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Legal Ethics - Operations of Union Legal Aid Department Held Illegal and Unprofessional - In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 150 N.E. 2d 163 (1958)

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tive bargaining agreement is *not* a defense to a charge of unfair labor practices, where in the absence of the "hot cargo" provision, the union conduct would unquestionably be a violation. Thus, inducement of employees which is prohibited under Section 8(b)(4)(a) in the absence of a "hot cargo" provision, is likewise prohibited when there is such a provision.[7]

From the foregoing cases, a gradual evolution of the definitive meaning of Section 8 (b) (4) (a) is seen. In the *Conway* case, it was felt that "hot cargo" contracts were fully within the law and were to be honored. The *McAllister* decision represented a complete reversal calling for an overruling of the *Conway* case and a declaration that a "hot cargo" provision is not a defense to a charge under Section 8 (b) (4) (a). In the *Sand Door* case, the Board changed its mind again by declaring the contract to be lawful, and only the appeal to employees unlawful.

Finally, the Supreme Court decided in affirmation of the *Sand Door* case that any appeal to the employees is a violation of Section 8 (b) (4) (a).

In addition, it held that, in spite of a contract, the employer is always free to make his own choice of dealing with, or refusing to deal with another concern at the time the question of boycott arises, thus giving the contract an almost nugatory effect.

[7] Local 1976, United Brotherhood of Carpenters v. NLRB, 78 S.Ct. 1011 (1958).

LEGAL ETHICS–OPERATIONS OF UNION LEGAL AID DEPARTMENT HELD ILLEGAL AND UNPROFESSIONAL

The Brotherhood of Railroad Trainmen and their regional counsel entered into an agreement whereby fees for claims, arising out of injuries to employees sustained in railroad accidents, were set at a fixed percentage, and any investigation costs, expert witness fees, medical examinations, transcript costs, and printing of appellate briefs, and department's operating costs were to be paid by the attorney out of the fixed percentage.[1] The investigation costs included a payment to an agent appointed by the union, whose responsibility it was to complete accident reports on all injuries occurring to employees in the course of employment. It was the agent's duty to contact the injured party, or his family, promulgating the

[1] Motivated by unhealthy conditions arising from economic pressure being exerted by some railroad claim-settlement agents, and the incompetency or exorbitant fees of some lawyers, in 1930 the Brotherhood established the department which, in essence, is the issue in this case. The avowed purpose of the department is to aid the injured railroad employees and their families. The department consisted of sixteen lawyers selected on a basis of their ability to adequately handle the nature of the cases generally involved and their ability to procure large settlements in personal injury cases.

availability of free legal advice. Proceedings were brought to determine whether this activity was unprofessional and illegal. *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N.E. 2d 163 (1958).

The Supreme Court of Illinois in deciding this problem, considered particularly, three separate arguments on which the Brotherhood tried to justify such activities.

First, the Brotherhood attempted to justify the practices in question under the Railway Labor Act.[2] They contended that this federal statute protects and further condones their activity. The act permits the Brotherhood to represent its members before the National Railroad Adjustment Board, or other appropriate tribunals, in the processing of disputes growing out of grievances. The court in refuting this argument stated that the handling of personal injury cases would not fall within the ambit of the term "disputes," as said term was intended to be interpreted by the statute. Further, the court held that the Act was not intended to encroach upon the state's power to regulate the legal profession. Until the instant case this precise issue was not decided by a major court.[3]

Secondly, the Brotherhood asserted, by way of analogy, that, by virtue of their interest in the case, their rights should be considered as tantamount to those of insurance companies.[4] Acknowledging an interest possessed by the Brotherhood, the court distinguishes between the nature of said interest and that of an insurer. The insurance companies stand to lose and not to gain by litigation; they are dealing with their own money. Such is not the situation with the Brotherhood. The court concluded that the nature of the Brotherhood's interest ". . . does not authorize it to engage in the active solicitation of those claims for particular lawyers who finance the solicitation."[5] Once again this was the first time a major court considered this particular issue.

Thirdly, the Brotherhood attempted to justify its activities on the "public policy" argument, e.g., that the injured has a right to competent legal advice. The court acknowledged this argument as having some weight but not of a sufficient magnitude ". . . to override the principles that must govern the members of the legal profession in their relations with clients."[6]

[2] 45 U.S.C.A. §§ 151, 152 (1943).

[3] Although this precise issue was not discussed in the opinions, both Atchison, T. & S.F. Ry. Co. v. Jackson, 235 F.2d 390 (C.A. 10th, 1956) and In re O'Neill, 5 F. Supp. 465 (E.D.N.Y., 1933) arrived at the same decision under similar facts.

[4] Ill. Rev. Stat. (1957) c. 32, § 415 states an exception to the law prohibiting a corporation from practicing law if it ". . . may be interested by reason of the issuance of any policy or undertaking of insurance, guarantee or indemnity. . . ."

[5] In re Brotherhood of Railroad Trainmen, 13 Ill.2d 391, 395, 150 N.E.2d 163, 166 (1958).

[6] Ibid., at 396, 167.

The court, in the instant case, was confronted with an earlier Illinois decision, *Ryan v. Pennsylvania Railroad Co.*[7] A chronological history of this case and the law pertaining thereto should serve to resolve any current misunderstanding.

Ryan was an attorney for the Brotherhood who initiated an action against the railroad to assert a lien claimed as a result of professional services rendered to an injured employee. Subsequent to the employee contracting (a Brotherhood Legal Aid Department contract) with Ryan, the railroad and the employee reached a settlement independent of Ryan. The railroad defended on the ground that the contract between Ryan and the employee was the result of solicitation and based upon a "fee-splitting" arrangement, thus not enforceable.[8] The court, after reviewing the nature of the Brotherhood's Legal Aid Department, upheld the lien. This decision was the genesis of the "public policy" argument. In essence, the court justified its decision because, ". . . the purpose of the Brotherhood is a worthy one . . ."[9] Although this case was not accepted by other courts, it had not been expressly overruled by an Illinois Court.

In considering the *Ryan* decision, the court in the instant case acknowledged the similarity of the issues involved but resorted to a recent Illinois statute[10] (passed while this matter was pending) which clearly ". . . expressed a policy contrary to that stated in the *Ryan* case."[11]

There have been other cases opposing the operations of the Brotherhood's Legal Aid Department[12] but the rationale of those decisions was based upon the nature of the "fee-splitting" contract as it first existed—a contract (or eventually two separate contracts) calling for the payment of a specific percentage of the amount obtained to the attorneys and a specified percenage of the amount to the Brotherhood. The California Supreme Court, in *Hildebrand v. State Bar*,[13] appears to draw a distinction between the effect of having a specific "split-fee" contract and the subsequent straight twenty-five per cent arrangement (the lawyer in that case

[7] 268 Ill. App. 364 (1932).

[8] Ill. Rev. Stat. (1957) c. 13, § 17.

[9] 268 Ill. App. 364, 379 (1932).

[10] Ill. Rev. Stat. (1957) c. 13, § 15 which provides: "It shall be unlawful for any person not an attorney at law to solicit for money, fee, commission, or other remuneration directly or indirectly in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon, or for the purpose of settling the same."

[11] In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 397, 150 N.E. 2d 163, 167 (1958).

[12] In re O'Neill, 5 F. Supp. 465 (E.D.N.Y., 1933); Hildebrand v. State Bar of California, 36 Cal.2d 504, 225 P.2d 508 (1950).

[13] 36 Cal.2d 504, 225 P.2d 508 (1950).

having operated under both arrangements). In finding an unprofessional and illegal practice the court stated, ". . . petitioners must be held accountable for the practices which existed during the period that they were charged with misconduct."[14] This statement appears to have reference to the period in which the attorney operated under the "fee-splitting" contracts.

The Illinois Supreme Court, in the instant case, concluded that the legitimate interest of the Brotherhood does justify the conducting of investigations, and a staff, financed by the Brotherhood, may be maintained to accomplish this purpose. The investigations may be conducted with a view towards subsequent litigation, but the resulting reports must be given to the injured or his kin.

Further, the court asserted that the Brotherhood may make known to all its members, and specifically to those injured, the advisability of obtaining legal advice prior to a settlement and the names of attorneys who, in the opinion of the Brotherhood, can handle such claims successfully. However, the court also held that the Brotherhood may not permit investigators to carry the attorneys' contracts or photostats of prior settlement checks, fix the fees of the attorneys, or maintain any financial connection with the attorneys.

The Illinois Supreme Court did not take disciplinary action against the attorneys of the Brotherhood[15] because of the ambiguity resulting from the *Ryan* case.[16] Upon the same basis, the Brotherhood was given until July 1, 1959 to reorganize in accordance with the recommendations set forth in the opinion.

[14] Ibid., at 514, 514.

[15] Ibid. The California court did not take disciplinary action against Hildebrand.

[16] The rationale for refusing to discipline was based on In re Luster, 12 Ill.2d 25, 145 N.E.2d 75 (1957), where the court permitted an attorney to use as an equitable defense his reliance on an unreported case never expressly overruled, notwithstanding similar contra opinions.

NEGLIGENCE–INSURER HELD LIABLE FOR NEGLIGENT ISSUANCE OF POLICY TO ONE WITH NO INSURABLE INTEREST WHO SUBSEQUENTLY MURDERED INSURED

Appellee, father of a deceased minor child, sued appellants, Liberty National Life Ins. Co., National Life and Accident Ins. Co., and Southern Life and Health Ins. Co., for the wrongful death of the child. The father based his suit upon the theory that the insurers were negligent in issuing policies of life insurance to the beneficiary, an aunt-in-law, who was subsequently convicted of the murder of the child. The Supreme Court of Alabama upheld the judgment of $75,000 on the ground that the evi-