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Constitutional Law - State Statute Prohibiting Collection of Dues If Union Officer Convicted of Felony, Held Constitutional - DeVeau v. Braisted, 363 U.S. 144 (1960)

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examination at the bookstore whether or not the book is obscene. If through his quick scanning of the book, he determines that it is not obscene, but when he reads it at home discovers that it is obscene, he is guilty of violating the statute.

On the other hand, the states obviously believe that there is a causal relationship between obscene material and antisocial behavior.[29] But the question then is: "Should the reader be subject to prosecution if he unknowingly purchases obscene literature?" States must have obscenity statutes, but the watch word must be reasonableness. Reasonableness here should be the coupling of knowing possession with *some intent*, and in the appeal of *State v. Mapp*[30] presently pending before the United States Supreme Court, it is believed that the Court will recognize the latter fact and declare the Ohio statute unconstitutional.

[29] For an excellent criticism of the view that there is no causal relationship between obscene literature and anti-social activities, see Schmidt, *A Justification of Statutes Barring Pornography from the Mail*, 26 FORDHAM L. REV. 70 (1957).

[30] 29 U.S.L. WEEK 3046 (U.S. July 14, 1960) (No. 236).

CONSTITUTIONAL LAW–STATE STATUTE PROHIBITING COLLECTION OF DUES IF UNION OFFICER CONVICTED OF FELONY, HELD CONSTITUTIONAL

A New York statute, the New York Waterfront Commission Act of 1953, section 8,[1] prohibited the collection of dues on behalf of any waterfront labor organization if any officer or agent of such organization had been convicted of a felony and had not been pardoned or given a certificate of good conduct from a board of parole. Defendant, District Attorney of Richmond County, threatened to prosecute anyone collecting dues for Local 1346 of the International Longshoremen's Association, because its Secretary-Treasurer, the plaintiff, had pleaded guilty to a charge of grand larceny in 1920 and had received a suspended sentence. By reason of this threat, plaintiff was suspended as an officer of Local 1346. An action for a declaratory judgment was thereupon instituted, plaintiff claiming section 8 to be in conflict with the supremacy clause of the United States Constitution, and the due process clause of the fourteenth amendment. It was further alleged that section 8 constituted a bill of attainder and was an *ex post facto* law. The Supreme Court of the United States, by a five to three decision (Mr. Justice Harlan took no part in the consideration or decision of the case), affirmed the lower courts and upheld the validity of the Waterfront Commission Act, stating

[1] N.Y. UNCONSOL. LAWS § 6700 (McKinney Supp. 1960).

that it was a reasonable means for achieving a legitimate state aim. *De Veau v. Braisted*, 363 U.S. 144 (1960).

The critical questions concerning the constitutionality of state labor relations legislation arise with respect to the extent of supersedure of state power by virtue of the enactment of federal legislation. Under the federal supremacy clause of the United States Constitution–article VI, section 2–federal law precludes state regulation in a field already occupied by Congress. With this simple formula, there would seem to be no problem. However, such has not been the case.

In the *DeVeau* case the Supreme Court was faced with the question of whether the New York act so contradicted a provision of the National Labor Relations Act of 1934 as to restrict the right of employees to bargain collectively through representatives of their own choosing.[2] On April 12, 1937, the Court had upheld the constitutionality of the original N.L.R.A., stating that the commerce power was broad enough to authorize the regulation of the labor relations of the employees there involved, whose activities were found to "affect" interstate commerce.[3] However, the N.L.R.A. does not automatically preclude a state from legislating in the area of labor-management relations, so long as this legislation does not materially obstruct the exercise of rights conferred by the N.L.R.A. or other federal legislation.[4] The enactment of the N.L.R.A. does not supersede a state act as to labor relations which do not so affect interstate commerce as to bring them within the commerce clause, and a state may exercise its police power even as to those labor relationships which fall within the commerce clause, unless the N.L.R.A. has excluded its operation in this field.[5] Of course, in case of a conflict in the administration of the state act and the N.L.R.A., the state must yield.[6] It is manifest that a state law cannot override the constitutional authority of the Federal Government.[7]

In the *DeVeau* case, Mr. Justice Frankfurter, speaking for the majority,

[2] National Labor Relations Act (1934), §§ 1, 7, as amended, 29 U.S.C.A. §§ 151, 157 (Supp. 1959). Section 7 of the N.L.R.A. declares categorically that "employees shall have the right . . . to bargain collectively through representatives of their own choosing. . . ."

[3] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937). The companion cases were NLRB v. Fruehauf Trailer Co., 301 U.S. 49 (1937); NLRB v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937); Associated Press v. NLRB, 301 U.S. 103 (1937); and Washington, Virginia & Maryland Coach Co. v. NLRB, 301 U.S. 142 (1937).

[4] Thomas v. Collins, 323 U.S. 516 (1945); Local 111, United Elec. Workers v. Wisconsin Employment Relations Bd., 315 U.S. 740 (1942).

[5] Wisconsin Labor Relations Bd. v. Fred Rueping Leather Co., 228 Wis. 473, 279 N.W. 673 (1938).

[6] *Ibid.*

[7] Consolidated Edison Co., v. NLRB, 305 U.S. 197 (1938).

stated that section 8 of the Waterfront Commission Act did not operate to deprive waterfront employees of opportunity to choose bargaining representatives, since it merely disabled them from choosing as their representatives ex-felons who had neither been pardoned nor received "good conduct" certificates. The situation was not such that the operation of the state statute so obviously contradicted a federal enactment that it precluded both from functioning together, or would impede the effectiveness of the federal measure. The failure of Congress to envisage the possibility that state legislatures might seek to limit employees' freedom of choice, and its failure explicitly to proscribe such limitations, demonstrated that a state could, without violating congressional policy, forbid employees to bargain through ex-felons.

The dissent, written by Mr. Justice Douglas, and concurred in by Mr. Chief Justice Warren and Mr. Justice Black, relied mainly on the case of *Hill v. Florida*.[8] In the *Hill* case, a Florida statute made it a misdemeanor, without first obtaining a license, to act as "business agent" of a labor organization. No license was to be granted to any person who had not been a citizen of and resident of the United States for more than ten years immediately preceding the filing of his application, or who had been convicted of a felony or was not of good moral character. Hill, a business agent of the United Association of Journeymen Plumbers and Steamfitters, Local 243, claimed that the statute violated the fourteenth amendment and conflicted with the collective bargaining provisions of the N.L.R.A. The Supreme Court, speaking through Mr. Justice Black, held that the licensing section of the statute "circumscribes the 'full freedom' of choice which Congress said employees should possess."[9]

The dissent in the *DeVeau* case further felt that the Waterfront Act, section 8, had been so construed and applied that the union and its selected representatives were prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by New York.

Actual or potential abuses of power by unions have aroused an increasing amount of public concern.[10] The growing public interest in this general problem has been reflected in recent decisions upholding state

[8] 325 U.S. 538 (1944).

[9] *Id.* at 541. *Cf.* UAW v. Wisconsin Employment Relations Bd., 336 U.S. 245 (1949); Garner v. Teamsters Union, 346 U.S. 485 (1953). For a discussion of Hill v. Florida, 325 U.S. 538 (1944), see Dodd, *The Supreme Court and Organized Labor, 1941–45*, 58 HARV. L. REV. 1018, at 1062–66 (1945).

[10] Witness, for example, the Hearings before the House of Representatives on this subject: *Hearings on H.R. 6286, H.R. 6321, H.R. 6343, & S. 2383, Before Subcommittee Three of the House Committee on the Judiciary*, 83d Cong., 1st Sess. (1953).

legislation regulating in varying degrees the internal affairs of unions.[11] The New York statute is an example of such legislation. The situation in New York which brought about the Waterfront Act was described in a detailed report published by the New York State Crime Commission in May 1953.[12] The Commission reported that the skulduggeries on the waterfront were due largely to the domination over waterfront employment gained by the International Longshoremens' Association, as then conducted. Its employment practices easily led to corruption, and many of its officials participated in dishonesties. The presence on the waterfront of convicted felons in many influential positions was an important causative factor in this appalling situation.

Until the Taft-Hartley Act[13] in 1947, the federal labor law had never attempted to regulate the internal operations of unions, the conduct of their daily affairs, or their financial operations. The act extended state power in the field of labor disputes affecting interstate commerce by empowering the N.L.R.B., in its discretion, to cede to the state jurisdiction over certain labor disputes, even though they affected interstate commerce.[14] In 1959, Congress took further steps to impose restrictions upon union officers and the internal affairs of unions. The Labor-Management Reporting and Disclosure Act of 1959,[15] section 504 (a), pro-

[11] Linehan v. Waterfront Comm'n., 116 F. Supp. 401 (S.D.N.Y. 1953); Linehan v. Waterfront Comm'n., 112 F. Supp. 383 (S.D.N.Y. 1953), *aff'd.*, 347 U.S. 439 (1954); Staten Island Loaders, Inc. v. Waterfront Comm'n., 117 F. Supp. 308 (S.D.N.Y. 1953), *aff'd.*, 347 U.S. 439 (1954); O'Rourke v. Waterfront Comm'n., 118 F. Supp. 236 (S.D.N.Y. 1955); Hazelton v. Murray, 21 N.J. 115, 121 A.2d 1 (1956). In the second Linehan case, *supra,* Judge Augustus Hand wrote:

"Since we hold that the Act is within the police power of the state, the numerous objections to it generally based on violation of the Constitution would all seem to be without foundation. This is a new type of regulation, drawn to meet an emergency and reasonably related to the public interest." *Id.* at 685.

[12] 4 N.Y. State Crime Comm'n. Rep. (1953).

[13] 29 U.S.C.A. §§ 141–188 (Supp. 1959). For a discussion of the first federal attempt to regulate internal operations of unions, see DUNLOP AND HEALY, COLLECTIVE BARGAINING, PRINCIPLES AND CASES 20 (1953); and Lyon, *The Labor-Management Reporting and Disclosure Act, 1959*, 9 DE PAUL L. REV. 159, at 160 (1960).

[14] Section 10(a) of the N.L.R.A. states: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . . affecting interstate commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided,* that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry . . . even though such cases may involve labor disputes affecting interstate commerce, unless the provisions of the State of Territorial Statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provisions of this Act or has received a contruction inconsistent therewith." 29 U.S.C.A. § 10(a) (Supp. 1959).

[15] U.S.C.A. §§ 401–604 (1959).

vided that "no person . . . who has been convicted of, or served any part of a prison term resulting from his conviction of [a group of serious felonies] . . . shall serve—(1) as an officer . . . of any labor organization . . . for five years after such conviction. . . ."[16] In sections 205 (c) and 403 of the act, express provisions excluding the operation of state law were included. No such pre-emption provision was provided in connection with Section 504 (a). Section 604 of the 1959 Act provides: "Nothing in this Act shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to [the same group of serious felonies, with the exception of exclusively federal violations, which are listed in Section 504 (a)]."[17] Section 603 (a) is an express disclaimer of pre-emption of state laws regulating the responsibilities of union officials, except where such pre-emption is expressly provided in the 1959 act.[18]

The states themselves have not ignored the problem of the internal affairs of unions and their effect upon the public welfare. A considerable number of states have enacted labor relations statutes. Some of these are in form "little Wagner Acts," having been modeled on the original N.L.R.A., and therefore contain restrictions upon employers only.[19] Most of these statutes, however, contain restrictions both upon employer and upon union or employee conduct.[20] Illinois has no such legislation, and the rights of the parties to a labor dispute—where such parties are not subject to federal law—are thus largely determined by common-law actions in the Illinois courts.[21]

Thus it can be seen that both at the federal and state level the problem of the union, its officials and members, has resulted in the passage of legislation directly affecting the internal affairs of unions. The *DeVeau*

[16] U.S.C.A. § 504(a) (Supp. 1959).

[17] 29 U.S.C.A. § 604 (Supp. 1959).

[18] Section 603(a) provides: "Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization . . . under the laws of any State. . . ." 29 U.S.C.A. § 603(a) (Supp. 1959).

[19] CONN. GEN. STAT. ANN. ch. 561, §§31–101 to –111 (1960); N.Y. CONSOL. LAWS ANN. §§700–16 (McKinney Supp. 1960); PA. STAT. ANN. ch. 43 §§ 211.1–.3 (Purdon Supp. 1959); R.I. GEN. LAWS ch. 7 §§ 28–7–1 to –47 (Supp. 1959).

[20] COLO. REV. STAT. ANN. ch. 97, § 94 (Supp. 1960); KANS. GEN. STAT. ANN. ch. 44, §§ 802–17 (Supp. 1959); MASS. ANN. LAWS ch. 151 B, § 4 (Supp. 1959); MICH. STAT. ANN. § 17.454 1960); MINN. STAT. ANN. § 179.42 (Supp. 1959); N.Y. CONSOL. LAWS ANN. §§ 720–32 (McKinney Supp. 1960); PA. STAT. ANN. ch. 43 §§ 211.31–.39 (Purdon Supp. 1959); UTAH CODE ANN. ch. 34 §§ 1–19 to –34 (Supp. 1959); WIS. STAT. ANN. § 111.07 (West, Supp. 1959).

[21] For the view that there is a lack of statutory law in Illinois regulating internal affairs of unions, see Lyon, *supra* note 13, at 162.

case seems to be an affirmance of the recognition of abuses of power by unions, and an attempt to deal with a cause of these abuses in a manner not contradictory to a federal enactment: The majority felt that the New York Act did not conflict with the provisions of the N.L.R.A. The members of the Court who were in the majority in declaring the Florida statute unconstitutional in the *Hill* case of 1944 are in the minority in the *DeVeau* case. The Court seems to feel today that a curb upon union abuses by means of both state and federal enactments which are not directly in opposition is more important than an unrestricted guarantee to the employees of unions of a right to choose their own collective bargaining representative officers without any interference from state labor relations laws.

CONSTITUTIONAL LAW–STATUTE AUTHORIZING SEARCH WITHOUT WARRANT UPHELD BY REASON OF EQUAL DIVISION OF SUPREME COURT

Earl Taylor, defendant, owned and resided in a private residence in Dayton, Ohio. Three housing inspectors sought admittance to his home pursuant to a city ordinance which authorized them to enter any dwelling, at a reasonable hour and upon showing proper identification, for the purpose of inspecting the dwelling to determine if it conformed to the miminum standards of health and safety as set forth in subsequent sections.[1] The inspectors carried no credentials and were refused entry by the defendant. They returned later with identification, and the defendant inquired as to the reason for inspecting his home. The inspectors gave no reason or cause for the particular inspection, but merely told the defendant that they had a right to inspect any home. The defendant asked them if they had a search warrant and when told that they did not, he again refused entry. He was subsequently served with a warrant to appear in court for violation of the ordinance, which violation could

[1] DAYTON, OHIO, CITY ORDINANCES No. 18099, § 806.30 provides: "The Housing Inspector is hereby authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming houses, rooming units and premises located within the City of Dayton in order that he may perform his duty of safeguarding the health and safety of the occupants of dwellings and of the general public. For the purpose of making such inspections and upon showing appropriate identification the Housing Inspector is hereby authorized to enter, examine and survey at any reasonable hour all dwellings, dwelling units, rooming houses, rooming units, and premises. The owner or occupant of every dwelling, dwelling unit, rooming house, and rooming unit or the person in charge thereof, shall give the Housing Inspector free access to such dwelling, dwelling unit, rooming house or rooming unit and its premises at any reasonable hour for the purpose of such inspection, examination and survey."