Cornell Law Review

Volume 16
Issue 2 *February 1931*

Article 4

Control of Labor Through Union Discipline

Miller D. Steever

THE CONTROL OF LABOR THROUGH UNION DISCIPLINE

MILLER D. STEEVER*

In an age of rapid change new arrangements and combinations in society are in process of transferring the situs of authority and of materially modifying that degree of emphasis which so frequently determines its reality. While much is said about the official agency of the community called the government, one finds innumerable unofficial agencies of a political and economic character which, operating within the margin of permissible conduct laid down by the government, determine in practice the scope of individual action. A type situation of such form of control results when in a given industry most of the available labor supply is organized in a trade union, and most of the available jobs are controlled by an incorporated employer or association of incorporated employers. If the union and the employer have entered into a closed union shop agreement, and if the union determines who shall be admitted into it, then to the extent that trade union membership is the dominant factor the rules and management of the union fix the opportunity to work.

While growth of the "company union" and diminution in trade union membership has in very recent years affected its relative influence, the union contract in the situation described above is of continuing importance. The workers themselves have sought to subject it to some regulation. In this respect the successful movement among a few unions such as the Amalgamated Clothing Workers to subject to the decisions of a trade board the power of the union as well as of the employer to dispossess a worker of his job is of great promise. The spread of this movement into other industries is, however, retarded by the absence in those industries of the elements requisite to its success, and the control of labor through union discipline remains a topic worthy of critical examination.

Primarily it is a question of the scope of organization among employees. This is set forth in *The Growth of American Trade Unions, 1880–1923*, by Leo Wolman.[1] In 1920 the total number of wage earners, excluding those engaged in agriculture, was 23,480,077 of which 4,881,200 or 20.8% were members of a trade union.[2] In table 14 Wolman gives the following per cent. of wage earners organized

*Of the Department of Government and Law, Lafayette College.

[1]WOLMAN, THE GROWTH OF AMERICAN TRADE UNIONS, 1880–1923 (Bureau of Economic Research 6, 1924). [2]*Ibid.* 85, 86.

in the major divisions of industry in 1920: extraction of minerals, 41; manufacturing industries, 23.2; transportation, 37.3; building trades, 25.5; stationary engineers, 12.4; stationary firemen, 19.9. In Table 16,[3] the organization in 1920 of the divisions of the transportation industry was: in all transportation, 37.3%; water transportation, 85.5%; steam railroads, 57.5%; with others tapering down to 8.3%. In steam railroads the following change in membership occurred between the years 1920 and 1923.[4]

Table I.	For year *1923*	*1920*
Locomotive engineers	87,400	96,900
Locomotive firemen	118,000	125,900
Railroad trainmen	178,900	184,600
Railway conductors	60,000	56,000
Switchmen	8,700	14,000

The scope of integration among employers as of June 1, 1926 is made evident in *Commercial and Industrial Organizations of the United States*,[5] in the letter of submittal of which Dr. Julius Klein states that computation shows "approximately 9000 organizations, made up of 1199 interstate, national and international, 1130 state, and 6449 local organizations. Governmental, educational, professional, civic, agricultural, and religious organizations have been omitted, the present directory containing strictly commercial and industrial organizations." Among the organizations listed in this directory we find the following with their membership stated: Associated General Contractors of America, 1700; National Association of Builders Exchanges, 6500; National Electric Light Association, 14,462; National Coal Association, 900; American Foundrymen's Association, 1600; National Association of Sheet Metal Contractors, 2500; Chamber of Commerce of the U. S., 779,262; National Association of Master Plumbers, 10,500; United Typothetae of America, 2648; Associated Building Contractors of Illinois, 2000; New York State Association of Builders, 1800; Building Trades Employers Association of the City of New York, 800. To this evidence the National Industrial Conference Board adds "It is fairly safe to assume the existence of between 800 and 1000 trade associations of national or interstate character at the present time."[6]

No figures have been discovered indicating the number of employees who, as union men, are working under closed union shop agreements. But the assumption that the number is large and that the condition

[3] *Ibid.* 90. [4] *Ibid.* App. 116.

[5] DOMESTIC COMMERCE SERIES, No. 5 (Dept. of Commerce of U. S., 1926).

[6] NATIONAL INDUSTRIAL CONFERENCE BOARD, TRADE ASSOCIATIONS (1925) App. A, 326.

affects important industries is supported by the cases which have appeared in the law reports where each one most probably represents many others that have not been instituted or appealed to a court of record. The considerable powers of discipline exercised by economic groups upon their members is, of course, a general characteristic of the high degree of integration in modern society. This form of coercion enables America to carry on its tremendous activity without a corresponding increase of official governmental direction. The sanction of self government is so effective in the field of labor that some of the older trade unions are assuming responsibility for the conduct and productive effort of their members. This development of the rules of self government and their adoption into the formal law of the state is consequently of increasing importance.

A chief test of self government efficacy is the power of an unincorporated voluntary labor union to suspend or expel its members. The case of *Abdon v. Wallace*[7] reopens the discussion of this particular topic. This and seven other cases, identical in all material particulars, were tried together by the lower court without a jury, and a single finding of facts and conclusions of law filed. The plaintiffs, originally members of the former local 492 of the Grand International Brotherhood of Locomotive Engineers, sought injunctive relief to compel the defendants, who are the officers, and members of said local, to recognize the plaintiffs as members of the Brotherhood and entitled to the rights incidental to membership. From judgment for defendants the plaintiffs appealed and the judgment was reversed with instructions. The Brotherhood, an unincorporated association of locomotive engineers comprised all but a small portion of such employees in the United States and Canada. Until February 27, 1916, the only "local" of the Brotherhood on the Chicago Division of the Big Four was 492 of which plaintiffs and the same defendants were members. The Brotherhood was so organized that in each local a committee of three members was charged with the duty of adjusting with the local officials of the particular railroad involved all grievances of its members. The chairmen of all local committees comprised a general committee which the union charged with the duty of adjusting with the management of the railroad involved, controversies not requiring for settlement the participation of the president of the railroad. By its rules and upon written application to the local chairman "every member of the Brotherhood had the right to have any grievance settled or interest of his own protected by the local committee or general committee of adjustment." More-

[7] 165 N. E. 68 (Ind. App. 1929).

over, each local was represented by one delegate and an alternate to the Grand International Division of the Brotherhood called the G.I.D. These delegates, with the Grand Chief Engineer and the other officers of the G.I.D. constituted the "supreme governing body of the Brotherhood", which operated under a written constitution, and standing rules.

These rules provided the only process for punishing a member, namely, the preferring of written charges against him before his local; the bringing of the charges to the notice of its next regular meeting; the reference of such charges to an investigating committee of three members; the report by such committee to the local and, if evidence against the accused be found, the delivery of a copy of the charges by the committee chairman to the accused with notice to him of the time of his trial; the hearing of evidence; the ballot by the members present on the question of guilt and, upon conviction, a ballot on the penalty.

Among the offenses for which a member might be disciplined a rule of the Brotherhood provided, "Sect. 12. Any member or division, who, by verbal or written memorandum to any one, calculated to injure or interfere with national legislative matters offered by our legislative representative members at Washington . . . or at any time makes suggestion to any one that may be detrimental to the interest of such legislation, shall be expelled when proven guilty as per section 49 of the Statutes."

On September 28, 1915, plaintiff Rother, in active service as a locomotive engineer on the Big Four, was engaged in the occupation of a headlight inspector. Pursuant to his duty to obey the orders of the general superintendent of the railroad he reported on that date to a designated person in Washington, D. C. and was thereupon served with a subpoena commanding his appearance at a hearing before the Interstate Commerce Commission concerning the adoption, by the railroads of the United States, of a particular type of electric headlight which was favored by the Brotherhood and by its chief executive, Warren S. Stone. At the hearing, Rother, being sworn, made no voluntary statements but answered questions put to him. He testified certain disadvantages which he had observed in the use of this type of headlight. Stone learning of this testimony was displeased. He claimed that Rother had violated Section 12 of the rules of the Brotherhood and directed the chief of Local 492 to prefer charges against him. He was tried before the local and upon a ballot of the members found not guilty. Stone thereupon with the aid of the officers of Local 492 suspended its charter and organized a

New Local Number 546 including all former members of 492 excepting Rother and sixteen of his friends, among them the plaintiffs. No charges were preferred against the sixteen and this action by Stone and other officers was without authority under the rules of the Brotherhood. Since the formation of Local 546, all the plaintiffs have been excluded from all activities and benefits of the Brotherhood.

On their petition for reinstatement the court, as already stated held for the plaintiffs. As to Warren S. Stone the court said "his conduct was reprehensible in the extreme, and we marvel that an association of the high standing of the Brotherhood of Locomotive Engineers retains in such a responsible position one whose ideals, if we may judge from his acts herein, are so out of keeping with the principles of common honesty"; and later "who is this man Stone, that he should presume to instruct a witness as to what his testimony should be before a government commission and to penalize him for testifying to the truth?—Appellees [defendants] and Stone conspired with each other . . . to drive appellants [plaintiffs] out of the brotherhood . . . in violation of the laws of the brotherhood . . . A suspension of the charter of local division 492, together with a refusal to transfer . . . appellants . . . to local division 546, was equivalent to the suspension of such members."[9] This suspension not occurring in accordance with the rules of the Brotherhood establishing the process for trial, it was void.

The opinion reiterates the rule that where property interests are involved injunctive relief will be granted to restore to membership those suspended by a process other than that provided by the union regulations. Plaintiffs by the suspension were deprived of: (1) the preferment in securing and retaining work which union men had; (2) participation in union insurance; and (3) the advantage of having grievances with an employer handled by an influential organization representing their interests.[10] The court's comment upon Stone,

[9] *Supra* note 7, at 74, 75.

[10] *Accord:* Thompson v. Grand Int. Brotherhood of Locomotive Engineers, 41 Tex. Civ. App. 176, 91 S. W. 834 (1905) in which damages were allowed for expulsion because of testifying upon oath as a witness in court. Enrollment in the union was given as 60,000 members; St. Louis So. West. R. R. v. Thompson, 102 Tex. 89, 113 S. W. 114 (1908), 19 ANN. CAS. 1250 (1911). Burke v. Monumental Division No. 52 Brotherhood of Locomotive Engineers, 273 Fed. 707 (D. Md. 1919). See Love v. Grand International etc., of Locomotive Engineers, 139 Ark 375, 215 S. W. 602 (1919), where the charges did not include testifying in court but in circulating information against the interests of the brotherhood and contrary to the constitution. Expulsion after properly conducted trial in organization upheld by court.

while it does not add to the legal content of the decision, does call attention to a specific instance of the kind of high handed action an opportunity for which the structure of American unionism affords its executives. In comparison with the British, the American trade union executive is relatively unrestricted in his action between conventions.[11]

The legal principles involved in this type situation are relatively simple. The right of a labor union to determine who shall be admitted to membership is complete and without qualification. In the leading case of *Mayer v. Journeymen Stonecutters' Association*[12] the complainants were a voluntary unincorporated association of master stone cutters and two journeymen stone cutters. Defendants, officers and members of a voluntary unincorporated association of journeymen stonecutters, had refused to admit these two journeymen because of a rule of the union against admitting any new members for one year. For lack of membership the two men were unable to secure work, as the master stone cutters, though desiring more workmen, would not employ non-union men. The union itself had no "contract" to that effect with them, however. The court of chancery refused to issue a decree to compel admission into a voluntary association, saying, "These organizations are formed for the purpose mutually agreed upon; their right to make by-laws and rules for the admission of members and the transaction of business is unquestionable. They may require such qualifications for membership, and such formalities of election, as they choose . . . may restrict membership to the original promoters, or limit the number to be thereafter admitted. The very idea of such organizations is association mutually acceptable . . . A power to require the admission of a person in any way objectionable to the society is repugnant to the scheme of its organization."[13]

In accord is *Greenwood v. Building Trades Council*,[14] where the defendant Council refused to admit plaintiff, Local No. 162 of the

[11]An illustration of the consequences of expulsion is indicated in Sweetman v. Barrows, 263 Mass. 349, 161 N. E. 272 (1928) where a voluntary association of moving picture operators controlled employment in 85% of the moving picture theatres and exchanges in Boston and within a radius of 10 miles, the jobs being allocated by the business agent of the local. Because of expulsion from the union plaintiff was unable to secure employment from Oct. 1923 to Feb. 1925.

[12]47 N. J. Eq. 519, 20 Atl. 492 (1890). *Accord:* Muller v. Bricklayers' Masons' Plasterers' International Union, 140 Atl. 424 (N. J. 1928), where an apprentice had failed to register and file his apprenticeship agreement in time.

[13]Mayer v. Journeymen Stonecutters' Ass'n, *supra* note 12, at 524, 20 Atl. at 491.

[14]71 Cal. App. 159, 233 Pac. 824 (1925).

Sheet Metal Workers, demanded a tax or fine of $4.50 per member of said local, and threatened to call out on strike members of other crafts engaged in the building industry in shops in which members of said local worked. The court reversed the temporary restraining order saying it would not interfere to compel admission into a voluntary association even though damage otherwise results.

Once a man is admitted to membership, however, the courts will prevent or give damages for his improper expulsion. The general rule is stated in *Grand International Brotherhood of Locomotive Engineers v. Green*,[15] in which plaintiff, Green, brought an action for damages for wrongful and malicious expulsion, receiving a verdict of $17,500. On appeal the court held for the plaintiff, saying that he need not even show that he had exhausted all remedies within the association because reversal of its decision by the union would not afford full redress for injury to property rights. "The expulsion of a member, if for cause within the jurisdiction of the tribunal of the association by which it is pronounced, after notice and an opportunity to be heard and a trial conducted in accordance with the constitution, laws, and regulations of the association, is conclusive upon the civil courts; but the courts hold that such associations must act in good faith and must not violate the laws of the land or any inalienable right of their members."[16] The trial of Green by the union preliminary to his expulsion was declared not bona fide, because the charges (which are not given in the report of the case) were other than the ones upon which he was expelled. His expulsion was induced by resentment of the fact that, when a strike of the railway brotherhoods was being discussed just prior to the declaration of war between the United States and Germany the plaintiff declared that his first allegiance was to his country. This, the court held, was not a sufficient ground for his expulsion. It conceded that the complaint stated a case for punitive damages, but the verdict of $17,500 was deemed excessive and reduced by the court to $12,500.

In the trial of its members the union must meticulously follow the procedure which it has adopted, otherwise the decision is void.[17] In the leading case of *Brennan v. United Hatters*,[18] which involved the fining by a union of a member, Brennan was found guilty by the union committee of charges which were developed at a hearing at which he was present solely in the capacity of a witness. It was held

[15] 210 Ala. 496, 98 So. 569 (1923).
[16] *Ibid.* 499, 98 So. at 572.
[17] Abdon v. Wallace, *supra* note 7.
[18] 73 N. J. L. 729, 65 N. E. 165 (1906).

that he had not been properly notified of the charges, and that the fine was void.

In *Froelich v. Musicians Mutual Benefit Association*[19] the plaintiff was a member of an unincorporated association composed exclusively of musicians, which had elaborate by-laws with a schedule of prices and regulations governing the conduct of its members. During a strike on a local transit company the association, in violation of its by-laws, passed a resolution fining all members who rode on the street cars of this company. Froelich did so ride, was fined, refused to pay and was being expelled for such refusal when he procured a restraining order which was made perpetual. It was held that the resolution imposing the fine was illegally adopted.

In *Connell v. Stalker*[20] plaintiff was treasurer and defendant was president of the Journeymen Stonecutters' Association of New York. When the plaintiff refused to give up his treasurer's books to a committee appointed to investigate a certain account, the members voted to suspend him and that no member work with him. As a result he was discharged from his work and was idle nine weeks. The constitution and by-laws provided that the treasurer must turn over the books to the trustees every four months for audit, also that a member could not be suspended except for working in a scab shop, or a violation in an aggravated manner of the constitution or by-laws. The plaintiff, suing for the amount of wages he lost, received judgment which was affirmed. The court said that the suspension was not warranted by the constitution or by-laws, "which constitutes his contract with the association."[21] This case seems to go unreasonably far in protecting the interests of the member.

Two recent cases are *Spiegel v. Locomotive Engineers Mutual Life and Accident Association*[22] and *McCantz v. Brotherhood of Painters, Decorators and Paperhangers of America.*[23] In the *Spiegel* case the plaintiff, who was the widow of a former member of the Brotherhood of Locomotive Engineers, membership in which was requisite to holding insurance, sued for insurance as beneficiary. The defendant claimed that deceased had been expelled from the Brotherhood under Section 51 of its laws specifying expulsion for taking the place of a

[19]93 Mo. App. 383 (1902).

[20]21 Misc. 609, 48 N. Y. Supp. 77 (Sup. Ct. 1897).

[21]*Ibid.* 611, 48 N. Y. Supp. at 79.

[22]166 Minn. 366, 207 N. W. 722 (1926).

[23]13 S. W. (2d) 902 (Tex. 1929). See also International Union of Steam and Operating Engineers v. Owens, 119 Ohio St. 94, 162 N. E. 386 (1928), allowing a mandatory injunction to issue to an unincorporated union to accord a member access to all the procedural rights afforded under the union's rules.

striker. The rules required written charges and that evidence be produced at a member's trial. Deceased was present at his trial but no written charges had been furnished him and no evidence was there produced against him. He denied he had taken a striker's place. The expulsion was held to be void because no written charges were given him. "In such organization formal and technical procedure cannot be expected, but when such vital matters are involved the accused is entitled to a substantial compliance with the law."[24]

In the *McCantz* case the plaintiff, a member, sued the Brotherhood, a corporation, for damages sustained because of his suspension from Local 1069 and the consequent denial of the privilege to work as a union man, the loss of disability and death benefits, and for exemplary damages. The trial court directed judgment for defendant. On appeal, this was affirmed as to the ruling on exemplary damages, but reversed and the case remanded for new trial on the issue of actual damages. In Houston, plaintiff's home, there were two locals, Nos. 130 and 1069, also a District Council No. 15. Under the charter, constitution and by-laws of 1069, the defendant, it was improper "for any member to work for an employer who might be designated by them as unfair to union labor", and elaborate procedure was provided for the trial of any member, with written charges, notice, appointment of a trial committee, balloting upon its report, etc. Section 294 stated "If the accused wilfully neglects or refuses to stand trial, the committee shall find him guilty of contempt and he shall be punished as the local union or district council may determine." The present plaintiff, while a member of Local 130 was charged with working in an unfair shop. The trial committee recommended he be exonerated provided he resign his job. He refused to do so. The local accepted the report and discharged the committee and plaintiff immediately left the meeting at which these proceedings took place. At a later meeting of Local 130 at which he was not present, he was fined $50 under Section 294 but was not so notified. Later he was admitted to Local 1069. Upon the complaint of Local 130 that he had not paid the fine the Vice-president of the Brotherhood ordered Local 1069 to suspend him and this was done. The court held that a suspended member may apply to the civil courts for damages and need not resort to the tribunals set up by the association. It decided that the $50 fine was void because imposed without notice to appear for a new trial and after plaintiff had left the meeting believing he had been acquitted and that no other

[24]Spiegel v. Locomotive Engineering Mutual Life and Accident Ass'n, *supra* note 22, at 369, 207 N. W. at 723.

charges were pending against him. Therefore, it concluded defendant was not justified in instructing Local 1069 to exclude him.

This case is an apt illustration of the difficulty experienced by labor organizations in carrying out the process laid down in their rules for the trial of members. Untrained in such procedural details the executives need the constant counsel of a lawyer. The decision of the Vice-president in the *McCantz* case was evidently a sound practical solution; but courts tend to regard these organization procedures in a technical light. The non-legal, informal modes of trial used by trade boards in the adjustment of disputes arising under trade agreements are a procedure better suited to the object of securing justice through devices usable by men untrained in legal technique but trained in that of the operations of the industry involved. Complicated union rules of procedure administered by men untrained in procedure, combined with appeal to the civil courts administered by men untrained in the technique of industrial operations appears to be as complete a divorce of function from capacity as could well be devised.

In *Hess v. Johnson*[25] in a suit for death benefits, the Court upheld a provision of the constitution of the New York Plate Printers' Union, an unincorporated society, which provided that one who had been three months in arrears in dues during the six months immediately preceding his death is not entitled to the death benefits. The constitution being the contract between the parties, even though the provision was unreasonable, was held not illegal.

A union rule providing for a suspension without notice of the charges, is, however, void. In *Bricklayers, etc. Union v. Bowen*[26] an action for equitable relief was brought by members of Local 39 in Rochester against the officers of the International Union because the latter had suspended the local, without a hearing, and had established another, Local 53, to which most of the members of Local 39 were transferred. The constitution of the International provided for the immediate suspension of officers or locals. A provision for removal or suspension without notice is void as against public policy, the court held. The law treats members of voluntary associations as "one family, and entitled to settle their family jars without outside interference, and in their own way," but "insures to every member . . . a fair trial, not only in accordance with the constitution and by-laws of the association, but also with the demands of fair play, which in the final analysis is the spirit of the law

[25]41 App. Div. 465, 58 N. Y. Supp. 983 (2d Dept. 1899).
[26]183 N. Y. Supp. 855 (Sup. Ct. 1920).

of the land .... Labor organizations have become an integral part of our business life, and wield a powerful influence upon the every day affairs of multitudes of our people. In return for the benefits which, when rightfully managed, they insure, their members surrender to them all individual trade, freedom, and must rely upon their honest, fair, and efficient management for opportunity to support themselves and their families."[27]

In *Gilmore v. Palmer*[28] the constitution of Local 2028 of the Boot and Shoe Cutters' Protective Association provided, Section 30, "Any member of the order advocating its disruption, of the withdrawal of any local or other assembly, shall by that act stand expelled from the order. This shall also apply to any local or other assembly that permits the discussion of such a motion. The general executive board shall enforce this provision upon proof satisfactory of said offence by said board, subject to appeal to the general assembly." This was held to be invalid because it provided for suspension "summarily without notice, without trial, without preferment of charges in writing, and without hearing, ... and all proceedings taken under it are void."[29] In *Swaine v. Miller*[30] the by-laws, Section 21 of the United Brotherhood of Carpenters and Joiners of America provided "He (The General President) shall have power to suspend any local union for any violation of the constitution or laws of the United Brotherhood, by consent of a majority of the general executive board." This too was held to be unreasonable and void because authorizing action without notice to the offending party. Here the local had been suspended because it refused to expel some of its members. In *People ex rel. Schults v. Love*,[31] however, the Court upheld the provisions of the constitution of the International Union of Steam and Operating Engineers giving locals power to suspend or expel a member by three-fourths vote "when the evidence is plain and the circumstances require immediate action." In this case another provision set forth a process of making charges, service, notice of hearing, hearing and a majority vote, with the right of appeal to the union. The relator was summoned before a meeting, admitted his offence, *i.e.*, falsely accusing an officer of the union of owing him money and of illegal action during a strike, and by a majority vote was suspended for an indefinite period. A voluntary

[27] *Ibid.* 858-861.
[28] 109 Misc. 552, 179 N. Y. Supp. 1 (Sup. Ct. 1919).
[29] *Ibid.* 553, 179 N. Y. Supp. at 2.
[30] 72 Mo. App. 446 (1897).
[31] 199 App. Div. 815, 192 N. Y. Supp. 354 (1st Dept. 1922).

association, the court said, may provide for suspension or expulsion of a member by summary action and without formal trial. Compare this with *Gilmore v. Palmer, supra.* In the *Schults* case the member admitted his offence so that "the evidence is plain" but the "circumstances" hardly "require immediate action."

When the charter of the association contains no power of expulsion it can be exercised only when a member has committed some infamous offence or act tending to the destruction of the society. In *Weiss v. Musical Mutual Protective Union*,[32] circulating a petition urging attendance at a meeting to consider combining with organized labor was held not to be such an offence.

Before resorting to the civil courts the plaintiff in these cases is held to certain respect for the union process. Where injunctive relief is sought to prevent suspension or a mandamus to compel readmission, the complainant must first exhaust all remedies with the organization, provided they are reasonable and available. In *Hall v. Morrin*[33] the plaintiff, who was a member of Local 18 of the International Association of Bridge, Structural and Ornamental Iron Workers asked for an injunction against the officers of the union. The latter's constitution provided a complete system of government with quasi-judicial process. When the plaintiff, Hall, was elected president of Local 18, Morrin, who was president of the International body, threatened to suspend the local because Hall had not been a member in good standing for the previous year as required by the by-laws. Hall then sued the present defendant and Local 18, charging them with unjustifiable action. That suit was dismissed by the court. Under an article of the constitution providing that "charges may be filed against any . . . member . . . on the ground of improper conduct . . . wilfully slandering any officer . . . committing any offence discreditable to the International Association etc." one of defendants in the suit then preferred charges against Hall that he had brought suit in the civil courts instead of pursuing his remedy through the organization. He was tried fairly according to the procedure of the organization, found guilty, and fined. It was in relation to this fine that Hall brought this present action which resulted in a decree for defendants. The court held: "Plaintiff should be required to pursue the remedies available to him within the order . . . the court should not interfere by injunction, either to abrogate the contractual rights and obligations of the

[32] 189 Pa. 446, 42 Atl. 118 (1899).
[33] 293 S. W. 435 (Mo. 1927).

members . . . or to substitute its own form of discipline for that which all the members of such organization for their own mutual benefit have contracted to subject themselves."[34]

Where, however, the right of appeal within the union is so hedged about by conditions as to amount to a denial of justice a plaintiff need not exhaust his remedy within the union before bringing action.[35] This appears from *Mullen v. Seegers*[36] where plaintiff, a member of Local 238 of the United Garment Workers of America, brought an action for damages against the defendants, officers of the national and of the local. While employed in the shop of X company in the spring of 1918 these defendants, without following the procedure of the union, announced that a strike had been called at another shop of the X company and told the plaintiff to quit work. She refused, giving as her reason that she did not feel it her duty to strike when she was doing government work. A few days later she was fined $25 and her dues were refused until the fine was paid. Because of this difficulty she was refused employment at other plants until she settled her dispute with the union. She brought suit without attempting to appear before the higher union authorities. Without discussing the issues the court held the case came within the exception that one unlawfully suspended from a union may sue for damages without first exhausting her remedies within the organization.

Expulsion because of misrepresentation inducing admission to the union is supported by the courts. In *Kraus v. Sander*[37] plaintiff brought an action in equity against defendant, a voluntary unincorporated association, for reinstatement in the Brewer's Union, from which he had beem expelled because he secured admission with a forged certificate and under false representations. Under the constitution expulsion was by vote of two-thirds majority. At a meeting of 250 members, plaintiff being present, 128 voted for expulsion and none against him. In giving judgment for the defendant the court stated: "It is a gross violation of good faith to the organization and its members for an applicant to gain admission by forged certificates and false representations as to his history, condition or charac-

[34]*Ibid.* 441. *Accord:* Crisler v. Crum, 213 N. W. 366 (Neb. 1927) which also contains an excellent description of the working of seniority rules under a closed union shop agreement.

[35]Corregan v. Hay, 94 App. Div. 71, 87 N. Y. Supp. 956 (4th Dept. 1904) where payment of $50 fine was required before receiving copy of charges and appeal required trip from Syracuse, N. Y. to Indianapolis, Ind.

[36]294 S. W. 745 (Mo. 1927).

[37]66 Misc. 601, 122 N. Y. Supp. 54 (Sup. Ct. 1910).

ter."[38] It held that the proviso of the constitution meant two-thirds of those voting.

In *Beesley v. Chicago Journeymen Plumbers etc. Association*[39] the court upheld an expulsion due to lack of requisite skill. Beesley had been admitted to membership on his representing himself to be a journeyman plumber and an efficient workman. Later some of the members charged that he was not a plumber but a bricklayer. On being notified to appear at a later meeting he stated "that he was not thoroughly practical in all the work of journeymen plumbers, but believed he knew the theory." A committee appointed to test his qualifications called upon him to "submit to a test in lead-work known as 'wiping a joint'." He refused to take this test, and on his admitting that he was a bricklayer by trade "and could not justify as an all-around plumber" he was expelled. The court refused to mandamus.

Summary

The decision of the court in upholding or rejecting the expulsion is thus shown to be based sometimes upon the nature of the cause of expulsion and sometimes upon the nature of the process used by the union. The types of control and the reasons asserted for its exercise by the union upon its membership remain to be summed up. This factual study shows the causes of expulsion as follows. The number refers to citation of case in the footnotes.

In discussing proposed strike of locomotive engineers on eve of war with Germany plaintiff declares his first allegiance to his country. (15)

Refusal to strike when working on war contracts. (36)

Bringing legal proceedings to prevent strike. (10, *Burke v. Loco. Eng.*)

Giving testimony in civil cause. (10, *Thompson v. Loco. Eng.*)

Giving testimony before government commission. (7)

Testifying in civil cause. (10, *St. Louis etc. R. R. v. Thompson*)

Issuing circulars attacking union policy. (10, *Love v. Loco. Eng.*)

Non-payment of dues. (11)

Non-payment of fine. (18 & 19)

Treasurer's refusal to open books for audit. (20)

Taking place of striker. (22)

Working in non-union shop. (23, *McCantz v. Bro.*)

Funds solicited from business men "expended in riotous living," and refusal of local to suspend said members. (30)

Knowingly bringing false charges against union official. (31)

[38] *Ibid.* 603, 122 N. Y. Supp. at 56.

[39] 44 Ill. App. 278 (1892).

Circulating petition urging association with rival union. (32)

In public speech stating that the union was "rotten to the core" and the president was the "worse dog among them." (35)

Using forged certificate and false representations to gain admission to union. (37)

Misrepresentation of skill to gain admission to union. (39)

Initiating legal process against members of own union for violation of the Sunday closing laws.[40]

In capacity as a member of a city plumbing board refusing to appoint as plumbing inspector an individual selected by union;[41] —an interesting case involving local politics and attempt of economic groups to dictate appointments.

[40]Manning v. Klein, 1 Pa. Super. Ct. 210 (1896).

[41]Schneider v. Local Union No. 60, 116 La. 270, 40 So. 700 (1905), 5 L. R. A. (n. s.) 891 (1907), 7 ANN. CAS. 868 (1907).