelling, fell from a ladder and injured herself, attempted to hold the householder liable for the injuries because of an alleged violation of this section. The Court rejected the claim, however, holding that section 240 was not intended by the legislature to apply to such a situation but only to circumstances where cleaning is incidental to "building construction, demolition and repair work." The section is an integral part of the article of the Labor Law dealing with that subject and obviously was not meant to reach the controversy at issue.[39]

## MUNICIPAL CORPORATIONS

### Zoning—Constitutionality of Ordinance Discontinuing Non-Conforming Uses

The petitioner in *Harbison v. City of Buffalo*[1] operated a drum reconditioning plant on his own property in the city of Buffalo. He erected the building thereon shortly after purchasing the property in 1924. At that time there were located nearby a glue factory and a city owned dump. The area was unzoned at the time, but in 1926 it was zoned for residential use and has remained so zoned, with the exception of one short period, to the present time. From 1936 to 1956, Harbison applied for and received licenses to conduct business as a junk dealer, a classification which embraced drum reconditioners. In 1956, the petitioner was refused a junk dealer's license and a drum reconditioning license pursuant to a city ordinance passed in 1953, which provided for a cessation of certain nonconforming uses, including "any junk-yard", within two years of the date of

38. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).
39. Connors v. Boorstein, 4 N.Y.2d 172, 173 N.Y.S.2d 288 (1958).

1. 4 N.Y.2d 553, 176 N.Y.S.2d 598 (1958).