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Court Enforcement Of Union Fines

apply. Evidence of additional non-contradictory terms could be submitted to the trier of fact for his consideration in determining the total agreement of the parties. It is for this reason that the UCC standard, and particularly its interpretation by the New York court in *Hunt Foods,* or the adoption of the Corbin standard, may lead to the decline of the parol evidence rule.

JOHN E. KELLY III

COURT ENFORCEMENT OF UNION FINES

The historical means of punishing union members who violate union rules have been limited to expulsion from the union and fines carrying the threat of expulsion for nonpayment.[1] With the threat of expulsion confronting him, a member contemplating violation of a union rule would be faced with a value judgment. Should he decide to disregard the union regulation, he would risk the loss of his union membership and the benefits flowing from that membership. The powerful union thus would have more control over the conduct of its members than would a weaker union whose members might well be willing to accept the risk of losing its relatively few benefits.

Local 248, UAW v. Natzke[2] adds a new aspect to the relationship between a weak union and its members. The case concerned state court enforcement of a fine imposed by the union upon members who had returned to work during a strike. In *Allis-Chalmers Manufacturing Company v. NLRB*[3] the Supreme Court held that the the union's suit against Natzke was not an unfair labor practice under the Taft-Hartley Act. Following this decision the Wisconsin Supreme Court in *Natzke* enforced the fine, thus giving the union a new means of enforcing its discipline.

While the general attitude of the courts has been to avoid litigating matters concerning internal union problems,[4] various legal fictions have been used to justify intervention in this area. However, the purpose of such intervention has been to protect the union member

[1]*See* NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 197 (1967) (concurring opinion).

[2]36 Wis. 2d 237, 153 N.W.2d 602 (1967).

[3]388 U.S. 175 (1967).

[4]For a discussion of this judicial attitude see Chafee, *The Internal Affairs of Associations Not for Profit,* 43 HARV. L. REV. 933 (1930).

from an abuse of power by the union.[5] The prevalent fiction used by the courts in this area has been the contract theory whereby the member is said to enter into a contract with the union, the terms of which are said to be expressed in the union's constitution and bylaws.[6] *Natzke,* however, shows a new application of the contract theory of union membership in that this "legal fabrication," used originally for the protection of the union member,[7] is used to his detriment by the judgment ordering him to pay the union-imposed fine.[8] While one other case, also decided by the Wisconsin court, has enforced a union fine under these circumstances,[9] the majority of courts have consistently refused such attempts at collection, feeling that payment, if made at all, must necessarily be by the voluntary action of the member.[10]

Natzke arose during an economic strike called by Locals 248 and 401 of the UAW against Allis-Chalmers Manufacturing Company. One hundred and seventy-two members of Local 248 and two Local 401 members were charged with "conduct unbecoming a union member" for crossing picket lines and returning to work during the strike. After a hearing before a union trial committee and the approval of their respective local memberships, fines were assessed against the strike breakers ranging from $20 to $100. Local 248 then sent a letter to each of its fined members as a reminder of the fine

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[5]For a general discussion see Summers, *Legal Limitations on Union Discipline,* 64 HARV. L. REV. 1049 (1951).

[6]"This contractual conception of the relation between a member and his union widely prevails in this country...." International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 618 (1958). In *Gonzales* the union member was awarded damages under the contract theory for wages lost as well as for mental and physical suffering due to his being wrongfully expelled from the union in violation of his rights under the union's organic law.

[7]NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 207 (1967) (dissenting opinion).

[8]The only other theory used by the courts in the past to justify intervention was the property theory whereby the union member was said to have a property right in his union membership which the courts would protect against an abuse of union power. This theory was geared solely to protecting the union member and could not be used against his interest as was the contract theory in *Natzke.* For a further discussion of both theories see Summers, *Legal Limitations on Union Discipline,* 64 HARV. L. REV. 1049 (1951).

[9]Local 756, UAW v. Woychik, 5 Wis. 2d 528, 93 N.W.2d 336 (1958).

[10]"The right of a private corporation [a trade association] to impose a fine is one thing, and the right to sue thereon and employ judicial process for its collection is quite another.... [P]ayment, if made at all, must necessarily be by the voluntary action of the member." Merchants Ass'n v. Coat House of William M. Schwartz, Inc., 152 Misc. 130, 273 N.Y.S. 317, 321 (N.Y. Mun. Ct. 1934). *See also* Local 629, Retail Clerks v. Christiansen, 67 Wash. 2d 29, 406 P.2d 327 (1965); Local 188, United Glass Workers v. Seitz, 65 Wash. 2d 640, 399 P.2d 74 (1965); Continental Turpentine & Rosin Co. v. Gulf Naval Stores Co., 244 Miss. 465, 142 So. 2d 200 (1962).

owed to the union, but rather than threatening the usual penalty of expulsion for failure to pay, the letter stated that a failure to pay would result in a civil action against the recalcitrant member for its collection. The letter also pointed out the *Local 756, UAW v. Woychik*[11] decision in which court enforcement of a similar union fine had been upheld by the Wisconsin Supreme Court.

When more than half of the fined workers refused to pay the amounts assessed against them, Local 248 brought a test suit against Natzke, a strike breaker fined $100, to determine whether the courts would enforce such a fine. Allis-Chalmers Manufacturing Company, the employer of the fined workers, then brought an action before the NLRB[12] alleging that the two unions had violated § 8(b)(1)(A) of the Taft-Hartley Act which makes it an unfair labor practice for a union to restrain or coerce an employee in the exercise of his right not to participate in a concerted activity. The Board's view, however, was that the union's fining the workers and bringing suits to collect the fines was entirely within the union-member relationship and was protected by a proviso to § 8(b)(1)(A). This proviso states that the section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ."[13]

The Court of Appeals for the Seventh Circuit refused to follow the Board's decision and held that this activity violated § 8(b)(1)(A) and was not protected by the proviso.[14] Then in a 5-4 decision the Supreme Court of the United States adopted the Board's result,[15] but reached its decision on the grounds that the union's activity did not

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[11]5 Wis. 2d 528, 93 N.W.2d 336 (1958).

[12]Local 248, UAW & Allis-Chalmers Mfg. Co., 149 N.L.R.B. 67 (1964).

[13]Labor-Management Relations Act (Taft-Hartley Act) § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1964). The relevant provision of § 7 of the Taft-Hartley Act reads:

> Employees shall have the right to . . . engage in . . . concerted activities . . . and shall also have the right to refrain from any or all of such activities. . . .

Id. § 7, 29 U.S.C. § 157 (1964).

However, the relevant provision of § 8 of the Act reads:

> 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 their rights guaranteed in section 157 of this title [§ 7 of the Taft-Hartley Act]: *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. . . .

Id. § 8(b), 29 U.S.C. § 158(b).

[14]Allis-Chalmers Mfg. Co. v. NLRB, 358 F.2d 656 (7th Cir. 1966). For a further criticism of the Board's holding in the case see, Comment, *8(b)(1)(A) Limitations upon the Right of a Union to Fine Its Members,* 115 U. PA. L. REV. 47, 74 (1966).

[15]NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967).

"restrain or coerce" the fined workers within the meaning of the Act. The Court therefore found it unnecessary to rely on the proviso as the Board had done and left undecided the question of whether the union's activity might also be protected under the proviso.[16]

Natzke was still pending when the Supreme Court decided that the union had not committed an unfair labor practice. The question was then left to the Wisconsin court as to whether it would affirm the lower court's judgment that the fine be paid. The union member's contention that state labor policy was against such enforcement was rejected by the court on the ground that there might be federal preemption in this area. The Wisconsin court reasoned that since state courts are without jurisdiction to enforce any state policy which varies with the policy of the NLRB,[17] and since it was "clear that court enforcement of the instant fine is consonant with federal labor policy as determined by [the] board,"[18] federal policy should control. The court cited the Board's *Allis-Chalmers*[19] decision as indicating this federal policy. The paradox here, however, is that the Board by basing its decision on the *proviso* to § 8(b)(1)(A) has in effect resolved that it was precluded from deciding the question because it involved internal union discipline. According to Supreme Court decisions[20] and the Court's own interpretation of the legislative history of the proviso,[21] the Board is specifically precluded from entertaining such a question. Therefore, it would seem there could be no federal policy as enunciated by the Board on a question the Board has held it was precluded from deciding under the provisions of the Taft-Hartley Act. In truth the court must be said to be relying on federal labor policy as announced by the Supreme Court. In the Court's *Allis-Chalmers* decision there might well be an indication of a future finding of federal preemption in this area because of the Court's reliance upon a strained interpretation of § 8(b)(1)(A) to justify its decision and thus an avoidance of classifying the union's activity as protected by the proviso.

Relying on Supreme Court dictum in *Allis-Chalmers* that there is

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[16]*Id.* at 196.

[17]Hanna Mining Co. v. Marine Eng'rs Beneficial Ass'n, 382 U.S. 181 (1965).

[18]36 Wis. 2d 237, 153 N.W.2d 602, 607 (1967).

[19]149 N.L.R.B. 67 (1964).

[20]*See, e.g.,* International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 620 (1958).

[21]"[§ 8(b)(1)(A)] states that nothing in the section shall 'impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein....' Senator Holland offered the proviso during debate and Senator Ball immediately accepted it, stating that it was not the intent of the sponsors *in any way* to regulate the internal affairs of unions." NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 191 (1967) (emphasis added).

an analogy between the union-member contract and the ordinary commercial contract, the Wisconsin Supreme Court in *Natzke* accepted the premise that "general principles of contract law govern"[22] the case. But in reaching its decision the court failed to consider many principles of contract law which have a bearing on the case, and on the one contract question it did consider, adopted a most doubtful view.

The question in *Natzke* was whether the union should be allowed to use the court as a means of enforcing its fine when such a method of collection was not provided for in the union's constitution or bylaws. The court held that the general rule applicable to the ordinary contract is that the parties will not be restricted to those methods provided for in the contract in case of breach, and that a contract will not be construed as taking away a common law remedy unless that result is imperatively required.[23] Following this rule *Natzke* held that the union should not be disallowed court enforcement of its fines.

The *Natzke* decision is directly opposed to the view taken in *Local 188, United Glass Workers v. Seitz,*[24] which disallowed a union suit to collect a fine because this means of collection was not provided for in the union's organic law. The *Seitz* approach of strictly construing the contract against the union would seem to indicate the better rule. The majority of courts has always construed the contract strictly against the union allowing it to punish only those offenses specifically provided for in the organic law[25] and to impose no greater penalty than provided therein.[26] This approach is supported by general contract law. However analogous the union-member contract might be to an ordinary contract, it is in one sense more analogous to the insurance contract. The person seeking union membership has no ability to bargain as to the terms of the agreement. He must simply accept the union's constitution and bylaws upon becoming a member. The universal rule with regard to such contracts of adhesion has been to construe them strictly against the party who has the exclusive choice as to terms.[27] The Wisconsin courts have consistently recogniz-

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[22]153 N.W.2d at 609.

[23]*Id.*

[24]65 Wash. 2d 640, 399 P.2d 74 (1965). *Accord,* Local 629, Retail Clerks v. Christiansen, 67 Wash. 2d 29, 406 P.2d 327 (1965).

[25]*See, e.g.,* Sullivan v. Barrows, 303 Mass. 197, 21 N.E.2d 275 (1939); McGinley v. Milk & Ice Cream Salesmen, 351 Pa. 47, 40 A.2d 16 (1944).

[26]*E.g.,* Dingwall v. Railway Employees, 4 Cal. App. 565, 88 P. 597 (1906); *see* Browne v. Hibbets, 290 N.Y. 459, 49 N.E.2d 713 (1943).

[27]*See, e.g.,* 13 J. APPLEMAN, INSURANCE § 7401 at 57 (1943). "[T]he language of insurance policies is selected by one of the parties alone, and the language employed by that party should be construed against it."

ed and applied this rule with regard to insurance contracts.[28] However, *Natzke* apparently did not consider that the more valid contract rule might be to construe the terms of the contract against the union which had exclusive choice as to its terms.

The only case which supports *Natzke* is the prior holding in *Woychik*. There also the court failed to consider the validity of construing a contract against a party which had no choice as to the terms, and allowed the union the remedy of court enforcement when this means of collection was not specified in the union's constitution or bylaws. Apparently, the only other case holding that a union fine is enforceable in court is *Master Stevedores' Association v. Walsh*,[29] an 1867 decision of a New York Court of Common Pleas. However, *Walsh* can be distinguished because there the union member had specifically agreed to court enforcement of a fine; the remedy was provided for in a bylaw of the union.[30] In all cases where such a remedy was not provided in the union organic law, the New York rule has been that such fines are not enforceable in court.[31] It is submitted therefore that the majority rule, and by far the better rule, is to limit the union's ability to sue for the enforcement of a fine to the case where the union members have agreed to this method of collection, that is, by making the appropriate amendment to the union's organic law.

Another contractual issue which should have been considered was that the workers had no choice as to whether they would join the union. The Court of Appeals for the Seventh Circuit considered the contractual relationship in *Allis-Chalmers* to be "the result not of individual voluntary choice but of the ... union security provision in the contract under which a substantial minority of the employees may have been forced into membership."[32] Although the Supreme Court in *Allis-Chalmers* felt that an inquiry into what motivated the contract was not important in deciding whether the union had violated the Taft-Hartley Act,[33] this would seem to be a most important issue in determining whether such a contract is enforceable. The courts

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[28]*See, e.g.*, Harker v. Paul Revere Life Ins. Co., 28 Wis. 2d 537, 137 N.W.2d 395 (1965).

[29]2 Daly 1, (C.P.N.Y. 1867).

[30]*Id.* at 2.

[31]*E.g.*, American Men's & Boys' Clothing Mfrs'. Ass'n v. Proser, 190 App. Div. 164, 179 N.Y.S. 207 (1919); Merchants' Ass'n v. Coat House of William M. Schwartz, Inc., 152 Misc. 130, 273 N.Y.S. 317 (N.Y. Mun. Ct. 1934).

[32]385 F.2d at 660.

[33]"[T]he relevant inquiry here is not what motivated a member's full membership but whether the Taft-Hartley amendments prohibited disciplinary measures against a full member who had crossed his union's picket line." 388 U.S. at 196.

have always been willing to give protection to one who has been the subject of duress or undue influence in entering into a contract,[34] and this would seem a very valid consideration with regard to a contract made compulsory by the union security agreement.

Another question to be considered in such a contract is whether the terms are too vague to be enforced. Uncertainty of terms has often been held to avoid the ordinary commercial contract.[35] While courts tend to lean against holding contracts unenforceable on grounds of vagueness,[36] the basic requirement remains that the terms of the contract leave no reasonable doubt as to what the parties intended.[37] *Natzke* however failed to consider whether the avoidance of "conduct unbecoming a union member"[38] is a reasonably definite indication of the performance required of a member under the union-member contract.

The union also has the power to change a member's rights and benefits without his consent.[39] Such a right given to one party under the terms of a contract has consistently been held to be grounds for avoidance.[40] Under the *Natzke* approach of treating the relationship between the member and the union as one involving something analogous to an ordinary commercial contract, the decision might well have been against the enforcement of the contract had the court considered this basic contract principle.

Another question could have been the nature of the $100 fine sought to be collected by the union. Under contract law damages are assessed for the purpose of putting the injured party in as good a position as he would have been had the contract not been breached.[41]

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[34]NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 208 (1967) (dissenting opinion). *See* 5 S. WILLISTON, CONTRACTS ch. 47 (rev. ed. 1937).

[35]*See* Klimek v. Perisich, 231 Ore. 71, 371 P.2d 956 (1962); Trammell v. Morgan, 80 Ohio L. Abs. 251, 158 N.E.2d 541 (Ct. App. 1957); Laseter v. Pet Dairy Prods. Co., 246 F.2d 747 (4th Cir. 1957).

[36]*See* Burrow v. Timmsen, 223 Cal. App. 2d 283, 35 Cal. Rptr. 668 (1963); 1 A. CORBIN, CONTRACTS § 95, at 400 (1963).

[37]Witt v. Realist, Inc., 18 Wis. 2d 282, 118 N.W.2d 85 (1962) (Wisconsin Supreme Court recognized certainty of terms as a requirement of a valid contract).

[38]For a discussion of the various vague clauses commonly used in union constitutions and bylaws see Summers, *Disciplinary Powers of Unions*, 3 IND. & LAB. REL. REV. 483, 505 (1950).

[39]*See, e.g.*, Dyer v. Occidental Life Ins. Co., 182 F.2d 127 (9th Cir. 1950); Horwitz v. Milk Wagon Drivers' Union, Local 753, 341 Ill. App. 383, 94 N.E.2d 95 (1950). *See*, Matthias, *Power to Amend Fraternal Insurance Contracts*, 33 ILL. L. REV. 281 (1938).

[40]*See, e.g.*, Nebraska Gas & Elec. Co. v. City of Stromsburg, 2 F.2d 518 (8th Cir. 1924); 1A A. CORBIN, CONTRACTS § 152 (1963).

[41]*See, e.g.*, Miller v. Robertson, 266 U.S. 243 (1924); 5 A. CORBIN, CONTRACTS § 1002 (1964).

While the parties may provide for liquidated damages in the contract, these must be reasonable in amount and must be a realistic estimate of actual contemplated damages.[42] If these requirements are not met the amount will be considered a penalty, inserted into the contract to intimidate the parties into performing, and will not be enforced.[43] *Natzke* failed to consider that a fine by its very nature is a penalty rather than an attempt to gain compensation for the wrong done.[44] Further, the union's motive to intimidate the workers into compliance with its commands was shown by the union's threat of fines of "up to $100 a day" to be imposed on those members who continued to work during the strike.

Failing to consider any of these general principles of contract law under which the contract might have been avoided, *Natzke* concluded that "a binding obligation in the form of a debt" was created when the union fined the workers, and that this debt would be enforced by the court. General principles of contract law would certainly command that a vaguely worded contract, into which the worker was required to enter as a condition of employment and as to the terms of which he had no choice, falls short of the requirements for enforceability. Disregarding the universal rule, *Natzke* construed the contract in *favor* of the party that had exclusive control as to its terms and allowed the union a method of collection not agreed to in the contract. Further, the fine sought to be collected would certainly be struck down as a penalty under general contract principles. The decision violates the past policy of the courts and the framers of the Taft-Hartley Act of not interfering in internal union problems, and also is based apparently on what must be deemed an incomplete and erroneous interpretation of the law. The weak union, whose members in the past might well have chosen to be expelled rather than strike, is given under *Natzke* a powerful weapon with which to secure obedience from its members. This method of enforcement is much more valuable to the weak union than is expulsion which has the obvious disadvantage of depleting the union membership. The average worker will be able to afford neither the fines nor the legal ex-

[42]RESTATEMENT OF CONTRACTS § 339 (1932).

[43]"It should be borne in mind... that a penalty imposed by the terms of a contract on the party committing a breach thereof is not enforceable either in equity or at law. A penalty is provided for the purpose of terrorizing a party to a contract into complying with its terms." Shields v. Early, 132 Miss. 282, 95 So. 839, 841 (1923). *Accord,* Continental Turpentine & Rosin Co. v. Gulf Naval Stores Co., 244 Miss. 465, 142 So. 2d 200 (Miss. 1962).

[44]Crooker v. United States, 325 F.2d 318, 321 (8th Cir. 1963); McHugh v. Placid Oil Co., 206 La. 511, 19 So. 2d 221, 227 (1944).