Benda v. Grand Lodge of Machinists: Ignoring the Presumed Validity of Union Trusteeships

In *Benda v. Grand Lodge of the International Association of Machinists and Aerospace Workers*,[1] the Ninth Circuit held that a standard preliminary injunction test governs actions brought to enjoin a union trusteeship. The union trusteeship is a congressionally sanctioned device that permits a parent union to take control of one of its local branches in special circumstances. Prior to *Benda*, courts considered the "merits" of the case to determine whether to enjoin a trusteeship; they did not use a standard injunction test. Fewer trusteeships will survive the preliminary injunction stage under the *Benda* test. As a consequence, *Benda* may significantly impair the ability of a parent union to control defiant local branches.

This Note argues that the result reached in *Benda* is contrary to the legislative presumption of validity for trusteeships. Part I briefly examines the background of trusteeships and sets out the legal framework under which they operate. Part II outlines the opinion and holding in *Benda*. Part III of this Note argues that *Benda*'s standard injunction test will cause most trusteeships to be enjoined—a result contrary to the legislative presumption of validity. Finally, Part IV discusses an alternative approach that incorporates the presumption of trusteeship validity and thus better effectuates congressional intent.

I

TRUSTEESHIPS

Labor unions developed at a local level.[2] Initially, local unions ("locals") were substantially independent of each other.[3] Starting in 1887, however, they perceived that effective negotiation with large corporate employers required consolidation.[4] Locals subsequently banded together to form an "international"—a group of unions under centralized control.[5] The victories won by internationals strengthened their

1. 584 F.2d 308 (9th Cir. 1978), *cert. denied*, 441 U.S. 937 (1979).

2. *See* J. BARBASH, LABOR'S GRASS ROOTS 134-36 (1961).

3. Some locals would occasionally band together in "federations." Each local, however, retained its bargaining autonomy. *See* P. TAFT, ECONOMICS AND PROBLEMS OF LABOR 428-29 (1942).

4. *See* Note, *Landrum-Griffin and the Trusteeship Imbroglio*, 71 YALE L.J. 1460 (1962).

5. L. ULMAN, THE RISE OF THE NATIONAL TRADE UNION 3, 68, 76 (1955).

hand as against both management and smaller unions.[6]

The international, however, cannot perform local matters as effectively as the local union. Local officers are familiar with day-to-day working conditions and are on hand to process grievances; only they can fully appreciate the effect of specific work rules.[7]

Ideally, the local and international would divide union responsibilities according to the nature of the task to be performed: the local would handle only "local" matters, while the international would administer matters requiring centralized control. The real world, unfortunately, does not always permit such clear distinctions. The local and the international may disagree about which body has jurisdiction over a matter or about substantive policy. Often a dispute arises because of different vantage points: the local seeks to protect local interests; the international, regional or national interests. Although the local joined the international because of the overall benefits it expected to receive from that membership, the local may not always believe that what is good for the international is also good for the local.[8]

Disagreements between a local and the international take on a familiar pattern. The local inevitably asserts union "democracy" and "self-rule." It portrays the international as a colonial power attempting to impose a dictatorial will. The international, on the other hand, sees its relation to the local as similar to that of the United States vis-à-vis an individual state—as a position of supremacy for the common good.

The local has several options in a dispute. It can attempt to disaffiliate from the international. It also can ignore the international's directives. Acquiescence by the international in such defiance, however, would permit the local and management to treat the international as merely an advisory body. Plagued by political factionalism, the international might subsequently dissolve into numerous separate locals, each lacking the advantages of a centralized, cohesive body.[9]

The international must have some ultimate power over locals if it is to survive and continue to bring advantages to union members.[10] The "trusteeship"—defined as any device used to curtail the autonomy

6. Barnett, *The Dominance of the National Union in American Labor Organization*, 27 Q.J. ECON. 455, 466-74 (1913). Local unions joined the larger—or "international"—unions because they could negotiate more favorable contracts and better fund strikes. Management, after accepting unions as a fact of life, favored consolidated unions because working with one bargaining unit facilitated negotiation and helped insure responsible adherence to the contract.

7. J. BARBASH, *supra* note 2, at 54. *See also* SEIDMAN, LONDON, KARSH, & TAGLIACOZZO, THE WORKER VIEWS HIS UNION (1958).

8. ROSE, UNION SOLIDARITY: THE INTERNAL COHESION OF A LABOR UNION (1952).

9. Muste, *Factional Fights in Trade Unions*, in AMERICAN LABOR DYNAMICS (Hardman ed. 1928).

10. *See* Barnett, *supra* note 6, at 455.

of the local union[11]—is that power. Pursuant to its constitution, the international may take control of a local which refuses to comply with provisions of the union's constitution.[12]

Parent unions have employed the trusteeship to maintain internal discipline since the beginning of the international movement.[13] At times, however, they have abused this device. Internationals have used trusteeships to consolidate the power of corrupt officers of the parent, to raid the resources of the local, and to prevent the growth of political opposition within the organization.[14]

Seeking to curb these abuses, Congress passed certain provisions regulating trusteeships[15] as part of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).[16] The LMRDA established procedural measures designed to protect the interests of a local when a parent imposes a trusteeship.[17]

Congress did not intend, however, for the LMRDA to impede the legitimate use of trusteeships by internationals. Section 462 states that an international may impose a trusteeship for "correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization."[18] This section permits the use of trusteeships in a wide variety of circumstances. Congress did not articulate a more specific standard than "legitimate objects" because the legislators believed that such a standard might prevent justified intervention by the international.[19]

Further, Congress adopted what was basically a "hands-off" policy toward trusteeships in the first eighteen months. To guide courts in "determining whether a trusteeship meets the statutory standard,"[20] Congress enacted section 464(c) of the LMRDA. Section 464(c) provides in relevant part that

> for eighteen months "a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing . . . shall be pre-

11. 29 U.S.C. § 402(h) (1976).

12. [1959] U.S. CODE CONG. & AD. NEWS 2333. Four hundred and eighteen trusteeships were in existence in the United States as of February 1979. U.S. DEP'T OF LABOR, LABOR STATISTICS (Feb. 1979).

13. Davis, *Receivership in American Unions*, 67 Q.J. ECON. 231 (1953).

14. [1959] U.S. CODE CONG. & AD. NEWS 2333.

15. 29 U.S.C. §§ 461-466 (1976).

16. *Id.* §§ 401-531.

17. *Id.* § 464(c).

18. *Id.* § 462.

19. [1959] U.S. CODE CONG. & AD. NEWS 2334.

20. *Id.*

> sumed valid . . . and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title."[21]

According to the legislative history of the LMRDA, the purpose of the presumption is to "make it plain that an honest decision by the international officials is not to be overturned during the first eighteen months of the receivership upon a question of fact or of degree or judgment as to the necessity for imposing it."[22] Absent dishonesty or bad faith, the legislature thought that it would "unreasonably impair the independence" of labor unions to allow review of union judgment as to the needs of the organization or the best means of effectuating them.[23]

Court decisions since 1959 consistently have remained faithful to the legislative goal of upholding trusteeships which have legitimate purposes.[24] Of thirty-six trusteeships challenged in court,[25] fourteen have been enjoined. Seven of those enjoined involved procedural failures,[26] three were attempts to thwart the integrity of the internal democratic processes of the local,[27] one concerned the imposition of a racially discriminatory merger,[28] and three trusteeships extended be-

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21. 29 U.S.C. § 464(c) (1976).

22. [1959] U.S. CODE CONG. & AD. NEWS 2334.

23. *Id.*

24. *See generally* Note, *Legitimate Objects of Union Trusteeships*, 20 WAYNE L. REV. 955 (1974). The author states that "under the existing standards of proof the courts must uphold any trusteeship absent a showing of bad faith or dishonesty." *Id.* at 967. *See also* Issacson, *Union Trusteeships under the Landrum-Griffin Act*, in 14 N.Y.U. CONF. ON LAB. 97, 113-14 (1961).

25. It is also possible to challenge the validity of a trusteeship through the National Labor Relations Board.

26. Sanders v. International Ass'n of Bridge, Structural and Ornamental Iron Workers, 546 F.2d 879 (10th Cir. 1976) (trusteeship not ratified within thirty days as required by international's constitution); United Bhd. of Carpenters v. Brown, 343 F.2d 872 (10th Cir. 1965) (no provision for trusteeship in constitution of international; 29 U.S.C. § 411 designed to protect locals from forced affiliation and raising of dues by internationals); Flight Eng'rs Int'l Ass'n v. Continental Air Lines, Inc., 297 F.2d 397 (9th Cir. 1961) (no provision for trusteeship in constitution of international); Sanders v. De Lucia, 266 F. Supp. 852 (S.D.N.Y. 1967) (no provision for trusteeship in constitution of local); Brotherhood of Painters v. Brotherhood of Painters Local 127, 264 F. Supp. 301 (N.D. Cal. 1966) (purpose of trusteeship to compel increased dues and taxes violated 29 U.S.C. § 411); Local 2. Int'l Bhd. of Tel. Workers v. International Bhd. of Tel. Workers, 261 F. Supp. 433 (D. Mass. 1966) (no provision for trusteeship in constitution of international; no fair hearing provided); Smith v. Distillery, Rectifying, Wine and Allied Workers Int'l, [1970] LAB. L. REP. (CCH) (63 Lab. Cas.) ¶ 11,061 (E.D. Ky. May 12, 1970) (no provision for trusteeship in constitution of international).

27. McDonald v. Oliver, 525 F.2d 1217 (5th Cir. 1976) (international set aside result of local election); Schonfeld v. Raftery, 381 F.2d 446 (2d Cir. 1967) (interuational imposed and maintained trusteeship to keep entrenched local leadership in power); Burch v. International Ass'n of Machinists, 337 F. Supp. 308 (S.D. Fla. 1971) (international failed to notify one local of technical defect in election process in time to cure; recognized results of clearly discriminatory election in another local).

28. Daye v. Tobacco Workers Int'l Union, 234 F. Supp. 815 (D.D.C. 1964) (international attempted to impose discriminatory merger of racially segregated locals).

yond the eighteen-month limit.[29] Thus, in those cases where courts granted an injunction, the trusteeship did not have the type of purpose that Congress considered legitimate. In cases where courts denied an injunction, the purpose of the trusteeship was, for example, to prevent disaffiliation,[30] to end what the international considered an illegal strike,[31] to consolidate several local unions into one new local union,[32] and to prevent a local from bargaining independently.[33] Courts have upheld a trusteeship, in other words, where its purpose was to enforce the international's view of proper collective bargaining tactics and policy or to improve union cohesion—all legitimate goals in the eyes of Congress.

II

FACTS AND HOLDING

District Lodge 508 of the Machinists Union was one of several local lodges that represented employees of Lockheed Missile & Space Company (LMSC), a wholly owned subsidiary of Lockheed Aircraft Corporation.[34] The collective bargaining agreement to which the local lodges and LMSC were parties was due to expire in October 1977. Negotiations for a new agreement began in the summer of 1977 between negotiators for LMSC and for the local lodges representing LMSC machinists. The international coordinated these negotiations, as it had in the past, with talks going on at other wholly owned subsidiaries of Lockheed;[35] separate but similar proposals were the basis of negotiations between each subsidiary and the union negotiating committee for that subsidiary.

In early November, the international notified district and local union representatives that it had decided to engage in corporate-wide

29. Brennan v. United Mine Workers, 475 F.2d 1293 (D.C. Cir. 1973) (trusteeships maintained "for decades"); Monborne v. United Mine Workers, 342 F. Supp. 718 (W.D. Pa. 1972) (trusteeships maintained "some 30 years"); Lavender v. United Mine Workers, 285 F. Supp. 869 (S.D. Va. 1968) (trusteeship maintained "over twenty years").

30. *See* Executive Bd. 1302, United Bhd. of Carpenters v. United Bhd. of Carpenters, 477 F.2d 612 (2d Cir. 1973); McVicker v. International Union of Dist. 50, Allied and Technical Workers, 327 F. Supp. 296 (N.D. Ohio 1971); Watts v. International Chem. Workers Union, [1975] LAB. L. REP. (CCH) (77 Lab. Cas.) ¶ 10,934 (E.D. Wash. Feb. 25, 1975).

31. Jolly v. Gorman, 428 F.2d 960 (5th Cir. 1970); Parks v. International Bhd. of Electrical Workers, 314 F.2d 886 (4th Cir. 1963).

32. San Filippo v. United Bhd. of Carpenters, 525 F.2d 508 (2d Cir. 1975).

33. Gordon v. Laborers' Int'l Union, 490 F.2d 133 (10th Cir. 1973).

34. District Lodge 508 consisted of representatives from Santa Clara and Santa Cruz County lodges. 584 F.2d at 311.

35. These other subsidiaries were Lockheed California Company [hereinafter CALAC], Lockheed Georgia Company [hereinafter GELAC], and Lockheed Aircraft Services Company [hereinafter LAS]. LMSC and CALAC employees rejected contract proposals and went on strike on October 10, 1977. GELAC employees did not strike until October 19th. *Id.*

joint unified bargaining.[36] Three Lockheed subsidiaries presented their "last, best and final offers" to the union negotiating committees on November 22nd. Union negotiators for two of the subsidiaries[37] were not satisfied with their respeetive proposals and voted not to take the contract to their memberships for final approval. Negotiators for the LMSC union, on the other hand, decided to bring the subsidiary's proposal to the membership for a vote.

The international overruled the LMSC union negotiators. Its representatives decided to inform all Lockheed companies that the unions had rejected the contract proposals.[38] LMSC union representatives sought the advice of their local delegate bodies, including District Lodge 508. These bodies voted to place the contract proposal before their members in spite of the international's ruling.[39]

The president of the international responded by creating a trusteeship over District Lodge 508. He suspended all officers of that lodge and designated an international official to take charge of the lodge's affairs.[40] The international, as mandated by its constitution, conducted a hearing; the hearing officer decided that the suspensions should continue.[41] Despite the suspensions, LMSC employees voted to accept the contract. The international, however, continued the strike against Lockheed.

The suspended officers filed suit in district court alleging that the international had imposed the trusteeship over District Lodge 508 in violation of the LMRDA.[42] The district court granted a preliminary injunction prohibiting the international from maintaining the trusteeship, from suspending officers, and from interfering "in any other way" with LMSC employees who wanted to return to work.[43]

The Ninth Circuit affirmed. The court first addressed the issue of what showing the local had to make in order to obtain a preliminary

36. Previously, the employees of each individual company had voted separately on acceptance or rejection of a contract. The new plan required acceptance by a majority vote of the combined membership working for all Lockheed subsidiaries. The international found authorization for this action in its International Circular No. 596 of 1958, which provided that the international president or an authorized committee could determine whether all the bargaining units affected by multi-unit agreements with the same employer should be combined for voting purposes or permitted to vote separately. 584 F.2d at 311.

37. GELAC and CALAC representatives found their companies' contract proposals unacceptable. 584 F.2d at 311.

38. *Id.*

39. *Id.* at 311-12.

40. This action fits within the broad definition of a "trusteeship" provided in 29 U.S.C. § 402(h) (1976). *See* text accompanying note 11 *supra*.

41. There was no dispute in *Benda* as to the procedural correctness of the imposition of the trusteeship.

42. 584 F.2d at 312.

43. *Id.*

injunction. Adopting a standard preliminary injunction test,[44] the court held that a judge must first balance the hardships that the parties would suffer because of an adverse decision.[45] If the balance of hardships tips "decidedly" toward the local, the local need only show an "irreducible minimum" chance of later success on the merits to obtain a preliminary injunction.[46]

The court then held that the district court, in balancing the hardships, had not abused its discretion when it found that the "irreparable" injury to District Lodge 508 resulting from permitting the trusteeship to continue would be greater than the harm to the international from enjoining it.[47] The trusteeship would cause "irreparable" injury to the local for two reasons. First, the trustee was making "unauthorized disbursements of strike benefits," which the local would be unable to recover.[48] Second, the international's attempt to continue the strike at the LMSC plant and to enforce sanctions against members who would not strike "was causing and would cause" District Lodge 508 a loss in membership.[49] The district court found that the international would not, by contrast, suffer irreparable injury from an injunction, but rather "only a temporary lessening of control over only one of its many district lodges."[50]

The appellate court acknowledged that the international's object of maintaining control over its subordinate units was legitimate, and remarked that this decision might encourage other "dissident groups" to challenge the international's leadership. The court did not see this, however, as "the kind of irreparable injury with which equity is concerned."[51] An ouster of the current leaders would not harm the union itself. The court also stated that there are "internal union procedures short of a trusteeship" which the leadership could invoke to maintain

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44. The court first noted that the traditional standard, adopted by the district court, was that a plaintiff "assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor." *Id.* at 314-15 (quoting William Inglis & Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975)). The court stated that recent cases had established that the two separate tests were merely "extremes of a single continuum" in that the relative hardships to the parties determines how great a likelihood of success on the merits the plaintiff must show. 584 F.2d at 315.

45. 584 F.2d at 315.

46. *Id.* On February 8, 1978, the NLRB issued a complaint alleging that LMSC had bypassed the international in dealing directly with the local, in violation of its duty to bargain collectively with the international. Further action by the NLRB was delayed pending the resolution of *Benda*. *Id.* at 312.

47. *Id.* at 315.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

control over locals.[52] The court failed, however, to identify any such procedures. Notably, in its review of the lower court's balancing of hardships, the appellate court did not consider that the LMRDA establishes a presumption that trusteeships are legitimate.

The court then examined the second aspect of the preliminary injunction test—whether a serious question worthy of litigation existed, defined in this case as a showing that the local had an "irreducible minimum" chance of later success on the merits. The court acknowledged the legislative presumption that trusteeships are valid for eighteen months. And it stated that the local can rebut this presumption only by clear and convincing proof that the parent did not establish or maintain the trusteeship in good faith for a purpose allowable under the LMRDA.[53] The court held, however, that the local must present clear and convincing proof to rebut the legislative presumption only in proceedings which consider the merits of the case. At the preliminary injunction stage, such proof is unnecessary.[54] The local must instead demonstrate only that a "good faith doubt" exists as to whether the parent established a trusteeship for an improper purpose. The existence of such a doubt, the court stated, would present a "serious question" worthy of litigation, and thus would satisfy the "irreducible minimum" hurdle.[55]

The court found that there was a "good faith doubt" in this case whether the trusteeship fulfilled legitimate objectives. It reasoned that the international's purpose of enforcing corporate-wide collective bargaining was probably invalid because a good faith dispute existed between the local and the international over collective bargaining responsibilities.[56] The court believed that this conflict was "at the heart" of the case, and stated that the international's mere assertion that it possessed bargaining responsibility did not leave the local with less than a "fair chance of success" on the merits.[57] The court also found that the international's object of "self-preservation" was, standing alone, insufficient to justify the imposition of a trusteeship.[58] The court distinguished prior cases that upheld trusteeships having such a purpose on the ground that those controversies, unlike the instant dis-

52. *Id.*
53. *Id.* at 316.
54. *Id.* at 316 n.4.
55. *Id.*
56. The court noted that the local had conducted autonomous bargaining for the last 20 years, that the scope of the circular authorizing the international to control the collective bargaining was questionable, and that the bylaws of the local, which had been approved by the international, allowed the local's president to negotiate and sign contracts. *Id.* at 316.
57. *Id.* at 317.
58. *Id.*

pute, involved the enforcement of "well-defined collective bargaining responsibilities."[59]

III

THE EFFECT OF *BENDA*'S PRELIMINARY INJUNCTION TEST

A. The Importance of the Preliminary Injunction

Local unions ordinarily challenge the validity of a trusteeship in an action for a preliminary injunction. And, in general, the legal battle over the trusteeship ends at the preliminary injunction stage.[60] This is probably because the current dispute between the international and the local—often centered on contract negotiations and strikes—will be over by the time the case reaches a trial on the merits. The damage, as far as the international's authority is concerned, already will have been done.[61]

Most courts have implicitly recognized the need for early resolution of trusteeship cases. To achieve this, they evaluate the merits of the trusteeship at the preliminary injunction stage, foregoing the standard preliminary injunction test.[62] The determination of whether to grant an injunction, then, depends on the ultimate validity of the trusteeship, rather than on the balance of hardships and the chance of later success on the merits. Under this approach, courts have given full weight to the presumption of trusteeship validity that Congress intended.

B. Benda*'s Analytical Framework*

Departing from existing law, *Benda* held that a standard injunction test governs the issuance of injunctions against union trusteeships. This test considers whether the balance of hardships weighs more heavily against the local and whether the local's claim presents a serious

59. The cases were Executive Bd. Local 1302, United Bhd. of Carpenters v. United Bhd. of Carpenters, 477 F.2d 612 (2d Cir. 1973), and National Ass'n of Letter Carriers v. Sombrotto, 449 F.2d 915 (2d Cir. 1971).

60. *See, e.g.*, Sanders v. International Ass'n of Bridge, Structural and Ornamental Iron Workers, 546 F.2d 879 (10th Cir. 1976); Sanders v. De Lucia, 266 F. Supp. 852 (S.D.N.Y. 1967); Brotherhood of Painters v. Brotherhood of Painters, Local 127, 264 F. Supp. 301 (N.D. Cal. 1966).

61. In one case, the court of appeals refused to decide the issue of the trusteeship's validity because by the time it reached the court the issue was moot. Flight Eng'rs Int'l Ass'n v. Continental Air Lines, Inc., 297 F.2d 397 (9th Cir. 1961).

62. A majority of cases have done this. *See, e.g.*, International Bhd. of Electrical Workers Local 1186 v. Eli, 307 F. Supp. 495 (D. Hawaii 1969); Schonfeld v. Raftery, 271 F. Supp. 128 (S.D.N.Y.), *aff'd*, 381 F.2d 446 (2d Cir. 1967); Brotherhood of Painters v. Brotherhood of Painters, Local 127, 264 F. Supp. 301 (N.D. Cal. 1966). A few cases do employ the preliminary injunction analysis, but only *after* they have determined the legitimacy of the trusteeship purposes. *See, e.g.*, Daye v. Tobacco Workers Int'l Union, 234 F. Supp. 815 (D.D.C. 1964). Under this mode of analysis, the preliminary injunction test is only an afterthought and has little real importance.

question worthy of litigation. In itself, the test is not improper. The *Benda* court failed, however, to include the presumption of trusteeship validity in the balance-of-hardships aspect of the test. Moreover, the court gave the presumption only pro forma weight in that portion which assesses the chance of success on the merits. *Benda* thus completely undercuts the congressional policy favoring trusteeships.

Benda's approach stacks the cards against the international. By ignoring the presumption of trusteeship validity in the balance-of-hardships aspect of the preliminary injunction test, the court has virtually guaranteed that locals will prevail in this matter. This is because the balance-of-hardships inquiry focuses on the *immediate* harm to the parties. The harm that a local suffers—loss of autonomy, choice of leadership, control over funds—is immediate and tangible. An international, however, suffers only an intangible loss of control and disciplinary power, the full effect of which might not become evident for years.[63] Thus, absent a presumption of trusteeship validity, courts will find that the balance of hardships favors the local union.

The international will not fare much better under *Benda*'s approach to the second part of the preliminary injunction test. This part requires a court to determine whether the case presents a serious question worthy of litigation. Were courts to presume that trusteeships are valid, they probably would resolve this issue in favor of the international. *Benda*'s approach, however, virtually negates such a presumption. The court did acknowledge that Congress has made trusteeships presumptively valid for eighteen months, but held that a "good faith doubt" as to the validity of the trusteeship rebuts the presumption. This de minimus standard of "good faith doubt" is extremely easy for the local to satisfy. Moreover, *Benda*'s holding that neither the en-

63. The court tried to minimize the harm to the international: it would suffer only a "temporary" loss of control over one of its "many" district lodges; the encouragement to other dissident groups resulting from the international's failure would not be the kind of "irreparable injury with which equity is concerned;" the success of dissidents might topple international leadership, but if such leadership is no longer acceptable to the majority of the members, its ouster would not harm the international as a whole. 584 F.2d at 315. These arguments, however, miss the point. *Every* trusteeship will impose a greater *present* burden on the local, since the real international interest at stake is future internal order and discipline. The hardship to the international is its future destruction. An isolated instance of the failure of a trusteeship will not, of course, destroy the international. But if the *principle* is established that the local has the right to make autonomous collective bargaining decisions, the international will effectively be rendered impotent.

The court also posed another argument—that internal union procedures short of a trusteeship could have been used to restore the international's control. *Id.* This "less restrictive alternative" argument is puzzling. The court offered no examples of the procedures it had in mind. Since the definition of a trusteeship under the LMRDA includes any device which serves to curtail the autonomy of the local, *see* text accompanying note 11 *supra*, the court must have been suggesting a device which could establish control yet not curtail the local's autonomy. Considering that District Lodge 508 was openly defying the international, that would have been a Houdini-like trick.

forcement of corporate-wide bargaining nor the preservation of the international is a legitimate trusteeship objective further facilitates the local's case. Because these are often the international's only objectives in imposing a trusteeship, courts using the *Benda* approach will conclude that the trusteeship has no valid purpose. The obvious result is that the international will lose on this part of the standard injunction test as well.

It is thus difficult to envision how courts that use the *Benda* approach could ever uphold a trusteeship at the preliminary injunction stage. Absent a presumption of trusteeship validity, the international simply cannot prevent an injunction against the trusteeship. The results at the preliminary injunction stage, however, would be very different were a court to examine the merits. In considering the merits, a court must presume that the trusteeship is valid if the parent imposed it for any "legitimate purpose."[64] The local can only overcome this presumption with clear and convincing evidence of the trusteeship's invalidity. It is thus likely that the court would uphold the validity of the trusteeship at this stage.

The holding in *Benda* eviscerates the statutory presumption of trusteeship validity. Its application could result in the abandonment of trusteeships as a device for maintaining union bargaining power. Such a result is directly contrary to the intent of Congress.

IV

THE SOLUTION

A. In General

The raison d'être of a preliminary injunction is to preserve the interests of the parties pending a trial on the merits. Enjoining a trusteeship until trial, however, frequently destroys an international's interests. Thus, in the trusteeship area, courts usually conduct a trial on the "merits" at the preliminary injunction stage. They examine whether the international complied with statutory procedural requirements and whether it established the trusteeship for legitimate purposes. And by applying the presumption of trusteeship validity, courts prior to *Benda* generally reached a just result at this stage.

However, with parties using the preliminary injunction proceeding to obtain, in effect, an adjudication on the merits, it was inevitable that eventually some court would employ the usual standard for preliminary injunctions rather than consider the merits. The *Benda* court did just that.

64. 29 U.S.C. § 462 (1976).

Both the pre-*Benda* and *Benda* approaches are flawed. It was disingenuous for courts prior to *Benda* to avoid the standard preliminary injunction test. Courts should at least pay some attention to the form an action takes. *Benda*'s application of the test, however, is too literal. It draws the court's focus away from the issue of whether the goals of the trusteeship are legitimate. The court, instead, becomes mired in balancing relative, immediate harms. Moreover, the court faces a dilemma under the *Benda* test. On the one hand, the court should grant a preliminary injunction where the local needs protection from abuse at the hands of the international. On the other hand, strict adherence to the preliminary injunction standard will render ineffectual the legislative presumption of trusteeship validity. That is, after *Benda*, locals will seek and often win preliminary injunctions against trusteeships, and then delay a trial on the merits with discovery tactics. The international will thus lose its primary tool for maintaining bargaining strength.

The solution lies in a middle position. Courts should apply the standard preliminary injunction test in actions brought to enjoin a trusteeship. They must also, however, take seriously the presumption of trusteeship validity.

To afford the presumption of trusteeship validity its proper weight, courts must make it a central feature of the preliminary injunction test. This can be accomplished in two steps. First, courts should invoke the presumption when balancing the hardships under the preliminary injunction test. The legislature tipped the balance of hardships in favor of the international when it created the statutory presumption. As a consequence, a court should find that the burdens weigh against the international only in extreme circumstances, such as when there is corruption within the international. This would prevent most cases from proceeding to the probability-of-success hurdle.

Second, courts should not only include the presumption of validity in the "fair chance of success" aspect of the test, but should also require locals to meet the "clear and convincing rebuttal" requirement to block trusteeships. Under this approach, a "good faith doubt" as to the trusteeship's validity would not suffice to enjoin the trusteeship. Instead, the local must clearly demonstrate that the trusteeship is likely to fail on the merits.

B. As Applied to Benda

Under this proposed analytical framework, the trusteeship in *Benda* undoubtedly would have been upheld. The district court found that the local would suffer irreparable harm if the trusteeship were not enjoined, and that the international would suffer little harm from an

injunction.[65] In evaluating these harms, however, the court failed to consider the legislative presumption of trusteeship validity. It ignored, in other words, Congress' determination that any possible harm the local suffers from a trusteeship is generally outweighed by the benefit the trusteeship provides to the international as a whole. Had the district court properly considered this presumption, it would have found that the balance of hardships tipped in favor of the international.

In examining the probability of success on the merits, the district court found that there was a "good faith doubt" as to who had the collective bargaining responsibilities. However, the court would have required a greater showing than "good faith doubt" had it taken the legislative presumption seriously. It would have squarely faced the issue of whether the international imposed the trusteeship for a legitimate purpose. And given the international's purpose of enforcing cohesiveness in collective bargaining—a purpose normally found legitimate by courts—the court would have upheld the trusteeship in *Benda*.

CONCLUSION

The analytical framework developed in *Benda* will severely hamper the future use of trusteeships. This result is contrary to the express wishes of Congress. Courts should use the preliminary injunction test, as *Benda* did, to determine whether to enjoin a trusteeship. Unlike *Benda*, however, they should incorporate the presumption of trusteeship validity into the balance-of-hardships aspect of the test and require clear and convincing evidence to rebut that presumption when considering the probability of success on the merits.

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65. Beuda v. Grand Lodge of the Int'l Ass'n of Machinists, 442 F. Supp. 431 (N.D. Cal. 1977).

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