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Labor Law - Union Shop Clause Violates Freedom of Speech Where Funds Used for Ideological Purposes - International Assn. of Machinists v. Street, 108 S.E.2d 796 (Ga. 1959)

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The decision of this court has provided the first adjudication of the legality of an "agency shop" clause under the Indiana Right-To-Work Act. However, the importance of this decision will extend far beyond the State of Indiana. Other states which are now considering the adoption of Right-To-Work laws will have to consider this decision when framing their proposed enactments. As pointed out by this Indiana court, if legislators seek to prohibit the "agency shop," then they must manifest this intent by clearly stating such prohibitions in the statute.

What effect this decision will have on the decisions of other states with similar statutes is difficult to foresee. In these states, unions will definitely seek to negotiate similar provisions so as to test their respective statutes. Just two months after the *Meade* decision, the Attorney General of North Dakota issued an opinion on "agency shop" clauses and referred to this Indiana decision.[15] He concurred with the *Meade* opinion as to their validity, however, he suggested the charge to nonunion employees for union representation should only be on the basis of *actual cost* of such representation. The fundamental reasoning used by the Indiana court in deciding the legality of the "agency shop" clause has provided a sound basis for other courts to deal with this same problem in the future.

[15] N.D. Atty. Gen. Opin. (August 24, 1959).

LABOR LAW—UNION SHOP CLAUSE VIOLATES FREEDOM OF SPEECH WHERE FUNDS USED FOR IDEOLOGICAL PURPOSES

S. B. Street was employed for many years by one of the defendant railroads. Subsequent to employing Street, defendant railroad entered into a labor contract with the defendant union, the authorized collective bargaining representative for employees of the railroad within the provisions of the Railway Labor Act.[1] The contract provided for a union shop, which made union membership a condition of continued employment and would have required Street to join the union. A substantial part of the dues, fees, and assessments which the plaintiffs were to be required to

[1] 45 U.S.C.A. § 152(11) (Supp., 1958) provides: "Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted (a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class:"

pay to the union would have been used on the local, regional and national levels of organized labor, to support ideologies, legislation, economic programs and political candidates which the plaintiffs not only did not approve, but directly opposed. The plaintiffs sought to enjoin defendant railroad and defendant union from enforcing the contract. The trial court found that the use of monies so exacted from the plaintiffs was contrary to the Constitution, law and public policy of Georgia and enforcement of the legislation which allowed such practices would violate the First, Fifth, Ninth and Tenth Amendments to the United States Constitution, which protect individuals from unwarranted invasion of their personal and property rights under the cloak of federal authority. The lower court enjoined the defendants from enforcing the contract. Upon appeal, the Supreme Court of Georgia, in a unanimous decision, affirmed the decision of the lower court on the grounds that such use of funds so exacted from the plaintiffs would violate their rights to freedom of speech and deprive them of property without due process of law. *International Assn. of Machinists v. Street*, 108 S.E.2d 796 (Ga., 1959).

The major question in the *Street* case is whether the guaranty to free speech is violated by such use of funds acquired under a union shop agreement. This problem does not appear to have been directly adjudicated prior to this case. Two other cases, involving similar factual situations have reached courts of last resort. In *Railway Employees' Department v. Hanson*[2] the United States Supreme Court held that the union shop section of the Railway Labor Act was constitutional and did not violate the First and Fifth Amendments, because requiring financial support of collective bargaining from all who derive benefits from it is within the power of Congress under the commerce clause.[3] The court also held that the union shop is a matter of policy and therefore within the province of Congress, not the Supreme Court.[4] However, Mr. Justice Douglas stated quite pointedly that the decision that the union shop was constitutional was not meant to prejudice the decision in any case involving imposition of conditions to union membership other than periodic dues, initiation fees, and assessments, *or involving use of compulsory membership to impair freedom of expression*, and that such judgment was withheld there because the facts in the case did not give rise to such a question.

Another case where the plaintiffs sought to enjoin the enforcement of a union shop contract was heard in the Texas Supreme Court. Following the precedent in the *Hanson* case, the court did not grant the injunc-

[2] 351 U.S. 225 (1956).

[3] U.S. Const. Art. I, § 8, cl. 3.

[4] Cf. Local 1976 United Brotherhood of Carpenters and Joiners of America v. N.L.R.B., 357 U.S. 93 (1958).

tion.[5] However, the majority opinion in this case explains an important part of the *Hanson* case. It says that Congress in allowing the union shop sought only to remedy the "free rider" problem, so that all who received benefits of collective bargaining would be made to share in its support, and that the terms *dues, fees,* and *assessments* appearing in the statute meant only those funds necessary to defray the permanent cost of collective bargaining.

One purpose of the Railway Labor Act is to aid in the free flow of interstate commerce.[6] Under the commerce power, Congress has the power to enact all appropriate legislation for the protection, advancement and safety of interstate commerce and may adopt measures which foster, protect, control and restrain such commerce.[7] There is a serious doubt as to whether the Georgia courts could enjoin the enforcement of the contract on the grounds that the union shop provision thereof violated the laws of Georgia. The decision in the *Hanson* case stated that a union agreement made pursuant to the Railway Labor Act has the *imprimatur* of the federal law upon it and, by the force of the Supremacy Clause of Article VI of the Constitution, cannot be made illegal nor vitiated by any provisions of a state's laws.[8] Therefore, the substantive law question which remains is whether the union shop clause in the contract authorized by the Railway Labor Act violates the plaintiffs' rights under the Federal Constitution.

The right of freedom to contract has been abridged by Congress' exercise of its power to regulate commerce. The United States Supreme Court has held that the Fifth and Fourteenth Amendments are not guaranties of untrammeled freedom to contract and to act; and Congress, in exercising its power to regulate commerce can subject both to restraints not shown to be unreasonable.[9] The Fifth Amendment does not prohibit governmental regulation for public welfare, but merely demands that law shall be reasonable and not arbitrary, or capricious, and that the means chosen shall have real and substantial value to the ends sought to be attained.[10] At this point precedent might indicate that the union shop

[5] Sandsberry v. International Assn. of Machinists, 156 Tex. 340, 295 S.W.2d 412 (1956).

[6] 45 U.S.C.A. § 151a (Supp., 1958).

[7] N.L.R.B. v. Jones & Lauglin Steel Corporation, 301 U.S. 1 (1937); Texas & N.O.R. Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548 (1930).

[8] Railway Employees' Dept. v. Hanson, 351 U.S. 225 (1956).

[9] Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515 (1937); Tagg Brothers and Morehead v. United States, 280 U.S. 420 (1930) in which the Supreme Court held that fixing of maximum rates which could be charged by commission brokers in the Union Stockyards was not a violation of due process as guaranteed by the Fifth Amendment.

[10] Nebbia v. New York. 291 U.S. 502 (1934).

provision of the Railway Labor Act does not unreasonably violate an employee's right to contract. Further, infringement which might occur would be a reasonable exercise of Congress' power to regulate interstate commerce.

The more difficult point to resolve is whether freedom of speech is violated by the use of funds, collected under a union shop clause, to support programs which the plaintiffs oppose. Our courts have realized that in certain instances the right of free speech must be abridged in order to maintain our security. The United States Supreme Court has stated that although the right of freedom of speech is fundamental, it is not absolute. In *Whitney v. California*,[11] speaking of the rights of free speech and assembly, Mr. Justice Brandeis said: "Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, *economic*, or moral."[12] There are many cases where freedom of speech has been restricted by labor legislation, but most of these cases deal with preventing employers from using coercive language to dissuade employees from exercising their collective bargaining rights.[13]

When this case or a case involving similar facts and presenting the same issue reaches the United States Supreme Court, it is highly possible that the decision will not support the holding of the Georgia courts. This decision seems to go against the trend found in the Supreme Court decisions and would cause great repercussions in organized labor which would be adverse to the general welfare of the nation. For these reasons it does not seem probable that this decision will be affirmed by the Supreme Court of the United States.

[11] 274 U.S. 357 (1927).

[12] Ibid., at 373 (emphasis supplied).

[13] N.L.R.B. v. Bailey, 180 F.2d 278 (C.A. 6th, 1950); N.L.R.B. v. Kropp Forge, 178 F.2d 822 (C.A. 7th, 1949); N.L.R.B. v. Winona Textile Mills, 160 F.2d 201 (C.C.A. 8th, 1947); N.L.R.B. v. American Tube Bending, 134 F.2d 993 (C.C.A.2d, 1943).

PROCEDURE–FOREIGN CORPORATION HELD NOT SUBJECT TO ILLINOIS JURISDICTION UNDER CIVIL PRACTICE ACT, SECTION SEVENTEEN, UNLESS PHYSICALLY PRESENT WHEN "DOING BUSINESS" IN ILLINOIS

In 1953, after a series of negotiations at plaintiff's office in Chicago, between defendant, a New York manufacturing corporation not licensed to do business in Illinois, and plaintiff, an Illinois distributor of office machines, a contract was allegedly entered into, the terms of which were stated in a letter sent from defendant in New York to plaintiff in Illinois.