

## TRADE-UNION DEMOCRACY

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The concepts of "democracy" and "freedom" when applied to labor unions present the problem of reconciling the need for authority and for a disciplined membership with the desire to protect the individual worker's freedom of judgment and action.<sup>1</sup> It is the purpose of this paper to determine whether or not trade-union government has produced a reconciliation consonant with the spirit of a democratic society.

Some relativity is attained by recognizing that certain labor leaders—just as did the Costa brothers in the business world—have obtained publicity incommensurate with their true importance. Of course, there are abuses in labor unions. As one writer comments, the power of John L. Lewis is so encompassing as to make any form of democratic procedure a myth.<sup>2</sup> And every labor-baiter can cite the provision of the Musicians' Union constitution that:

"The president may annul and set aside the constitution, by-laws, standing resolutions, or any portion thereof, excepting such which treat with the finances of the organization, and substitute therefor other and different provisions of his own making; the power to do so is hereby made absolute in the president when, in his opinion, such orders are necessary to safeguard the interests of the federation, the locals, members . . ."

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<sup>1</sup> A union member is bound to subordinate, within certain limits, his own judgment to that standard of conduct which the membership shall have agreed to be for the best interest of all. *Rhodes Bros. Co. v. Musician's Protective Union*, 37 R.L. 281, 92 Atl. 641 (1915); *Andoroff v. Building Trades Employers' Ass'n.*, 83 Ind.App. 294, 148 N.E. 203 (1925); *Smythe Neon Sign Co. v. Local Union No. 460 of International Brotherhood of Electrical Workers of Cedar Rapids*, 226 Iowa 191, 284 N.W. 126, 129 (1939); *Porter v. King County Medical Society*, 58 P.2d 367 (Wash. 1936). See: Pierson, *The Government of Trade Unions*, 1 *INDUST. & LAB. REL. REV.* 593 (1948).

<sup>2</sup> Louis Stark, *Democracy— and Responsibility— In Unions*, *New York Times Magazine*, May 25, 1947, p. 11.

But it is error to infer from a few isolated instances, that the membership has no voice in the formulation of union policy. It has been said that "The ultimate control over collective bargaining in most unions rests with the rank and file." This is true of all steps from the formulation of demands to the final approval of the contract.<sup>3</sup> And some writers have argued that many unions suffer from an excess of democracy which leads to uneconomic and extreme demands due to the pressure of the membership, rather than, as is commonly believed, due to their leaders' misguided thinking.<sup>4</sup>

In discussing the government of trade-unions, the writer has focused on factors central to the success or failure of the organization—disciplinary action, elections, and membership policies.

### I. Disciplinary Procedures

In the most detailed analysis of union discipline that has been found, Professor Summers states that a survey of 154 international unions shows a striking similarity in the steps to be used in any discipline case.<sup>5</sup> The typical procedure includes the making of charges by a fellow member, serving of notice on the accused, naming of a trial committee, holding of a hearing, reporting of recommendations to the local union for a vote, and appeal from the local to the international officers and international convention. Sometimes the procedure is enmeshed in a maze of rules, in one instance covered by about 4000 words (Musicians' Union); in other cases, by a short phrase in the union constitution simply stating that a fair hearing must be held by the local.

Clearly, if the union constitution provides for certain procedures, and in the absence of a waiver by the individual affected, the constitution would seem to create a contractual

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<sup>3</sup> Shister, *The Locus of Union Control in Collective Bargaining*, 60 *Quarterly Journal of Economics* 545 (1946).

<sup>4</sup> SLICHTER, *UNION POLICIES AND INDUSTRIAL MANAGEMENT*, pp. 374ff (Brookings Institution, 1941).

<sup>5</sup> See generally on disciplinary procedures: Summers, *Disciplinary Procedures of Unions*, 4 *Indust. & Lab. Rel. Rev.* 15 (1950).

right to that procedure. Every member in entering the union has assumed certain obligations under the union constitution, but in return becomes entitled to certain benefits as part of the consideration for his entering.<sup>6</sup>

Even if the union constitution or by-laws contain no provision relative to a hearing, it seems that the courts will compel the union to afford an adequate procedure.<sup>7</sup> Accordingly any by-law dispensing with notice is universally held to be null and void.<sup>8</sup> Some courts rest this on natural justice and public policy. Others announce that it is implied as a term of the union constitution on the theory that the union constitution was intended to regulate rights among the members in accord with certain fundamental concepts of proper procedure.<sup>9</sup>

The notice required in a hearing must be specific; a copy of the charges must accompany the notice and be served within a reasonable time before trial so that the defendant may properly prepare himself, obtain counsel, and summon witnesses.<sup>10</sup> Without such notice or where the notice is deficient in a vital respect such as time or place of hearing, there is no jurisdiction to try a member *in absentia*.<sup>11</sup> The defendant may waive notice and voluntarily submit to the jurisdiction of the trial committee.<sup>12</sup> Yet even a voluntary appearance does not deny him the right to have a copy of the charges.<sup>13</sup>

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<sup>6</sup> U'Renn v. Great Northern R. Co., 139 Wash. 366, 247 Pac. 726 (1926).

<sup>7</sup> International Printing Pressmen and Assistants' Union of North America v. Smith, 145 Texas 399, 198 S.W.2d 729 (1946).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Brennan v. United Hatters of North America, 73 N.J.L. 729, 65 Atl. 165 (1906); Manning v. Kennedy, 320 Ill.App. 11, 49 N.E.2d 658 (1943).

<sup>11</sup> Fritz v. Knaud, 57 Misc. 405, 103 N.Y.S. 1003 (1907).

<sup>12</sup> Bush v. International Alliance of Theater Stage Employees and Moving Picture Machine Operators of United States and Canada, 55 Cal.App.2d 357, 130 P.2d 788 (1942).

<sup>13</sup> Brennan v. United Hatters, etc., *supra*, n. 10.

According to Summers' survey, slightly less than half of the unions provide that a hearing board shall consist of elected officers; the other half stipulate that temporary committees are to be appointed to hear each case as it arises. Some unions expressly exclude from these committees, generally consisting of five to seven members, any biased individuals. Others have them selected by lot from the membership at large. To the writer, it seems that a more preferable manner would be to create a permanent trial committee of elected officers with the defendant having the right peremptorily to challenge any member of the trial board. In the event that some or even all of the members become disqualified, the committee would then be drawn by lot from the membership of the local, with either side having the right to challenge for bias.

Provisions in union constitutions for the regulation and conduct of the hearings are scarce and incomplete, many having none whatsoever. Very few constitutions guarantee the right of counsel. Only rarely does the constitution permit legal counsel, the otherwise uniform requirement being that counsel must be chosen from the membership. One union goes so far as to provide that "the member selected shall not be a lawyer."

Obviously, there is need for legal guidance in the conduct of disciplinary hearings, as in the admission or exclusion of hearsay testimony. The appointment of a legal officer to the trial committee for the limited purpose of rendering advice on questions of law should be required. He would have no vote and would not be qualified if he were the accuser or a witness for the prosecution or had acted in any investigative or consultative capacity in that case. The defendant should be permitted to have legal counsel where serious charges are involved, such as expulsion; in all other instances being restricted to counsel chosen from the membership.

A majority of unions provide that the trial committee report its decision of guilt or innocence to the membership

at large for their approval. Other unions give finality to the committee determination, while a very small minority eliminate the trial board entirely and permit the membership to hear evidence firsthand. The first method offers potentialities of mob rule, as does the last. A more equitable procedure would seem to require that the committee determination be final, unless the defendant appeals it to the higher union authorities as set forth in the union constitution and by-laws.

Professor Chafee, in an article written twenty years ago, established three possibilities as the basis of an appeal to the courts from a union disciplinary proceeding.<sup>14</sup> These were: (1) That the action sounds in contract, the constitution and by-laws of a union being in effect a contract between the union and its members; (2) that the action is one for the protection of property rights (right in union funds, in one's job, etc.); and (3) that the action is one in tort, the status as a union member and the right to work being protected from wilful or malicious injury. Most of the cases in which the courts have received an appeal seem to assume that the action is in contract; namely, that a wrongful expulsion is a breach of the union's implied promise to maintain the member's standing so long as he respects union rules.<sup>15</sup>

Exhaustion of remedies is a typical requirement in assailing administrative action and many unions erect a similar requirement for protesting actions of a local. Accordingly, under many union constitutions the worker cannot appeal to the courts until he has exhausted his internal remedies. In addition to exhaustion of remedies, the International Typographical Union orders the deposit of a bond to cover the costs entailed by the union's defense of the action.<sup>16</sup> These

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<sup>14</sup> Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993 (1930).

<sup>15</sup> *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833 (1931); *Leo v. Local Union No. 612, International Union of Operating Engineers*, 26 Wash.2d 498, 174 P.2d 523 (1946).

<sup>16</sup> ITU, By-laws Art. IV, sec. 43.

provisions reflect the long established fear and hatred of court intervention in labor disputes.<sup>17</sup>

The same rule is applicable to unions as to other voluntary organizations, i.e., that persons who join a union are reasonably chargeable with notice of the membership obligations and duties which the constitution and by-laws impose.<sup>18</sup> In the absence of special circumstances, such as a violation of contract obligations or an invasion of property rights, the courts will not interfere with intra-association affairs or determinations of labor unions.<sup>19</sup> Under this holding, the courts have upheld constitutional provisions requiring exhaustion of remedies within the union.<sup>20</sup>

Nevertheless, the courts have found grounds for jurisdiction in the following cases: where there is either no appeal within the union procedure or that which exists is unreasonable;<sup>21</sup> where an appeal might involve too great

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<sup>17</sup> Examples of court decisions reflecting the courts' antipathy to labor may be found in 45 Yale L.J. 1248, 1266 (1936). This attitude was revealed by Samuel Gompers at a legislative hearing where, in answer to a question referring to the high fines imposed by labor unions for various offenses (fines which Gompers had already admitted were equivalent to expulsion), Gompers stated, "God save labor from the courts!"

Q. "You think that labor unions should be permitted to exercise this autocratic and despotic power of capital punishment without any say by the courts?"

Joint Leg. Committee on Housing Rep. Lockwood Committee, (1923). Leg. Doc. No. 48.

<sup>18</sup> *Liggett v. Koivuen*, 227 Minn. 114, 34 N.W.2d 345 (1948).

<sup>19</sup> *Green v. Oberghall*, 73 App.D.C. 298, 121 F.2d 46 (1941), cert. denied 314 U.S. 637; *Pfoh v. Whitney*, 62 N.E.2d 744 (Ohio, 1945); *DeMille v. American Federation of Radio Artists*, 31 Cal.2d 139, 187 P.2d 769 (1947), cert. denied 333 U.S. 876.

<sup>20</sup> *Greenwood v. Building Trades Council of Sacramento*, 71 Cal.App. 159, 233 Pac. 923 (1925); *Joel v. Rosseter*, 15 Fed.Supp. 914 (1936); *Maguire v. Buckley*, 301 Mass. 355, 17 N.E.2d 170 (1937); *Mayer v. Journeyman's Stone Cutters Association*, 47 N.J.Eq. 519, 20 Atl. 492 (1890); *Federation of Insurance Employees v. United Office and Professional Workers of America, C.I.O.*, 74 A.2d 446 (R.I., 1950); *Local 1140, United Electrical Radio and Machine Workers of America v. United Electrical Radio and Machine Workers of America*, 51 A.L.C. 61 (Minn. 1950).

<sup>21</sup> *Local No. 7 v. Bowen*, 278 Fed. 271 (S.D. Texas 1922); *Local No. 11 v. McKee*, 114 N.J.Eq. 555, 169 Atl. 351 (1933); *Mursener v. Forte*, 186 Ore. 253, 205 P.2d 568, 576 (1949).

a delay;<sup>22</sup> where the case has obviously been prejudged by the appellate body;<sup>23</sup> where property rights are said to be involved;<sup>24</sup> where the action appealed from was in gross excess of authority or in violation of constitutional provisions;<sup>25</sup> or where the action appealed from controverted public policy.<sup>26</sup>

A duality of position which makes the same person judge and prosecutor has long been criticized, and Congress has seen fit to separate these functions in government agencies under the Federal Administrative Procedure Act.<sup>27</sup> The frequent identity of the union's executive and judicial board means that if charges are brought by the executive board, the same body that initiated the prosecution will render the judgment. If the board is dominated by the president, its judicial power of expulsion can be used for political purposes.

Such domination permits those in power to invoke the tribunal's powers against hostile members in addition to

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<sup>22</sup> *Bailey v. Montgomery*, 177 App.Div. 777, 165 N.Y.S. 159 (1917); *Local 104 v. International Brotherhood of Boilermakers*, 158 Wash. 480, 291 Pac. 328 (1930); *Washington Local Lodge No. 104, of International Brotherhood of Boilermakers, Iron Ship Builders, and Helpers of America v. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America*, 33 Wash.2d 1, 203 P.2d 1019 (1949); *O'Neill v. United Association of Journeymen Plumbers and Steamfitters of United States and Canada*, 348 Pa. 531, 36 A.2d 325 (1944); *cf. Trainer v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada*, 353 Pa. 487, 46 A.2d 463 (1946).

<sup>23</sup> *Edmington v. Hall*, 168 Ga. 484, 148 S.E. 403 (1929).

<sup>24</sup> *Lo Bianco v. Cushing*, 112 N.J.Eq. 593, 177 Atl. 102 (1935); *Cook v. John H. Mathias*, 61 A.2d 585 (N.J. 1948); *Minn. Council of State Employees, No. 19 v. American Federation of State, County, and Municipal Employees*, 220 Minn. 179, 19 N.W.2d 414 (1945).

<sup>25</sup> *Gilmore v. Palmer*, 109 Misc. 552, 179 N.Y.S. 1 (1919); *Gardner v. Newbert*, 74 Ind.App. 183, 128 N.E. 704 (1920); *Ellis v. A.F.L.*, 48 Cal. App.2d 440, 120 P.2d 79 (1941); *Barnhart v. United Automobile Aircraft, A.I. Workers*, 10 N.J.Super. 357, 76 A.2d 270 (1950).

<sup>26</sup> *Cameron v. International etc. Union No. 384*, 118 N.J.Eq. 11, 176 Atl. 692 (1935); *Oakes, Law of Organized Labor and Industrial Conflicts* (1927).

<sup>27</sup> Federal Administrative Procedure Act, sec. 5(c); For history and discussion of sec. 5(c), see: *Wong Yang Sung v. McGrath, Attorney-General*, 339 U.S. 33 (1950); *Labor-Management Relations Act, 1947*, sec. 3(d).

preventing those members from invoking the tribunal's power against the administration. This second factor becomes of utmost importance in those unions which provide penalties for complainant's failure to prove his charges.

In a substantial number of cases union officers are found sitting in judgment on activities which constitute opposition to their own policies or power. A typical case arose where the president introduced to his local a resolution condemning the general executive board for signing a contract with the employer without the required approval of the membership, and stating that the membership would not be bound thereby. The same board tried, convicted, and expelled him, and this action was upheld on the narrow point that the proceedings had complied with the union constitution.<sup>28</sup>

In other cases, disciplinary power has been used to purge opposition.<sup>29</sup> Sometimes, it has been used by a winning candidate to charge the losing candidate with conduct unbecoming a union member. In such a case, the expulsion of the protesting members was nullified by the court, and their reinstatement ordered.<sup>30</sup> In addition to domination by the officers, unofficial cliques within the union have used discipline procedures to satisfy their own whims and desires. Thus, where an unpopular member had a fictitious charge lodged against him, and was convicted and expelled, the court held the action to be improper.<sup>31</sup>

Added to political influences, which overentangle discipline with policy making, are the problems created by the fact that disciplinary proceedings are administered by lay-

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<sup>28</sup> *State ex rel Dame v. Le Fevre*, 251 Wisc. 146, 28 N.W.2d 349 (1937). In *Coleman v. O'Leary*, 58 N.Y.S.2d 812 (1945), two shop stewards were expelled on charges brought by officers of the union. They were tried and found guilty by the executive board, which included the officers whose orders had been violated and who had filed the charges. The court ordered the stewards reinstated.

<sup>29</sup> *Malloy v. Carroll*, 272 Mass. 524, 172 N.E. 790 (1930); *Cameron v. Durking*, 321 Mass. 590, 74 N.E.2d 671 (1947).

<sup>30</sup> *O'Brien v. Papas*, 49 N.Y.S.2d 521 (1944).

<sup>31</sup> *Local Union No. 57, Brotherhood of Painters, Decorators and Paperhangers of America v. Boyd*, 245 Ala. 227, 16 So.2d 705 (1944).



men who are not fully cognizant of the law, but have an historic aversion to everything connected therewith.

Many of the procedural elements which by lawyers are believed to be essential to a fair trial find little sympathy with the layman. The layman is impatient to make up his mind and is impervious to the minute and involved technicalities used to protect the accused.

In one case, bogus ballots all filled in with the name of the same candidate were admittedly deposited by the defendant. He insisted they were given him by other members, but he was tried, convicted and fined \$2500.00. The conviction was reversed because it was based on a presumption of guilt, the burden having been placed on the defendant to prove himself innocent, and because the winning candidate sat on the trial board.<sup>32</sup>

In another case, the trial was to be held by the international executive board of the union. The international president ordered the parties to submit their evidence by mail since the board members lived at a distance from each other and the parties. This was held to be improper as denying the right to confrontation and cross-examination.<sup>33</sup>

Closely connected with, yet divisible from the layman's influence, is the emotional content of many discipline cases. A charge of union disloyalty or strike-breaking combined with the anger which the charge itself creates makes a critical and calm judgment of whether the accused committed the act difficult. A secession movement will many times lead to snap-judgment expulsions. Thus, where certain dissident union members were expelled after calling an unsuccessful outlaw strike, the appellant was declared not

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<sup>32</sup> *McGintey v. Milk and Ice Cream Salesman, Drivers, and Dairy Employees Local No. 205*, 351 Pa. 47, 40 A.2d 16 (1945).

<sup>33</sup> *Koukly v. Weber*, 154 Misc. 659, 277 N.Y.S. 39 (1935). In *Brooks v. Engan*, 250 App.Div. 333, 19 N.Y.S.2d (1935) the union excluded the defendant while it heard a witness and refused to let him know the identity of the witness or the testimony offered. The court held this to be a denial of a fair trial.

to have had a fair trial, she having ceased working for the struck employer two months before the strike.<sup>34</sup>

The political influence, the layman's influence, and the emotional influence are inescapable in union disciplinary actions. Many times, some or all of them arise in court proceedings. The most recent statement of the critical part emotion can play in a trial was announced by Justice Jackson when, in a concurring opinion, he sided with the Court in reversing a rape conviction on the ground that violent emotions had been aroused through inflammatory newspaper articles, and that under such circumstances, a fair trial could not have been had.<sup>35</sup>

Union disciplinary procedure is in need of revision. An impartial tribunal with a non-voting legal advisor before whom the accused could try his case would do much to alleviate the problem of politics and emotionalism in the final decision.

## II. Elections

A recent survey showed that of 167 unions, 83 are required to hold conventions at least every two years and 109 hold conventions at least every four years.<sup>36</sup> If the procedural test as to the conduct of the elections and conventions is applied to the above statistics, the results take on a different light. Certain it is that a study of convention proceedings yields the impression that the leaders of many unions "are not hesitant about departing from parliamen-

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<sup>34</sup> *Sway v. Lovely*, 276 Mass. 159, 176 N.E. 791 (1939) (reinstatement denied on other grounds); cf. *Cason v. Glass Blowers Association of United States and Canada*, 220 P.2d 34 (Cal. 1950), where the president of a local, having been expelled for not ending an outlaw strike, was ordered reinstated by the court on the grounds that the proceedings before the national convention were contrary to "natural justice" and "fair play" in that the plaintiff was not permitted to plead his case personally before the assembled delegates.

<sup>35</sup> *Shepherd v. State of Florida*, 71 Sup.Ct 549 (1951).

<sup>36</sup> Shister, *Trade Union Government; A Formal Analysis*, 60 Quarterly Journal of Economics 91 (1945).

tary rules where an important issue is up for consideration, or where their power is seriously threatened."<sup>37</sup>

Over a period of 31 years, in only nine of 63 elections for the presidency was there any opposition to the incumbent.<sup>38</sup> This apathy of the membership has, in all probability, no single causative factor. Many times, it would seem not to be the fault of the union leadership.

In spite of penalties sometimes imposed for non-attendance, in spite of appeals, and in spite of much effort on the part of some organizations to make their program attractive, the problem of decreasing attendance and participation in union government grows. High wages and attendant lack of interest are one cause. Some industries, incident to wartime expansion, hired men who were required to join a union in order to work, but who were not permanently in the industry, and therefore did not concern themselves with union activities.

A major factor is that there are more places to go and more things to do.<sup>39</sup> There has been a multiplication of automobiles, movies, radios, and now television. A larger expanse of recreational activities is open to the American worker as the result of his higher wages, so that if the choice is between a union meeting and a boxing match the meeting is forgone. More and more the union has been under the necessity of competing with other institutions in order to retain the active interest of its members. Yet, as Millis and Montgomery write, "Notwithstanding the weakness of union government, union members do participate much more frequently and effectively in the election of their leaders and determination of their policies, than the electors of a city government. Above all they have a more personal interest in the men and issues, than do the electors."<sup>40</sup>

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<sup>37</sup> Pierson, *The Government of Trade Unions*, 1 *Indust. and Labor Rel. Rev.* 593, 602 (1948).

<sup>38</sup> Taft, *Opposition to Union Officers in Elections*, 58 *Quarterly Journal of Economics* 247 (1944).

<sup>39</sup> *Millis & Montgomery, ORGANIZED LABOR*, Chap. VI (1945).

<sup>40</sup> *Ibid.*

### III. Membership

The union may use reasonable arguments, peaceable persuasion and even entreaty to acquire members.<sup>41</sup> But since the right to join or not to join is a protected one,<sup>42</sup> the unions must depend for their membership upon the free choice of the individual worker. No resort can be had to compulsory methods of any kind to increase, keep up, or retain such membership.<sup>43</sup>

These principles are expressly made applicable to interstate commerce by the Taft-Hartley Act. Sec. 7 guarantees employees "the right to refrain" from joining or assisting a labor organization. Sec. 8(b) (1) states:

"It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ."

In prohibiting unions from coercing employees into joining, this section reverts to the view of the courts prior to the Wagner Act. The Board has used as a test to determine whether the union has unlawfully coerced the employees: Were the union's statements or actions "reasonably calculated to coerce" employees in their right not to join a union and to refrain from concerted activities?<sup>44</sup> While the two most common forms of coercion are threats and violence, the Board has held that in some circumstances the mere execution of an illegal union security agreement with an employer—and, a fortiori, its enforcement—consti-

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<sup>41</sup> *My Maryland Lodge v. Adt*, 100 Md. 283, 59 Atl. 721 (1905); *United States v. Weber*, 114 Fed. 950 (1902).

<sup>42</sup> Membership rights in a labor union, as well as rights under the employment contract, are valuable property rights protected by the 5th Amendment. *Nissen v. International Brotherhood*, T.C.S.H., 229 Iowa 1028, 295 N.W. 858 (1941).

<sup>43</sup> *Longshore Printing & Publishing Co. v. Howell*, 26 Ore. 527, 38 Pac. 547 (1894).

<sup>44</sup> *Seamprooffe, Inc.*, 82 N.L.R.B. 892 (1949).

tutes restraint of the employees' right to join or not to join a union.<sup>45</sup>

The right of labor unions to make by-laws and rules for the admission of members is unquestionable; they may require such qualifications for membership as they choose.<sup>46</sup> While labor organizations generally claim to be guided by the principle of inclusiveness, all workers being welcome and desired as members, there are exceptions and limitations. It is perfectly competent for them to require that a certain measure of training have been completed, this to protect the competency of those entering the trade.<sup>47</sup>

Notwithstanding that the principle of inclusiveness is allegedly adhered to, it is frequently departed from by craft unions and in time of unemployment by many industrial unions as well. Entrance into the union is sometimes closed, and in time of depression, dues of the younger members may be returned and their membership cancelled. The same type of exclusiveness is sometimes practiced when there is an overabundance of jobs—an example being during and after the 1906 earthquake, when the building-trades locals of San Francisco refused to issue any new cards or to accept the cards of nearby locals so that double and triple wages could be earned by their members working overtime and on Sundays.

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<sup>45</sup> Julius Resnick, Inc., 86 N.L.R.B. 38 (1949); Clara-Val Packing Co., 87 N.L.R.B. 703 (1949). In the latter case, the union expelled a member for refusal to honor a picket line which the union had established at the plant of another company with whom the union had a labor dispute. The union, in requesting that the ex-member be fired from her job in accordance with the union-security provisions of the contract, was held by the Board to be violating sec. 8(b)(1), the contract having been signed without the election required under sec. 9.

<sup>46</sup> *Pickette v. Walsh*, 192 Mass. 575, 78 N.E. 753 (1906); *Wilson v. Hacker*, 101 N.Y.S.2d 461 (1950). See: *Steele v. Louisville & Nashville Railroad*, 323 U.S. 192 (1944) and *Betts v. Easley*, 161 Ka. 459, 169 P.2d 831 (1946) for a discussion of racial discrimination in union admission policies. In *Union Starch and Refining Co. v. N.L.R.B.*, 51 A.L.C. 184, C.C.A., 7th Cir., No. 10144, (1951), the discharge of employees was held invalid when they applied for membership, tendered their fees and dues, but refused to take a loyalty oath to the union. While a union may set up membership requirements, it cannot have employees discharged for any reason other than failure to tender fees and dues.

<sup>47</sup> *National Protective Association v. Cumming*, 170 N.Y. 315, 63 N.E. 369 (1902); *Millis & Montgomery*, *supra*, n. 39.

In return for membership in the union, financial obligations are undertaken. While the fees and dues, their amount, and time of payment are ordinarily provided for by the locals, the internationals, as they gain more power and assume new functions like newspapers and radio publicity, have begun to set the fees and dues. More and more they tend to fix them, or at least fix the minimum, maximum or both. With a few exceptions, the dues are moderate, such as \$1.00 per month in the Railway Brotherhoods.

Union leaders generally follow the psychology found in the average business as to prices when it comes to the setting of adequate dues. Some say, the higher the dues, the more interest is found among the membership, which desires to get its money's worth, in contrast to low dues where the member believes he is getting something for nothing and takes no interest. High dues also lead to a stable and sound financial organization capable of dealing with the employer on a more equitable footing and of going through a strike without too great a retrenchment.

In addition to regulating the dues of the local, the international must consider that its financial stability depends upon the money received by the local inasmuch as it collects a percentage of the dues paid in. However, in recent years, in order to eliminate the risk of depending upon dues collected from the members—a hand-to-mouth type of existence—many parent unions have found it a better policy to levy a per capita tax on each local.

Insofar as dues and fees are concerned, the Taft-Hartley Act reads as follows:

“It shall be an unfair labor practice for a labor organization or its agents— to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminating under all the circumstances. In making such a finding, the Board shall consider, among the relevant factors, the practices and customs of labor organizations in the particular industry, and wages currently paid to the employees affected . . .” Sec. 8 (b) (5).

This restriction, while generally believed to apply to all unions, applies only to those covered by a union-shop agreement. It is intended to keep unions from forcing employees out of their jobs by making initiation fees so high that they cannot join, and thus legitimately be discharged under the act for "non-payment of fees."<sup>48</sup>

### Conclusion

Disciplinary actions are generally carried out in a fair and just manner, the cases getting into the courts being unrepresentative. One overall factor to be considered in the remedy of the judicial procedure is that there is no local procedure outlined in the constitution of the international union; the executive board of the international union in passing upon the by-laws of the local should make certain that proper judicial machinery has been provided.

Elections are held and regularly so. While it is true that abuses take place, possibly more so than is usually found in a governing body, it is believed that such is the result of the failure of younger men and women to make their life in the governing portion of the union movement. As is the case with politics, the rewards seem to be insufficient for the amount of work and sacrifice required, and thus we see the more capable among younger people going into the highly-touted "white-collar" field. How many newly-graduated lawyers are willing to be ostracized from their communities in order to become union lawyers?

The solution to the problem presented by misgovernment or lack of proper government in any self-governing body, be it an unincorporated association such as a labor union or a political entity, will not be afforded by the application of restrictive legislation which would crush their autonomous nature. Rather, it lies in the educating and propagandizing of the constituencies of the bodies involved, so that they will seek through their own efforts to secure an improvement in their internal procedures.

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<sup>48</sup> 93 Cong. Record 6443, June 5, 1947. See: Union Starch and Refining Co., etc., *supra*, n. 46.