Washington Law Review

Volume 35
Number 4 *Annual Meeting of the Washington State Bar Association*

11-1-1960

Rights and Remedies of Union Members; Federal Law or State Law?

Joyce M. Thomas

RIGHTS AND REMEDIES OF UNION MEMBERS; FEDERAL LAW OR STATE LAW?

Since the passage of the labor reform legislation of 1959, a member of a labor organization engaged in an industry affecting commerce has certain federally-recognized rights in addition to his rights under state law. In many instances he may have a choice between a state and a federal forum when he seeks a remedy against his union. In this Comment, the federal rights and remedies and the existing Washington law will be examined in broad summary form[1] in order to evaluate the factors influencing the choice of forum.

MEMBER RIGHTS UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959[2]

For several years the lack of internal democracy in many labor unions[3] and the inadequate recognition afforded to the membership and property rights of the individual members[4] has been a cause of concern to scholars[5] and the public. The publicity given to the problem by the McClellan committee's[6] exposure of abuses of power by some labor leaders resulted in the inclusion in the 1959 act of a bill of rights for union members.[7] These sections are designed to insure to all union members an equal voice (subject to reasonable union rules and regulations) in the nomination and election of candidates; equal participation and voting rights at union meetings; freedom of speech

---

[1] Detailed exposition and comment may be found in BNA OPERATIONS MANUAL, THE LABOR REFORM LAW (1959); COMMERCE CLEARING HOUSE, INC., NEW LABOR LAW OF 1959, WITH EXPLANATIONS (1959). For historical background and discussion of the law see Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851 (1960). For Washington law see 1 WASH. L. REV. 274 (1926); 15 WASH. L. REV. 267 (1940).

[2] Pub. Law 86-257, 73 STAT. 519; 29 U.S.C. § 429 (Supp. 1959).

[3] See BROMWICH, FUND FOR THE REPUBLIC, STUDY OF UNION CONSTITUTIONS (1959).

[4] See Hays, *Union and Its Members: The Uses of Democracy*, 11 N.Y.U. CONF. LAB. 35 (1958); Summers, *Public Interest in Union Democracy*, 53 NW. U.L. REV. 610 (1959); Forkosch, *Internal Affairs of Unions: Government Control or Self-Regulation?*, 3 LAB. L.J. 699-706, 728-31 (1952); *Summers, Political Liberties of Labor Union Members—A Comment*, 33 TEXAS L. REV. 603 (1955); *Protection of Members' Interests in Funds of Unincorporated Unions*, 33 IND. L.J. 67 (1957); Graham, *Rights and Remedies of Members in Internal Union Controversies in the Southern Jurisdictions*, 12 VAND. L. REV. 888 (1959).

[5] Cox, *Role of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609 (1959); Summers, *Role of Legislation in Internal Union Affairs*, 10 LAB. L.J. 155 (1959); Wellington, *Union Democracy and Fair Representation*, 67 YALE L. J. 1327 (1958); Summers, *Union Powers and Workers' Rights*, 49 MICH. L. REV. 805 (1959).

[6] Senate Select Committee on Improper Activities in the Labor or Management Field, Senate Resolution 74 of the 1st Session of the 85th Congress, 1957.

[7] Public Law 86-257; 73 STAT. 522, 523; 29 U.S.C. §§ 411-15 (Supp. 1959).

and assembly; safeguards against improper disciplinary action;[8] protection against increased dues and assessments except by majority vote; protection of the right to sue (subject to exhaustion of reasonable hearing procedures within the organization); and the right to receive or inspect a copy of collective bargaining agreements which affect the rights of the employee. The remedy for infringement of any of these rights by a labor organization is a suit in federal district court for appropriate relief, including injunctions.

Apart from the sections constituting the bill of rights, other sections of the act afford increased protection to member rights. Subchapter V of the act lays down detailed requirements to be observed by labor organizations concerning terms of office, election procedures, and the removal of officers.[9] A union member may challenge an election by reason of alleged violations of Subchapter V. After exhausting remedies within the organization, or having failed to obtain a final decision via such remedies within three months, he may file a complaint with the Secretary of Labor. The Secretary is empowered to resort to civil action, if he finds the complaint well founded, to enforce the election provisions of the act.

The act also requires each labor organization to make a comprehensive report to the Secretary of Labor, setting forth the constitution and bylaws of the organization together with a detailed statement of policies and procedures concerning the operation of union affairs and relations with members.[10] A financial report must also be made annually. This same information must be made available to all union members and any member may, for just cause, enforce, in state or federal district court, his right to examine any books or records necessary to verify the information. Not only is the member entitled to be informed as to the financial affairs of the union, but he is also given the right, under certain conditions, to enforce the fiduciary responsibility of union officers. He may bring suit, either in the federal district court or in a competent state court, to require an accounting or to obtain damages on behalf of the union. Any affected union member may sue in the federal district court to enforce the provisions of Title III relating to trusteeships of subordinate labor organizations, or by written complaint, initiate investigation by the Secretary of Labor, who is empowered to bring a civil action against an offending organization.

---

[8] 73 STAT. 523, 541; 29 U.S.C. §§ 411(5), 530 (Supp. 1959).
[9] 73 STAT. 532; 29 U.S.C. § 481 (Supp. 1959).
[10] 73 STAT. 524, 525; 29 U.S.C. § 431 (Supp. 1959).

WASHINGTON LAW

The coverage of the federal statute is broad but Washington law continues to be significant because existing union-member rights and remedies under state law are expressly preserved.[11] Also, state law could be influential in the interpretation of the rights and remedies given by the federal statute. Although the United States Supreme Court has held that federal courts will shape federal law where federal rights are concerned,[12] it has also said that federal courts may look to state law, when it is compatible with the federal policy, to aid in fashioning federal remedies in cases not expressly covered by statutory mandate.[13] Washington case law on union member rights, while not as broad in scope as the federal statute, is substantially in harmony with it.

With regard to court intervention in union affairs, Washington has used the rules applicable to mutual benefit societies and other voluntary unincorporated associations. The courts will not interfere with internal procedure and discipline of such associations in the absence of fraud or illegal or arbitrary action,[14] but will intervene when necessary to protect valuable property rights against actions which violate due process of law.[15] A property interest has been found in the right to retain union membership when the right to earn a living in a chosen profession,[16] or employment,[17] or property rights in the union treasury,[18] or the right to recover on a death benefit certificate depends upon such membership.[19] Suits have also been entertained concerning the salary rights of union officers[20] and the ownership and control of

---

[11] 73 STAT. 523; 29 U.S.C. § 413 (Supp. 1959).

[12] Clearfield Trust Co. v. United States, 318 U.S. 363 (1942); Jerome v. United States, 318 U.S. 101 (1943).

[13] Board of Comm'rs v. United States, 308 U.S. 343, 351 (1939); Stone v. White, 301 U.S. 532 (1935).

[14] Stivers v. Blethen, 124 Wash. 473, 215 Pac. 7 (1923); Kelly v. Grand Circle Women, 40 Wash. 691, 82 Pac. 1007 (1905).

[15] Mahoney v. Sailor's Union, 45 Wn.2d 453, 275 P.2d 440 (1954); Washington Local Lodge 104 v. International Bhd. of Boilermakers, 33 Wn.2d 1, 203 P.2d 1019 (1948); Leo v. Local 612, Int'l Union of Operating Eng'rs, 26 Wn.2d 498, 174 P.2d 523 (1946); Furniture Workers Local 1007 v. United Bhd. of Carpenters, 6 Wn.2d 654, 108 P.2d 651 (1940); Cox v. United Bhd. of Carpenters, 190 Wash. 511, 69 P.2d 148 (1937); Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P.2d 787 (1935); State *ex rel.* Cicoria v. Corgiat, 50 Wash. 95, 96 Pac. 689 (1908).

[16] Poole v. National Organization of Masters, 155 Wash. Dec. 507, 348 P.2d 986 (1960).

[17] Leo v. Local 612, Int'l Union of Operating Eng'rs, 26 Wn.2d 498, 174 P.2d 523 (1946).

[18] Mahoney v. Sailor's Union, 45 Wn.2d 453, 275 P.2d 440 (1954).

[19] Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P.2d 787 (1935).

[20] Washington Local Lodge 104 v. International Bhd. of Boilermakers, 33 Wn.2d 1, 203 P.2d 1019 (1948); 28 Wn. 2d. 536, 183 P.2d. 504 (1947).

union property and funds.[21]

Action taken by a union is without jurisdiction and void when the scope of powers laid down in the union constitution and bylaws is exceeded, or when procedural due process is lacking. The injured party has access to the courts to have the action or order declared invalid and to obtain relief. In *Ray v. Brotherhood of Railroad Trainmen*[22] it was held that the union had no jurisdiction to expel a member because he voted against the union in a representation election. This was not within the grounds for which discipline was authorized under the rules of the Brotherhood. Recovery by the beneficiary of his death benefit certificate could not be defeated because of the alleged loss of membership. Similarly, in *Leo v. Local 612, Int'l Union of Operating Eng'rs,*[23] solicitation of other members to join another craft union was not a violation of the union constitution and the union had no jurisdiction to expel Leo for such action. Also, he was not given notice of charges or an opportunity to prepare a defense. His reinstatement was ordered with recovery for lost wages. In *Cox v. United Bhd. of Carpenters,*[24] the constitution and bylaws of a parent union were said to constitute a binding contract between the association and its members. An attempted revocation of the charter of a local union by the parent union was void when the laws of the parent union gave no authority for a revocation and no charges were filed or hearing given. A declaratory judgment was issued to the effect that the local was still in existence and was entitled to its property. It has been stated to be the universal rule that no number of members less than the whole can divert the funds of the union to uses other than those defined in its constitution and laws.[25]

Provisions in union constitutions authorizing summary action without notice or hearing are invalid because they violate the law of the land.[26]

The federal protection of members' rights to free speech and assembly is subject to the right of the union to enforce reasonable rules as

---

[21] Furniture Workers' Local 1007 v. United Bhd. of Carpenters, 6 Wn.2d 654, 108 P.2d. 651 (1940); Lumber & Sawmill Workers' Union, 2623 v. International Woodworkers, 197 Wash. 491, 85 P.2d 1099 (1939); Cox. v. United Bhd. of Carpenters, 190 Wash. 511, 69 P.2d 148 (1937); Centralia Labor Temple Ass'n v. Day, 139 Wash. 331, 246 Pac. 930 (1926).

[22] 182 Wash. 39, 44 P.2d 787 (1935).

[23] 26 Wn.2d 498, 174 P.2d 523 (1946).

[24] 190 Wash. 511, 69 P.2d 148 (1937).

[25] Local 2618, Plywood Workers v. Taylor, 197 Wash. 515, 85 P.2d 1116 (1938).

[26] Washington Local Lodge 104 v. International Bhd. of Boilermakers, 33 Wn.2d 1, 203 P.2d 1019 (1948); Furniture Workers' Local 1007 v. United Bhd. of Carpenters, 6 Wn.2d 654, 108 P.2d 651 (1940) (suspension of local and seizure of property).

to the responsibility of every member towards the organization as an institution.[27] The interpretation of what is reasonable in this regard must await development through decided cases. Washington has taken a broad view of members' rights to oppose union leaders and policy, and also the union itself. As mentioned above, making a speech at a union meeting opposing union policies,[28] soliciting other workers to join another union,[29] and voting against the union in a representation election[30] have been treated as protected activity and would presumably not constitute disloyalty to the union as an institution. In *Selles v. Local 174, Int'l Bhd. of Teamsters*,[31] the court said that the right of self-organization includes the right to attempt to change the leadership and policies of the union.

However, in joining a union, a member consents to be bound by its rules and to be disciplined for infractions thereof.[32] The mode of discipline as prescribed by the organic law of the union must be followed and proceedings must be in good faith.[33] However, in a recent case, *Poole v. National Organization of Masters*,[34] a member who was suspended in 1948 for refusing to pay a disciplinary fine was entitled to be reinstated nine years later upon his tender of a sufficient sum to cover back dues, the fine, and a reinstatement fee. The union constitution stated that a member suspended for non-payment of dues or other indebtedness may be reinstated upon payment of all money owing. The court construed this to be permissive only, as to the member, and to leave no option to the union, which was required to reinstate him upon his complying tender. The court said that Poole could not follow his profession without union membership, and the union could not be permitted to bar a member permanently from his employment for a relatively minor breach of the rules.

The right to bring suit under the federal statute may be conditioned on the member's exhausting reasonable hearing procedures within the organization, not exceeding a four month lapse of time. Washington

---

[27] 73 STAT. 522; 29 U.S.C. § 411 (Supp. 1959).
[28] Mahoney v. Sailor's Union, 45 Wn.2d 453, 275 P.2d 440 (1954).
[29] Leo v. Local 612, Int'l Union of Operating Eng'rs, 26 Wn.2d 498, 174 P.2d 523 (1946).
[30] Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P.2d 787 (1935).
[31] 50 Wn.2d 660, 314 P.2d 456 (1957).
[32] Minch v. Local 370, Int'l Union of Operating Eng'rs, 44 Wn.2d 15, 265 P.2d 286 (1953); Yeager v. International Bhd. of Teamsters, 39 Wn.2d 807, 239 P.2d 318 (1951).
[33] Minch v. Local 370, Int'l Union of Operating Eng'rs, 44 Wn.2d 15, 265 P.2d 286 (1953).
[34] 155 Wash. Dec. 507, 348 P.2d 986 (1960).

has required exhaustion of reasonable internal procedures[35] but has recognized a number of exceptions to the rule. No appeal within the union is necessary when the union action or order is void for lack of jurisdiction or procedural due process,[36] when financial matters are involved,[37] when there would be unreasonable delay,[38] or when appeal would be futile.[39] Whether a member has exhausted his remedies is a determination of fact for the jury.[40]

In concluding this summary of Washington law, mention may be made of Washington's anti-blacklisting statute.[41] No case has been found in which there was reliance on the statute in an action against a union. *Arnold v. National Union of Marine Cooks*[42] involved a letter sent by a union agent to other unions. The letter charged that certain men were "renegades"; that they had deserted the union and attempted to break a strike. A list of the men's names was attached to each letter. The case was decided against the union on the basis of libel per se, without mention of the anti-blacklisting statute, although the NLRB had no difficulty in finding the same letter to be a blacklist.[43]

ADMISSION TO MEMBERSHIP

No attempt was made by Congress to control union policies regarding admission to membership. An amendment to the house bill designed to prohibit discrimination on the grounds of race, religion, color, sex, and national origin, both in representation and in admission to membership, was defeated.[44] Washington's "Law Against Discrimination in Employment"[45] makes it an unfair labor practice for a union to deny full membership rights and privileges to any person because of race, creed, color or national origin except in the case of a bona fide occupational qualification or need. Whether this also covers admission to membership is not clear. The court has said that admission

---

[35] Couie v. Local 1849, United Bhd. of Carpenters, 51 Wn.2d 108, 316 P.2d 473 (1957); Constantino v. Moreschi, 9 Wn.2d 638, 115 P.2d 955 (1941).
[36] Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P.2d 787 (1935).
[37] Washington Local Lodge 104 v. International Bhd. of Boilermakers, 28 Wn.2d 536, 183 P.2d 504 (1947).
[38] Washington Local Lodge 104 v. International Bhd. of Boilermakers, 158 Wash. 480, 291 Pac. 328 (1930).
[39] Washington Local Lodge 104 v. International Bhd. of Boilermakers, 33 Wn.2d 1, 203 P.2d 1019 (1948); Furniture Workers' Local 1007 v. United Bhd. of Carpenters, 6 Wn.2d 654, 108 P.2d 651 (1940).
[40] Minch v. Local 370, Int'l Union of Operating Eng'rs, 44 Wn.2d 15, 265 P.2d 286 (1953).
[41] RCW 49.44.010.
[42] 36 Wn.2d 557, 219 P.2d 121 (1950) *aff'd* 44 Wn.2d 183, 265 P.2d 1051 (1954).
[43] 29 LABOR RELATIONS REFERENCE MANUAL 1376 (1952).
[44] 105 CONG. REC. 14388 (daily ed. Aug. 12, 1959).
[45] RCW 49.60.190.

to membership is within the control of the union[46] and the fact that a man is eligible for membership under provisions of the union constitution does not entitle him to membership as of right.[47]

Choice of Forum

In selecting the court in which a suit should be brought, procedural advantages are unlikely to be a factor because Washington's new rules of civil procedure are comparable to federal court procedure. Differences between the federal law and state law with regard to the scope of substantive rights are obviously a major factor. In the formative years while federal law is being developed, the degree of predictability in the state courts, where there is case authority, will undoubtedly be a consideration.

The possibility of recovering expenses might make the federal forum desirable in appropriate cases. It should be noted that section 201(c) of the federal statute,[48] which allows a union member to enforce the right to examine union books and records, permits the court to award a reasonable attorney's fee in its discretion. Such a suit may be brought in either a state court or in federal district court. Also, section 501(b)[49] which deals with suits by members for an accounting or to recover damages for the benefit of the union, permits allotment of a reasonable part of the recovery for attorney's fees and expenses of the member. If a prospective suit can be brought within the coverage of these sections, it may make the vindication of a right possible where the monetary recovery expectable would not otherwise support the cost of suit. There is no provision for attorney's fees and costs in suits to enforce the bill of rights sections. Such a provision[50] would have put teeth into these sections of the statute. The omission may make the difference between an enforceable statute and an idealistic statement of principles. A Labor Union Fair Practices Bill introduced in the 1959 session of the Washington legislature[51] included provision for costs and reasonable attorney's fees in suits to enforce its provisions,

---

[46] Kanzler v. Linoleum Workers, 20 Wn.2d 718, 149 P.2d 276 (1944).

[47] Yeager v. International Bhd. of Teamsters, 39 Wn.2d 807, 239 P.2d 318 (1951) (admission denied because of unemployment among existing members).

[48] Pub. Law 257, Title II § 201 (a-c); 73 Stat. 524; 29 U.S.C. § 431 (Supp. 1959).

[49] 73 Stat. 535; 29 U.S.C. § 501(b) (Supp. 1959).

[50] Some federal statutes which permit the award of a reasonable attorney's fee in suits to enforce the statute are 15 U.S.C. § 15 (anti-trust suits); § 72 (unfair competition in import trade); 17 U.S.C. § 116 (copyright infringement); 15 U.S.C. § 77www (false or misleading statements under Trust Indenture Act); 15 U.S.C. § 78i (manipulation of security prices); 28 U.S.C. § 2678 (tort claims against the U.S.); 49 U.S.C. § 908 (injuries by unlawful acts of water-carriers in interstate and foreign commerce).

[51] S.B. 319, H.B. 528.

but the proposed legislation did not leave committee.

State and federal courts have concurrent jurisdiction of suits arising under the laws of the United States, except in certain instances where the jurisdiction has been restricted by Congress to the federal courts.[52] The enforcement section of the bill of rights does not state unequivocally that federal jurisdiction is to be exclusive for enforcement of these federally-created rights, although the language is susceptible to the interpretation that exclusiveness was intended.[53] The fact that a choice of federal or state forum is given for other causes of action created by the act, while this section is silent as to choice, also suggests exclusiveness. The need for uniformity could be given as a reason. The question is still open, however, and it may be possible to sue in state court, relying on the federally-created rights. Federal policy would necessarily be followed by the state court if concurrent jurisdiction exists.

The possibility of conflict between federal policy and the state rights and remedies that are saved seems unlikely to be a problem in Washington.

JOYCE M. THOMAS

[52] Grubb v. Public Util's Comm'n, 281 U.S. 470 (1930).
[53] 73 STAT. 523, 29 U.S.C. § 412 (1959).