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SUITS AGAINST LABOR ORGANIZATIONS UNDER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT

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One of the primary purposes of the Labor Management Relations Act, 1947[1], better known as the Taft-Hartley Act, was to make unions, as well as employers, responsible for their acts and the acts of their agents.[2] Prior to the passage of this Act, and under the provision of the National Labor Relations Act of 1935, neither the unions nor employees could be guilty of unfair labor practices because that Act did not define any unfair labor practices on the part of unions or employees, nor were there any provisions in that Act for the enforcement of collective bargaining agreements against a union or for recovery of damages for its breach against the union. Also, that Act did not attempt to make unions responsible for the tortious acts of its members or agents. In other words, it was an entirely one-sided proposition —benefiting the unions at the expense of the employers.

Under the provisions of the Norris-LaGuardia Act[3] the federal courts, in most instances, were closed to employers seeking injunctions against unlawful acts of labor organizations. Although many of the State courts were still open to employers seeking injunctive relief, many other States, modeling after the Norris-LaGuardia Act, had also closed their courts to employers seeking injunctive relief in "labor disputes." In any event, at best, injunctive relief in the usual situation merely stopped the committing of further unlawful acts but did not compensate for the damage done before the awarding of the injunction.

At common law, unincorporated associations are not suable as entities and, therefore, recovery at common law cannot be had against the funds of those organizations as such; recovery can be had only against the financially responsible persons who are made parties defendant.[4] Therefore, as a practical matter, it is impossible to recover damages against labor organizations under the common law rules of

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[1]61 Stat. 136 (1947), 29 U. S. C. §141 (Supp. 1950.).

[2]H. R. Rep. No. 245, 80th Cong., 1, 8; Sen. Rep. No. 105, 80th Cong., 1, 15; Labor Relations Law, A. L. I. 10.

[3]47 Stat. 70 (1932), 29 U. S. C. §101 (1946).

[4]Am. Jur., Association and Clubs §46; Sen. Rep. No. 105, 80th Cong., 16.

procedure, which rules are applicable in most States.[5] Only about one-fourth of the states have enacted statutes which subject unincorporated associations to suits in their common name.[6] And under Rule 17 (b) of the Federal Rules of Civil Procedure, except in rare instances, an unincorporated association could not be sued in the district courts of the United States in its common name for torts of its agents.

Therefore, as a practical matter, prior to the enactment of the Labor Management Relations Act, the employer could not recover damages for the breach of a collective bargaining agreement by a labor organiation, nor for the tortious acts of such an organziation. One of the purposes of the Labor Management Relations Act was to correct this situation and to provide for union responsibility.

By setting out and defining certain acts which, when committed by a labor organization, constitute unfair labor practices on the part of that organization,[7] the Act made great strides in equalizing the responsibilities of management and labor. The Act also provided for the

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[5]Kansas Furniture Co. v. Amalgamated Woodworkers Local Union, 165 Ind. 421, 75 N. E. 877, 2 L. R .A. (N. S.) 788 (1905); Donovan v. Danielson, 244 Mass. 432, 138 N. E. 811 (1923); St. Paul Typothetae v. St. Paul Bookbinders Union, 94 Minn. 351, 102 N. W. 725, (1905) Ruggles v. Int'l Ass'n, 331 Mo. 20, 52 S. W. (2d) 860 (1932); Bossert v. Dhuy, 166 App. Div. 251, 151 N. Y. Supp. 877 (1914), rev'd on other grounds, 221 N. Y. 342, 117 N. E. 582 (1917); Grant v. Carpenters' District Council, 322 Pa. 62, 185 Atl. 273 (1933); Simpson v. Grand Int'l. Brotherhood, 83 W. Va. 355, 98 S. E. 580 (1914), cert. denied, 250 U. S. 644, 39 S. Ct. 494, 63 L. ed. 1186 (1919); West v. B. & O. R. R. Co., 103 W. Va. 417, 137 S. E. 654 (1927); 2 Teller, Labor Disputes and Collective Bargaining (1940) 462. There is, however, authority of great dignity to the contrary. The English House of Lords in the classical case of Taff Vale R. Co. v. Amalgamated Society of Railroad Servants, [1901] A. C. 426, held that a labor union, although unincorporated could be sued as an entity. Being contrary to the general common law doctrine regarding suits against unincorporated associations, said decision came as a shock to both trade unionists and the legal profession. Landis and Manoff, Cases on Labor Law (2d ed. 1942) 26. The actual effect of the Taff Vale decision was short lived because it was legislatively repudiated by the Trade Disputes Act, 1906, 6 Edw. 7, c. 47. However, the rule of the case is still known as the "Taff Vale doctrine." Notwithstanding its legislative repudiations, the "Taff Vale doctrine" was expressly followed by the Supreme Court of the United States in United Mine Workers v. Coronado Coal Company, 259 U. S. 344, 42 S. Ct. 570, 66 L. ed. 975, 27 A. L. R. 762 (1922), thus committing the federal courts to the doctrine that a labor union may be sued as an entity. The Coronado decision was a landmark in the application of the Sherman Antitrust Act to labor cases. Although the Taff Vale decision was cited with approval, there was language in the Supreme Court's decision which would seem to limit its effect to suits under the Sherman Act. It has not been generally followed in other types of cases.

[6]Alabama, California, Connecticut, Delaware, Maryland, Montana, Nevada, New Jersey, New York, Rhode Island, South Carolina, and Vermont. Sen. Rep. No. 105, 80th cong., 16.

[7]Sec. 8 (b) Labor Management Relations Act (1947).

issuance of cease and desist orders by the National Labor Relations Board against unions for unfair labor practices committed by its members or agents. But, once again, such orders are in the nature of injunctions and only prevent future damages rather than redress past damages incurred by an employer. Also, it should be noted that many employers have refused to take advantage of relief through the Board because, rightly or wrongly, they distrust the Board because of its record prior to the enactment of the Labor Management Relations Act. This distrust was strengthened recently by the dispute between the Board and its former General Counsel, Mr. Denham, which resulted in Mr. Denham's being replaced. Another reason for the failure of employers to use the Board is the fact that in most instances proceedings through the Board are extremely slow. In commenting on this matter the Senate Committee stated:

> "Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives . . ."[8]

Therefore, realizing that remedy through the Board was not adequate, Congress, at Section 301 of the Labor Management Relations Act, provided additional remedies for both the employer and labor organizations.

Congress had been particularly concerned because of the fact that labor organizations could not be required to live up to the terms of their contracts.[9] Therefore, in addition to providing that certain unions could be sued as entities, the Act at subsection (a) of Section 301 specifies:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Because of the fact that this subsection (a) has been in existence for a relatively short time, there are no decisions of the Supreme Court of the United States construing it, but there are numerous decisions of the various district courts and circuit courts. From these cases, the

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[8]Sen. Rep. No. 105, 80th Cong., 8.

[9]Sen. Rep. No. 105, 80th Cong., 15, 16; H. R. Rep. No. 245, 80th Cong., 17.

legislative history, and the reading of the paragraph itself, several points arise that should be considered by any counsel before instituting a suit under this subsection.

First, it should be noted that subsection (a) is limited to suits for violations of contracts, but the term "contract" is not defined. The courts have determined that an informal written contract, or even an oral contract, is sufficient.[10]

Secondly, it is significant that there is nothing in that subsection which specifically exempts suits under it from the applicability of the Norris-LaGuardia Act. Therefore, even though the term "suits" is very broad, it would appear that a suit under subsection (a) seeking an injunction in a "labor dispute," as that term is used in the Norris-LaGuardia Act, must fail. The federal courts which have considered the matter have arrived at that conclusion.[11] These courts point out that in two instances, Section 10 (l) and Section 208 of the Labor Management Relations Act, Congress has specifically given the district courts jurisdiction to grant injunctions in certain labor disputes and in each section it is expressely provided that the provisions of the Norris-LaGuardia Act should not apply.[12] Therefore, by failing to provide that the Norris-LaGuardia Act should have no application to suits under Section 301, Congress must have intended for the Norris-LaGuardia Act to apply to such suits. On the other hand, in at least two instances of suits filed under Section 301 (a) seeking injunctions, where the district courts determined that there was no "labor dispute" within

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[10]United Shoe Workers of America v. LeDanne Footwear, Inc., 16 Labor Cases 65,257 (D. C. Mass. 1949). See also Hamilton Foundry and Machine Co. v. International Molders, 95 F. Supp. 35, 19 Labor Cases 66,141 (D.C. Ohio 1949).

[11]Amazon Cotton Mill Co. v. Textile Workers Union, 167 F. (2d) 183, 14 Labor Cases 64,433 (C. C. A. 4th, 1948); Local 937, U. A. W. v. Royal Typewriter Co., Inc., 88 F. Supp. 669, 17 Labor Cases 65,296 (D. C. Conn. 1949); United Packing House Workers v. Wilson and Co., Inc., 80 F. Supp. 563, 15 Labor Caces 64,631 (D. C. Ill. 1948).

[12]Section 10 (l) of the Labor Relations Act (Wagner Act) as amended by the Labor Management Act (Taft-Hartley) provides for injunctive relief upon petition to a United States District Court by a regional attorney of the Labor Board. That section deals with violations of paragraphs 4 (A), (B), (C) of section 8 (b) of the Act. Those paragraphs add employee "unfair labor practices" comparable to the employer "unfair labor practices" in section 8 (a) (section 8 of the original Wagner Act). Examples are jurisdictional strikes and some secondary boycotts. Section 10 (l) does not specifically refer to the Norris-LaGuardia Act but does provide for such injunctive relief "notwithstanding any other provisions of law." Section 208 provides that the President may direct the Attorney General to petition any United States District Court for an injunction in case of any strike which will effect the national health or safety. This section refers specifically to the Norris-LaGuardia Act, and provides that it shall not be applicable.

the meaning of the Norris-LaGuardia Act, the courts granted the injunctions prayed for.[13]

Thirdly, it should be noted that to come within the provisions of subsection (a), it is not necessary that the violation of the contract affect interstate commerce, but it is only necessary that one of the parties to the contract is a labor organization representing employees in an industry affecting such commerce. This requirement is easily met in most instances because as has been pointed out, "It is now abundantly established that in the Labor Relations Acts Congress meant to exercise to the fullest extent its power over interstate commerce."[14]

The courts thus far have restricted the parties to such a suit to the literal provisions of subsection (a). They have determined that it does not apply to suits between individuals within a particular labor organization,[15] or to suits between an employer and employee.[16] The subsection applies only to suits between an employer and a labor organization or to suits between two separate and distinct labor organizations.[17]

The constitutionality of the portion of subsection (a) which waives the necessity for diversity has been questioned, but a district court in Maryland has pointed out that suits under that provision are suits arising under the laws of the United States and that therefore, it was entirely proper for Congress to waive the diversity requirement.[18]

Finally, subsection (a) does not have retroactive effect and, therefore, does not apply to causes of action arising prior to the enactment of the Labor Management Relations Act.[19] Of course this matter is not very important at this date, some four years after the passage of the Act.

Thus it will be seen that, insofar as recovering damages for violations of contracts is concerned, the employer is given ample relief in the district courts under the provisions of Section 301 (a). However, not all employers have contracts which will protect them in all situa-

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[13]Mountain States Division No. 17 v. Mountain States Telephone and Telegraph Co., 81 F. Supp. 397, 15 Labor Cases 64,724 (D. C. Colo. 1948); Textile Workers Union v. Aleo Mfg. Co., 94 F. Supp. 626, 19 Labor Cases, 66,101 (D. C. N. C. 1950).

[14]Shirley-Herman Co. v. International Hod Carriers, 182 Fed. (2d) 806, 808, 18 Labor Cases 65,810 (C. A. 2d, 1950).

[15]William Snoots v. Joseph F. Vejlupek, 17 Labor Cases 65,502 (D. C. Ohio 1949).

[16]Theodore W. Zaleski v. Local 401, 91 F. Supp. 552, 18 Labor Cases 65,863 (D. C. N. J. 1950).

[17]Local 793 U. A. W. v. Auto Specialties Mfg., 19 Labor Cases 66,162 (D. C. Mich. 1951).

[18]Colonial Hardwood Flooring Co. v. United Furniture Workers, 76 F. Supp. 493, 14 Labor Cases 64,325 (D. C. Md. 1948).

[19]Oscar Schatte v. International Alliance, 182 Fed. (2d) 158 (C. A. 9th, 1950), cert. denied, 340 U. S. 827, 71 S. Ct. 64 (1950).

tions. For instance, the coal operators apparently have a contract which would be of little help to them. There are numerous tortious acts that a labor organization and its members might commit which would be entirely outside any contact between it and the employer and, therefore, redress could not be obtained under subsection (a) since it is limited to suits for violation of contract.

It has already been observed that the primary difficulty in recovering damages for the tortious acts of members of a labor organization is in subjecting a labor organization to suit as an entity. The district courts of the United States have, for a great number of years, had jurisdiction over such tortious acts where the amount in controversy was sufficient and the requisite diversity was present,[20] but except in cases involving substantive rights under a law of the United States,[21] the same procedural difficulty was encountered in the district courts as in the State courts—that is, the difficulty of subjecting an unincorporated association to process.[22] However, Congress did away with this difficulty by providing in subsection (b) of Section 301 that:

> "Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

Thus, any labor organization representing employees in an industry affecting commerce may be sued as an entity and a judgment may be enforced against the entity; but before rejoicing in this wonderful state of affairs, and before instituting suit against a union, counsel should recognize that there are one or two important problems that should be considered.

The first problem is whether or not the above-quoted portion of subsection (b) is applicable to suits generally against labor organizations or is limited to suits for violation of contracts. Unless subsection (b) is general in its application—that is, applies to all suits against labor organizations representing employees in an industry affecting commerce—then the employer in attempting to recover damages for the tortious acts of a union (which acts are not violations of any contract between the employer and the union) is again met with the difficulty of suing an unin-

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[20]U. S. Const. Art. III §2; Title 28 U. S. C. §1332 (Supp. 1950).
[21]See note 5, supra.
[22]Fed. Rules Civ. Pro. 17 (b).

corporated association. The court of the fourth circuit in the *Amazon Cotton Mill* case,[23] in an opinion by Judge Parker, has apparently taken the position that Section 301 (b) is applicable only to suits for violation of contract. Although the question was not squarely presented or decided, this opinion has been followed by several district courts.[24]

But the plain words of that subsection do not, in any manner, limit their applicability to suits for violation of contracts, and the legislative history discloses that Congress intended for subsection (b) to be general in its application. The Senate-House conference report contains the following statement:

> "This subsection [(b)] and the succeeding subsections [(c), (d), (e)] of Section 301 of the conference agreement (as was the case in the House Bill and also in the Senate Amendment) are general in their application, as distinguished from subsection (a)."[25]

There is also the problem of the jurisdiction of the district courts. In the *Amazon* case, a union had instituted an action against an employer, alleging that the employer had been guilty of an unfair labor practice in refusing to bargain with the union, and the union asked for an injunction compelling the employer to bargain and also asked for damages for his failure to bargain. A considerable portion of Judge Parker's opinion is concerned with the right of the district court to grant injunctions under Section 301 of the Labor Management Relations Act, and he logically concludes that a district court may not issue an injunction in a "labor dispute" because of the Norris-LaGuardia Act. Then, Judge Parker goes on to say:

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[23]Amazon Cotton Mill Co. v. Textile Union, 167 F. (2d) 183, 14 Labor Cases 64,433 (C. C. A. 4th, 1948). This was an action by an unincorporated union against an employer for an injunction requiring the defendant to bargain with plaintiff and for damages from loss of employment due to a strike resulting from defendant's alleged refusal to bargain with plaintiff. The National Labor Relations Board intervened and moved to dismiss on the ground that it had exclusive jurisdiction of the matters in controversy. The contention of the Board was upheld by the Circuit Court of Appeals. It was specifically held that Section 301 (b) of the Labor Management Relations Act was not intended as a grant to United States District Courts of jurisdiction over all unfair labor practices.

[24]Mountain State Division No. 17 v. Mountain States Telephone Co., 15 Labor Cases 64,724 (D. C. Colo. 1948); United Packing House Workers v. Wilson and Co., Inc., 15 Labor Cases 64,631 (D. C. Ill. 1948); United Steel Workers v. Shakespeare Co., 16 Labor Cases 64,978 (D. C. Mich. 1949); compare John Tisa v. Jacob Potofsky, 90 F. Supp. 175, 18 Labor Cases 65,724 (D. C. N. Y. 1950).

[25]Senate-House Conference Report (H. R. 510) U. S. C. Cong. Service, 80th Cong., 1st Sess. 1172 (1947).

> "Contention is made that jurisdiction is vested in the District Court by Section 301 (b) of the Act providing that a labor organization may sue or be sued in the courts of the United States 'as an entity and in behalf of the employees whom it represents'; but the purpose and effect of this provision was manifestly to make clear the capacity of labor organizations to come or to be brought into court as parties . . . not to enlarge the class of cases of which the District Courts were given jurisdiction . . .
>
> "There is nothing in the history of the Act, the reports of committees or the debates in Congress which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair practices."

Relying on this statement in the *Amazon* case, several district courts have refused to grant relief against unfair labor practices as such.[26] It is submitted that Judge Parker is entirely correct in ruling that subsection (b) has not enlarged the jurisdiction of the federal district courts and has not given the district courts jurisdiction to redress unfair labor practices *as such*. But for many years district courts have had jurisdiction over tortious acts committed by a citizen of one State against a citizen of another State where the amount in controversy exceeds $3,000.00. Subsection (b) merely changed a procedural rule so as to allow certain unions to be sued as an entity. This was in no way enlargement of the jurisdiction of the district courts, but was merely a valid exercise of Congress' power over interstate commerce.

Judge Parker also observed in the *Amazon* case in regard to Section 301 (a), which is concerned with violations of contracts, and Section 303 (b) which is concerned with recovery of damages caused by secondary boycotts, jurisdictional disputes, etc., that:

> "There would, of course, have been no reason for the enactment of either Section 301 (a) or Section 303 (b), if the effect of 301 (b) was to vest in the Federal courts general jurisdiction of suits by or against labor unions."

But Section 301 (a) does clearly enlarge the jurisdiction of the district courts because in that subsection the jurisdictional amount and the necessity for diversity are waived, and in Section 303 (b) the jurisdictional amount is waived. There is no such waiver in Section 301 (b) and, therefore, the jurisdictional amount and diversity of citizenship are required in all other cases except those specifically set out in Section

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[26]Marie Reed v. Fawick Airflex Co., 86 F. Supp. 822, 17 Labor Cases 65,386 (D. C. Ohio 1949); Mountain States Division No. 17 v. Mountain States Telephone and Telegraph Co., 15 Labor Cases 64,724 (D. C. Colo. 1948); United Packing House Workers v. Wilson and Co. Inc., 15 Labor Cases 64,631 (D. C. Ill. 1948).

301 (a) or 303 (b). Congress evidently recognized the necessity of making it easier for the party wronged to recover damages for breach of contract and for injuries sustained as a result of secondary boycotts, etc., than for the ordinary tort action and, therefore, enacted Sections 301 (a) and 303 (b).

Conceding that Section 301 (b) does not increase the jurisdiction of the district courts but merely changes a procedural rule to allow recovery of damages against a labor union for a tort committed by its members or agents, it will be necessary in any such action in order to bring the case within the jurisdiction of the district courts to allege and prove that the amount in controversy exceeds $3,000.00, and that there is diversity of citizenship between the parties. The first requirement in regard to the amount in controversy presents no difficulty in the usual situation. However, if the citizenship of the labor organization is to be determined by the citizenship of its members, in most situations involving a national union diversity of citizenship may be impossible to obtain. Once again, however, subsection (b) provides the answer. By providing that labor organizations representing employees in an industry affecting commerce may be sued as an entity, Congress has given such organizations the attributes of corporations insofar as suits are concerned. Therefore, it would appear that the location of the principal office of the labor organization is determinative of its citizenship rather than the domicile of its members. That Congress intended subsection (b) to have that effect is clear from the following statement made by Senator Taft from the floor of the Senate:

> "Some of the provisions of this bill deal with the question of making the unions responsible. There is no reason in the world why a union should not have the same responsibility that a corporation has which is engaged in business. *So we have provided that a union may be sued as if it were a corporation.*"[27]

Subsection (c) of Section 301 establishes the venue of actions against such labor organizations and, once again, labor organizations are treated as corporations—that is, a labor organization may be sued in the district in which it maintains its principal office or in any district in which its officers or agents are engaged in representing or acting for employee members. This is equivalent to the "doing business" test for corporations.

Service of process on such labor organizations may be made upon their officers or agents in their capacity as such.[28] In this connection, it

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[27]93 Cong. Rec. 7690 (June 23, 1947) [italics supplied].
[28]Sec. 301 (d) Labor Management Relations Act, 1947.

should be observed that service on an official of a local union is not service on the national union unless it can be shown that the official of the local union is in fact an agent for the national union.[29]

Therefore, it is submitted that a labor organization representing employees in an industry affecting commerce may be sued in the district courts of the United States for breach of contract without diversity of citizenship and without regard to the amount in controversy, and that such a labor organization may be sued for the tortious acts of its agents in the district courts of the United States in any case wherein the amount in controversy exceeds $3,000.00, and wherein the citizenship of that organization, as determined by the location of its principal office, is diverse from that of the employer. It must be admitted that in regard to such suits for torts there are no decided cases which clearly support the right to bring such a suit. But the language of the statute, the legislative history, and the application of well established principles would seem to indicate that such suits should be entertained by the federal district courts. A suit by an employer against a union is always fraught with difficulty, but it is believed that the method here suggested is at least worthy of consideration.

[29]Daily Review Corp. v. I. T. U., 9 F. R. D. 295, 17 Labor Cases 65,292 (1949); Isbrandsten Co. v. National Marine Engineers, 9 F. R. D. 541, 17 Labor Cases 65,435 (1949).