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## Labor Law

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## LABOR LAW

**Union Discipline—Judicial Review of Union Declared Law.** Upon acquiring membership in a labor union, a person may gain a property right which will be protected by the courts.<sup>1</sup> Such a property right is found in the union member's right to work, which, because of union security provisions between the union and various employers, may be jeopardized once his union membership is taken from him.<sup>2</sup> Union membership, however, carries with it certain obligations. If there is a violation of such an obligation, the union may properly discipline the union member even though it is an abridgement of a property right.<sup>3</sup> The standard to determine whether such an abridgement is permissible is based on the theory that the constitution and by-laws of the union express the terms of a contract which defines the privileges secured and the duties assumed by those who have become members.<sup>4</sup> A violation of such a provision followed by disciplinary action will most always be held a permissible abridgement of the property right.<sup>5</sup>

Thus it is clear that the union may interfere with the property rights of the members under various circumstances, but, as emphasized by two recent Washington decisions,<sup>6</sup> the union may not interfere if in so doing it (1) violates standards of procedural due process, or (2) violates any procedural requirements of the organic law of the union, or (3) incorrectly applies the substantive law of the union to the alleged offense. In making the determination of whether the union acted contrary to these last two requisites, what effect, if any, does the court give to the determination made by a union tribunal?

The standards of procedural due process are always external and such a determination is made regardless of whether the union believes it complied with such standards.<sup>7</sup> A requirement concomitant with such

<sup>1</sup> Mayer v. Stonecutters' Ass'n, 47 N.J. Eq. 519, 20 Atl. 492 (Ch. 1890); Miller v. Ruehl, 166 Misc. 479, 2 N.Y.2d 394 (Sup. Ct. 1938); Cf. Dusing v. Nuzzo, 177 Misc. 35, 29 N.Y.S.2d 882 (1941) where it was held that a union member "has a 'property right' in his position on the roster" of the union.

<sup>2</sup> See James v. Marinship Corporation, 25 Cal.2d 721, 155 P.2d 329 (1944).

<sup>3</sup> DeMille v. American Federation of Radio Artists, 17 A.C.A. 480, 175 P.2d 851 (1946), *aff'd*, 31 Cal.2d 139, 187 P.2d 769 (1947), *cert. denied*, 333 U.S. 876 (1948).

<sup>4</sup> Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931).

<sup>5</sup> Dame v. Lefevre, 251 Wis. 146, 28 N.W.2d 349 (1947); cf. Crossen v. Duffy, 90 Ohio App. 252, 103 N.E.2d 769 (1951) where the court departed from the contract theory and held that even though there is a clear violation of a certain provision of the by-laws, that provision itself is unenforceable.

<sup>6</sup> Mahoney v. Sailors' Union of the Pacific, 143 Wash. Dec. 803, 264 P.2d 1095 (1953), *rehearing granted*, 144 Wash. Dec. 497 (1954), and Minch v. Local Union No. 370, Etc., 144 Wash. Dec. 14, 265, P.2d 286 (1953).

<sup>7</sup> Washington Local Lodge No. 104 v. Int'l Brotherhood of Boilermakers, 33 Wn.2d 1, 203 P.2d 1019 (1949) (expulsion without notice, charges, or an opportunity to be

standards is that the union must comply with the procedural requirements set forth in its constitution and by-laws.<sup>8</sup> The case of *Mahoney v. Sailors' Union of the Pacific*<sup>9</sup> again emphasized that the court will look behind the union determination of such a question. The court there held, contrary to the union tribunal, that the determination of the situs of a trial for disciplinary action was not done in compliance with the procedure of the union constitution. In *Minch v. Local Union No. 370, Etc.*,<sup>10</sup> it was held proper to submit to the jury the evidence that Minch, the union member, was expelled by less than the number of votes required and that after the union trial and pending appeal he was not reinstated to union membership after payment of his fine and current dues, both in violation of the union constitutional provisions. Thus the court in effect rejected the union's contention that the union trial was a matter of internal discipline, not a *de novo* matter in the trial court.

Likewise, the substantive questions of union law, like the compliance with procedural requirements, will be determined by the court *de novo* and the determination by the union tribunal will in no way be controlling.<sup>11</sup> In the *Mahoney* case<sup>12</sup> the court held that the union's findings of grounds for expulsion were unfounded. "The charge being insufficient, the proceedings based upon it was a nullity and plaintiff's expulsion was void."<sup>13</sup>

ROBERT S. MUCKLESTONE

## LEGAL PROFESSION

### Contingent Fee Contract in Divorce Action—Disciplinary Action.

The Washington court, in *In re Smith*,<sup>1</sup> has held that it is a violation of the ethics of the profession for an attorney to enter into a contingent fee contract in a divorce action. This was the first time a court had

heard enjoined); *Furniture Workers' Union Local 1007 v. United Brotherhood of Carpenters & Joiners*, 6 Wn.2d 654, 108 P.2d 651 (1940).

<sup>8</sup> *Johnson v. United Brotherhood of Carpenters & Joiners*, 52 Nev. 400, 288 Pac. 170 (1930).

<sup>9</sup> 143 Wash. Dec. 803, 264 P.2d 1095 (1953), *rehearing granted*, 144 Wash. Dec. 497 (1954). See Wollett and Lampman, *The Law of Union Factionalism—The Case of the Sailors*, 4 STAN. L. REV. 177 (1952).

<sup>10</sup> 144 Wash. Dec. 14, 265 P.2d 286 (1953).

<sup>11</sup> *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833 (1931); *Leo v. Local Union No. 612 of Int'l Union of Operating Engineers*, 26 Wn.2d 498, 174 P.2d 523 (1946).

<sup>12</sup> *Supra* note 8.

<sup>13</sup> *Supra* note 8 at 1097.

<sup>14</sup> 42 Wn.2d 188, 254 P.2d 464 (1953). The agreement entered into with his client entitled the attorney to twenty per cent of all sums which might be received by his