Buffalo Law Review

Volume 3 | Number 1 Article 46

12-1-1953

Labor Law—Internal Union Management

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Recommended Citation
Irwin N. Davis, *Labor Law—Internal Union Management*, 3 Buff. L. Rev. 118 (1953).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol3/iss1/46

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Alimony Pendente Lite

Pending an action for divorce, annulment or separation in New York, the court at its discretion, by order, may require the husband to provide the necessary monies to support the wife and children and to enable the wife to carry on or to defend the action.[38] Such payments, frequently referred to as alimony *pendente lite,* apply only while the court has jurisdiction over the parties.[39] Enforcement of payments by the proper motion is deemed applicable only where the court has jurisdiction[40] and is therefore lost where the action is terminated,[41] e. g., by settlement,[42] abandonment,[43] discontinuance,[44] dismissal of complaint.[45]

In Polizotti v. Polizotti[46] the husband was delinquent in temporary alimony payments. The wife was held unable to punish her husband for civil contempt[47] for although the motion was made prior to dismissal of her petition for separation the finding of civil contempt was rendered after dismissal of the petition for separation. The Court of Appeals held that the Appellate Division did not have the jurisdiction or power to modify the contempt order, dating it *nunc pro tunc*[48] as of date of wife's motion.

IX. Labor Law.

Internal Union Management

In *Maltese v. Dubinsky,*[1] the Court of Appeals had to determine the validity of a provision of defendant union's constitution. Plaintiff was elected business agent of Local Union 48, International Ladies' Garment Workers' Union, an unincorporated association. The constitution and by-laws of the International

38. C. P. A. § 1169.
39. *Ibid.*
40. *Karlin v. Karlin,* 280 N. Y. 32, 19 N. E. 2d 669 (1939).
41. A motion, C P. A. § 113, relates to an incidental question collateral to the main object of an action and is dependent on the principal remedy. *Matter of Tilden,* 117 Misc. 656, 191 N. Y. Supp. 766 (Surr. Ct. 1922).
42. *Conklin v. Conklin,* 201 App. Div. 170, 194 N. Y. Supp. 685 (1920), *aff'd,* 234 N. Y. 546, 138 N. E. 441 (1922).
43. *Carbulon v. Carbulon,* 293 N. Y. 375, 57 N. E. 2d 59 (1944).
44. *Matter of Thrall v. Thrall,* 12 App. Div. 235, 42 N. Y. Supp. 439 (1st Dep't 1896), *aff'd,* 153 N. Y. 644, 47 N. E. 1111 (1897).
45. *Hayes v. Hayes,* 150 App. Div. 842, 135 N. Y. Supp. 225 (2nd Dep't 1912), *aff'd,* 208 N. Y. 600, 102 N. E. 1104 (1913).
46. 305 N. Y. 176, 111 N. E. 2d 869 (1953).
47. Judiciary Law § 753.
48. The function of an order nunc pro tunc is to correct irregularities in the entry of judicial mandates or like procedural errors, *Mohrmann v. Kob,* 291 N. Y. 181, 51 N. E. 2d 921 (1943).

1. 304 N. Y. 450, 108 N. E. 2d 604 (1952).

provide that all candidates for a said office must file duplicate resignations in blank prior to their installation in office. Pursuant to these regulations, plaintiff's resignation was accepted by a two-thirds vote of the general executive board of the International. His status or membership in his local was in no way affected by his resignation as business agent.

It has been held that the "constitution and by-laws of an unincorporated association [labor union] express the terms of a contract which define the privileges secured and the duties assumed by those who have become members."[2] Thus the court in the *Polin* case stated that it would only review an expulsion of a union member if the discharge was for reasons not expressly provided for in the "contract" (constitution and by-laws) and not made expellable offenses thereby; because in this case, the power to expel would not be within the power conferred by the contract.[3]

In *O'Keefe v. Local 463 of United Association of Plumbers*,[4] the court refused to issue an injunction or award damages suffered because of a union's actions, when these acts of the Union were in good faith and without malice toward the plaintiff and were not specifically aimed at causing damage or loss to him but were in the furtherance of the union's lawful policy, purpose and objectives. This "bad faith" or "malice" test has been applied in various situations, *e. g.*, an action by a union member against the union for interference with his employment;[5] an action by a local union against the International to compel cancellation of a charter given to a rival union by the International in accordance with the power granted to it by the constitution and by-laws;[6] an action by an employer of non-union labor against defendant union who imposed a fine or expulsion on any union member who accepted employment in any "non-union" shop and who also urged plaintiff's customers not to patronize him.[7]

Judge Froessel, speaking for a unanimous court, upheld the provision in question and the action of the executive board pursuant to it. No statute having been cited as a bar, the section is assumed to be lawful. While the court questions the wisdom and propriety of the provision, it finds no violation of public policy in

2. *Polin v. Kaplan*, 257 N. Y. 277, 281, 177 N. E. 833, 834 (1931); *Nilan v. Colleran*, 283 N. Y. 84, 89, 27 N. E. 2d 511, 513 (1940).
3. *Polin v. Kaplan*, *supra* note 2 at 282, 177 N. E. at 834; see *People* ex rel *Bartlett v. Medical Society*, 32 N. Y. 157 (1865).
4. 277 N. Y. 300, 14 N. E. 2d 77 (1938).
5. *O'Keefe v. Local 463 of United Association of Plumbers*, *supra* note 4; Note, 51 HARV. L. REV. 1299 (1938).
6. *Nilan v. Colleran*, *supra* note 2.
7. *Bossert v. Dhuy*, 221 N. Y. 342, 117 N. E. 582 (1917).

its enforcement. Furthermore, inasmuch as the section has been invoked but two times in over ten years, the court finds no abuse of the method for affecting a resignation under it. Bad faith or malice on the part of the executive board is also found to be lacking in this instance. Hence, the plaintiff is bound by the constitution which defines the terms upon which the office of business agent is held.[8]

Perhaps, where a provision of the constitution or by-laws can actually be viewed as violative of public policy,[9] or where the action of the union or its officers is arbitrary or unreasonable (i. e. with "malice" or in "bad faith"),[10] a judicial tribunal would be justified in interfering with the internal policies of a labor organization. Since the courts are not particularly well suited for such interference however, it is best to allow a union to control its own affairs in the ordinary instance.

Arbitration

In *Bohlinger v. National Cash Register Co.*,[11] the Court of Appeals, in an action by an employer to stay arbitration, was asked to determine whether an arbitrable issue was raised when two employees of defendant were discharged for working for a company in competition with the employer during their off hours. The very broad arbitration clause in the collective contract read, "Seventeenth: In the event of any dispute between the parties hereto with reference to any matter not provided for in this Contract, or in reference to the terms, interpretations or application of this Contract, such disputes shall be referred to a Board of Arbitration . . ." While the collective contract defines a "discharge,"[12] it otherwise fails to elaborate on the employer's right to discharge without notice and without cause.

The majority of the court, finding no ambiguity in the language of the arbitration clause, holds that the parties contemplated the submission to arbitration not only of the terms, appli-

8. Even though a business agent is elected by his local union, the duties and responsibilities of his position render him a part of the parent union and intermediate bodies. (*Maltese v. Dubinsky, supra* note 1 at 456, 108 N. E. 2d at 606) Thus plaintiff is bound by the "contract" with the International.

9. See *Spayd v. Ringling Rock Lodge,* 270 Pa. 67, 113 Atl. 70 (1921), where the court refused to enforce a by-law depriving members of their state constitutional right to petition the legislature. Note, 35 HARV. L. REV. 332 (1922).

10. See *Fleming v. Motion Picture Machine Operators,* 16 N. J. Misc. 502, I Atl. 2d 850, (1938), where a member of defendant union was ordered reinstated because the real reason for his expulsion was due to his participation in a suit against the union and not because such member was a year behind in his dues payments.

11. 305 N. Y. 539, 114 N. E. 2d 31 (1953).

12. "[I]n the case of a discharge it is the intent permanently to terminate the employee's employment."