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Comment

SUABILITY OF TRADE UNION AS A LEGAL ENTITY

The common-law immunity of the unincorporated trade union from suit is slowly being taken away by legislation and decision.

A recent District of Columbia decision presents a strong statement of the argument for the capacity of the union to sue or be sued.[1] An attorney who had performed services for the union and was unable to collect his fee, sued the union in its common name in an action for debt. The organization was served with process through its president in accordance with the federal rules of procedure.[2] The single question on appeal was whether the unincorporated union could be sued as an entity. In a brief forceful opinion handed down in the U. S. Court of Appeals for the District of Columbia, the union was held liable and the funds in its treasury were available for damages. There was neither statute nor common law doctrine upon which to found this forthright holding. There were, however, two impelling reasons to sustain the decision. 1) Under the District of Columbia law the union could register and protect its union label, and by virtue of other statutes, funds of the labor union were exempt from certain local taxation. Here was legislative recognition of the union as an entity. If the union had

[1] Busby v. Electric Utilities Employees Union (C.A. D.C., 1945) 147 F. (2d) 865.

[2] Federal Rule 4(d).

independent existence for these purposes then why not for tort or breach of contract? This same reasoning was employed in the famous *Coronado Coal* case by the Supreme Court,[3] as well as in a prior District of Columbia case.[4] The principle is axiomatic; the unions are given substantive rights which can be enforced by the organizations acting as legal units, therefore, they can be treated as legal persons for purposes of litigation by those who deal with them as business units. 2) The right to sue or be sued in the common name is a procedural matter which does not depend upon the substantive rights of the members.[5] The court points out that the members have the same rights and are subject to the same liabilities as before, and states, "The entire change relates only to the fact that now they [the trade unions] can sue or be sued by less cumbersome process."

A spokesman for labor has stated that labor no longer fears abrogation of the immunity or incapacity of the unincorporated union. A statement by G. A. Padway, General Counsel of the American Federation of Labor, is quoted in the opinion of the principal case. He says in part, "In the last dozen years a change has taken place in the attitude on the part of labor. We do not object in a sense, and under proper circumstances, to being sued in our common name or to suing in our common name . . . Since 1932, or since the passage of the Norris-LaGuardia Act, our attitude toward this suability has changed entirely. Today we have not the fear we did have in the past . . . So, we are not opposed to being sued in proper cases, because we too have to sue in proper cases to obtain our rights."

What then is the barrier to a general recognition of the voluntary trade union as a suable entity, and by what means is this restraint being dispelled? The first inquiry is easily met. Under the common law, an unincorporated association of persons is not recognized as having any legal personality, and liability must be enforced against each member individually.[6] The desirable transformation from association status to entity status by legislation has been impeded by the political power of the trade unions.

The second inquiry engages the remainder of the discussion. In one-third of the states statutes touch directly on the suability of trade unions. These statutes fall into two categories. One group allows the voluntary association, which embraces the trade union, to be sued in the associate name, and judgment to be executed upon the association's property. This type of statute provides that the association may

[3] United Mine Workers v. Coronado Coal Co. (1922) 259 U.S. 344.

[4] Operative Plasterers, etc. v. Case (1937) 69 App. D.C. 43, 52, 93 F. (2d) 56, 65.

[5] United Mine Workers v. Coronado Coal Co. (1922) 259 U.S. 344.

[6] Pickett v. Walsh (1906) 192 Mass. 572, 78 N.E. 753; Johnston v. Albritton (1937) 101 Fla. 1285, 134 So. 563.

be sued in its common name by service of process on an agent or officer of the association which binds all members.[7]

The second group of statutes provides that when two or more persons are associated in any business which is transacted in a common name, such association may be sued in the common name.[8] Whether a trade union is engaged in business is the issue to be resolved in order to make these statutes applicable.

It is well settled in California that the association need not be engaged in commercial business in order to be sued under this provision.[9] The term business has been given a broad meaning covering all types of enterprises which engage people's attention and activities.[10] It is also firmly established in this jurisdiction that these voluntary associations and trade unions are sued as legal entities and not as a collection of individuals in a representative suit.[11] It may be noted that in the California statute the union may be brought before the court by service of process on one or more members of the association. This law should be amended so that it is necessary to serve either the president or other officers of the organization in order to bind all the members. Service of process on one member of a large association is not sufficient to insure a full notice of impending suit to the proper officials.

The Minnesota court, applying a statute nearly identical with that of California, allowed the union to be proceeded against in its common name on the basis of evidence that the labor organization was actually engaged in business.[12] This strict adherence to the letter of the statute necessitates a finding in each proceeding against a trade union that

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[7] ALA. CODE 1940, 7-142-3; CONN. GEN. STAT. 1930, §5490; DEL. REV. CODE (1935) §467b: MD. (Flack Code 1939) art. 23, §1109-15: MICH. COMP. LAWS (1929) §14020; N. Y. McKinney 1942, GEN. ASSOC. LAW, §13. (The courts do not agree as to the theory on which the suit is authorized by this statute. Whether it is against the association itself as an entity, or against all the associates represented by the officers named, is an unsettled point. But under either theory the courts agree that a suit properly brought under the statute binds the members and property of the union.) N. D. REV. CODE (1943) 28-0609; R. I. GEN. STAT. (1938) c. 530, §§1-14; S. C. CIV. CODE (1942) §§7796-7798; TEX. STAT. (Vernon, Centennial ed., 1936) §6133-8; VA. CODE (Michie, 1942) §6058.

[8] CAL. CODE CIV. PROC. §388; MINN. GEN. STAT. (1923) 2 Mason 1927, §9180; MONT. REV. CODE (1935) §90; OKLA. STAT. (1941) 12-182; NEV. COMP. LAWS 1929, §8564.

[9] Armstrong v. Superior Court (1906) 173 Cal. 341, 159 Pac. 1176; Jardine v. Superior Court (1931) 213 Cal. 301, 2 Pac. 756, 79 A.L.R. 291; Herald v. Glendale Lodge (1920) 46 Cal. App. 325, 189 Pac. 329; Deeney v. Hotel & Apartment Clerks' Union (1943) 57 Cal. App. (2d) 1023, 134 P. (2d) 328.

[10] Herald v. Glendale Lodge (1920) 46 Cal. App. 325, 189 Pac. 329; Artana v. San Jose Scavenger Co. (1919) 181 Cal. 628, 630, 185 Pac. 850, 852.

[11] Deeney v. Hotel & Apartment Clerks' Union (1943) 57 Cal. App. (2d) 199, 202, 125 P. (2d) 947, 950.

[12] Bowers v. Grand I.B. of L.E. (1933) 187 Minn. 626, 246 N.W. 362.

the union is transacting business of a commercial nature, thereby lessening the efficiency of the statute as authority for using. The Oklahoma court applying a similar statute has disregarded the troublesome phrase "voluntary associations transacting business" and allows trade unions to be sued without more discussion.[13]

It is when we depart from statutory law and delve into the maze of case law that the subject becomes confused. Two-thirds of the states have no statutory law on the suability of trade unions. When the problem is presented it can be solved by any one of three methods. (1) The common law may be applied and the trade union is spared from litigation; (2) the court may follow the example of the principal case and declare the trade union a suable entity at common law on grounds of necessity and policy; or (3) the court may utilize certain devices, such as the class suit, the waivable defect, or estoppel, and thus allow the unincorporated association to be sued on the special facts.

A significant factor influential in determining which course will be taken is the view of the court as to whether the recognition of entity status for suit is the creating of a substantive right or merely a matter of procedure. In a recent Illinois case[14] the former view was taken when plaintiff attempted to join a local union as a party defendant with some of the individual officers. The court refused the joinder on the ground that whether the union had legal existence or not was a question of substantive law going to the jurisdiction of the court and not one of procedural law. This view of the problem is at variance with the opinion of the Supreme Court in the celebrated *Coronado Coal* case wherein it was said,[15] "Though such a conclusion as to the suability of trade unions is of primary importance . . . it is after all in essence and principle merely a procedural matter." The same view was reiterated by the Wisconsin court[16] when it was decided that the union had no existence apart from that of its members, but for convenience it was permissible to sue the union in its common name.

If suing the trade union as a legal unit is looked upon as a simplified method of bringing the organization into court without resorting to the cumbersome process of suing each member, then the class suit may be utilized.[17] One-half of the states have statutes permitting the use

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[13] United Brotherhood of Carpenters and Joiners of America v. McMurtrey (1937) 179 Okla. 575, 66 P. (2d) 1051.

[14] Montgomery Ward and Co., Inc. v. Franklin Union, Local No. 4 (1944) 323 Ill. App. 654, 56 N.E. (2d) 476.

[15] United Mine Workers of America v. Coronado Coal Co. (1922) 259 U.S. 344, 390.

[16] Hromek v. Gemeinde (1941) 238 Wis. 204, 209 N.W. 587.

[17] O. Jay Spread Co. v. Hicks *et al.* (1938) 185 Ga. 507, 195 S.E. 564; Nissen v. Internt'l Brotherhood, etc. (1941) 229 Ia. 1928; Colt v. Hicks (1933) 97 Ind. App. 177, 179 N.E. 335; Key v. Geo. E. Breece Lumber Co. (1941) 45 N.M. 397, 115 P. (2d) 622;

of the representative or class suits at law.[18] Through this device borrowed from equity practice, if the question to be litigated is one of common or general interest to all the members of the union and the members are too numerous to make it practicable to bring them before the court, the plaintiff may serve a few members who will represent the group and judgment against the defendants will bind all those represented.[19] This method is obviously far less efficient than the suit against the trade union in its own name. The requirements of 'parties too numerous to bring before the court' and a 'common or general interest' must be met. What constitutes a 'common or general interest' is a much discussed point, and there seems to be no agreement on the precise meaning of the phrase.[20] Furthermore, all members of the class must be adequately represented and their interests protected in order to be bound by the judgment.[21] This is interpreted by a Texas court to mean that there must be a direct pecuniary interest in the subject matter of the case by the defendants.[22] These safeguards against unfair representation curtail the use of the class suit so that it may be employed only in a limited number of situations.

A few cases have held that the defect of suing a labor union in common name is waived if not raised by timely objection[23]—a uncertain procedure dependent upon an unobserving opposing counsel.

The well-worn doctrine of estoppel also has been used in order to reach the trade union as a unit. In Missouri, an unincorporated labor organization which was engaged in selling insurance to its members was held estopped in an action based on one of the insurance certificates from denying it was a suable legal entity.[24]

When the trade union engages in offering insurance benefits to its members, it may subject itself to suability by virtue of the statutes which empower it to act as an insurance agent and simultaneously

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McClees v. Grand Internat'l Brotherhood of L. E. (1938) 59 Ohio App. 477, 14 N.E. (2d) 812; Brotherhood of Railroad Trainmen v. Price (1937) Tex. Civ. App., 108 S.W. (2d) 239; Hromek v. Gemeinde (1941) 238 Wis. 204, 298 N.W. 587, 149 A.L.R. 514.

[18] CLARK, CODE PLEADING (1928) 277.

[19] *Ibid.* at 281; 20 R.C.L. Parties, p. 669, §9.

[20] Wheaton, *Representative Suits Involving Numerous Litigants* (1934) 19 CORN. L. Q. 399, 407.

[21] Hansberry v. Lee (1940) 311 U.S. 32.

[22] Brotherhood of R. R. Trainmen v. Price (1937) Tex. Civ. App., 108 S.W. (2d) 239.

[23] Operative Plasterers, etc. Internat'l Assoc. v. Case (1937) 68 App. D.C. 43, 93 F. (2d) 56; U.M.W. v. Cromer (1914) 159 Ky. 605, 167 S.W. 891; Hotel, Restaurant, etc. Employees Local Union v. Miller (1938) 272 Ky. 466, 114 S.W. (2d) 501. But see, for cases holding the defect is not waivable, Aulco Laundry and Cleaning Co. v. Laundry, etc. Union (1938) Mo. App., 113 S.W. (2d) 1881; Grant v. Carpenters' District Council (1936) 322 Penna. 62, 185 Atl. 273.

[24] Clark v. Grand Lodge. etc. (1931) 328 Mo. 1084, 43 S.W. (2d) 404.

expose it to being sued in its common name.[25] Even without direct statute, if the trade union by implication from general legislation is given authority to contract in its own name, it may then be treated as a legal entity for purposes of suit for breach of contract.[26] This echoes the reasoning of the Supreme Court in the *Coronado Coal Co.* case.[27] It was there held that where unincorporated labor unions have been recognized as distinct units by various acts of Congress and there has been a violation by the union of the rights conferred under these acts, in the spirit of reciprocity the union should be held as a single defendant.

The federal rule 17(b) codifying the rule of the *Coronado Coal* case states that "a partnership or other unincorporated association which has no such capacity [to sue or be sued] by the law of such state may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.[28] It is clear then that this rule applies only to suits by or against trade unions which are based on federal statutes.[29] In actions brought for any purpose other than to enforce a federal substantive right the question of suability is governed by the law of the state in which the federal or state court is held.[30] In a fairly recent Kentucky case, a member of the United Mine Workers sued the union as his employer for overtime pay under the Fair Labor Standards Act.[31] Although Kentucky follows the common law and does not allow a voluntary association to be sued as such, it was held that the United Mine Workers organization could be sued as the right to be enforced stemmed from the federal law.

In a majority of jurisdictions trade unions may thus be sued in their common name through one means or another. A State of Washington court held a farm laborers' union suable as an entity without reliance upon any express or implied statutory authority.[32] That is

[25] Winchester v. Grand Lodge, etc. (1932) 203 N.C. 735, 167 S.E. 49; Varnado v. Whitney (1933) 166 Miss. 663, 147 So. 479. Witmer, *Trade Union Liability: The Problem of the Unincorporated Corporation* (1941) 51 YALE L. REV. 40-41.

[26] Forest City Mfg. Co. v. Internat'l L.G.W. Union (1938) 233 Mo. App. 935, 111 S.W. (2d) 934; Kiser v. Amalgamated Clothing Workers Union of America (1938) 169 Va. 574, 194 S.E. 727.

[27] United Mine Workers v. Coronado Coal Co. (1922) 259 U.S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 27 A.L.R. 975.

[28] Moore's Federal Practice, Federal Rule (17(b), p. 2002.

[29] Sperry Products v. Association of American R. R.'s (S.D.N.Y., 1942) 44 Fed. Supp. 660, 149 A.L.R. 513.

[30] Philadelphia Local 192, A.T.T. v. American Federation of Teachers (E.D. P.A., 1942) 44 Fed. Supp. 345.

[31] Williams v. U.M.W. (1943) 294 Ky. 520, 172 S.W. (2d) 202; (1944) 92 Penna. L.R. 327.

[32] Lahonite v. Cannery Workers and Farm Laborers' Union (1938) 197 Wash. 543, 86 P. (2d) 189, 149 A.L.R. 514.