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Recent Cases

RECENT CASES

THE FALSETTI, WAX AND BAILER LABOR CASES: EXHAUSTION OF INTERNAL REMEDIES AND NLRB EXCLUSIVE JURISDICTION

When a labor union member is wrongfully expelled from the union, to what tribunal does he appeal for aid? When he is discharged from his employment and applies to his union for help in being reinstated to his former job and the union fails to help or expels him, to whom does the union member appeal in order to procure a remedy? The Pennsylvania Supreme Court has handed down a trio of decisions[1] which clarify Pennsylvania's law concerning these questions.

There are two determinations to be made before a Pennsylvania court will assume jurisdiction over such a matter.[2] The first is whether a member must exhaust his internal remedies within the union and, if so, whether he in fact exhausted them. The second issue is whether, through the Labor Management Relations Act[3] (more commonly known as the Taft-Hartley Act), Congress intended federal pre-emption to be invoked by the National Labor Relations Board. Each of these issues will be treated separately in this Note.

The exhaustion of internal remedies rule, as it applies to labor unions and their members, was clearly pronounced in *Falsetti v. Local 2026, UMW*.[4] In that case, a union member was laid off from his job on the ground that he was no longer able to fulfill his job requirements. Members of lesser seniority were retained and hired by the employer company subsequent to the plaintiff's dismissal. Plaintiff was then expelled from the union and subsequently commenced an action in equity, seeking the restoration of his union membership and reinstatement to his former position of employment. The Supreme Court of Pennsylvania upheld the exhaustion of internal remedies doctrine and held that where a member has a complaint against a union, he must first exhaust his internal remedies within the union as provided for in its constitution and bylaws. The rule is similar to the exhaustion of remedies rule that is applied in the field of administrative law.

1. Falsetti v. Local 2026, UMW, 400 Pa. 145, 161 A.2d 882 (1960); Wax v. International Mailers Union, 400 Pa. 173, 161 A.2d 603 (1960); Bailer v. Local 470, International Teamsters, 400 Pa. 188, 161 A.2d 343 (1960).

2. There are other jurisdictional questions, such as jurisdiction over the person, which, not being unique to this type of case, are not considered here.

3. 29 U.S.C. §§ 141-88 (1952).

4. *Supra* note 1.

Originally, the reason supporting the exhaustion rule in dealing with labor unions was explained on a contract theory. The member formed a contractual relationship with the union when he joined, *i.e.*, the member contracted to follow all the procedures set forth in the union's constitution and bylaws.[5] The general criticism of the contract theory is that, if followed strictly, the exhaustion rule might be applied mechanically in instances where such application would lead to injustice. This would necessitate the formulation of exceptions which would tend to render the rule ineffective.[6]

Consequently, the courts today look toward the broader public policies which support the existence of the rule. As the court in *Falsetti* noted, there are several sets of interests to be considered in intra-association disputes: "(1) the interest of the association as such; (2) the interest of the members of the association; and (3) the interest of the courts."[7] Besides these, the court continued, there is "an over-riding *public* interest in promoting well-managed autonomous associations which are able to perform their functions effectively and still provide internally for the fair treatment of individual members who must be disciplined."[8]

Even when grounded on public policy, however, the exhaustion rule is not without its exceptions. There are, generally speaking, four exceptions which deny application of the rule. They are:

> First and foremost, a person will not be required to take intra-association appeals which cannot in fact yield remedies. If the remedy exists in theory only, it can well be considered illusory. Secondly, there is no need for a member to exhaust his internal remedies where the association officials have, by their own actions, precluded the member from having a fair or effective trial or appeal. . . .
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> Still another exception to the rule is where to insist that a member exhaust the appellate procedure would be unduly burdensome, e.g., if the appellate procedure requires a member to appeal to a national convention which does not convene for several years. . . .
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> And finally, there are instances where the requirement of exhaustion of remedies would subject a member to an injury that is in a practical sense irreparable. Such a situation would arise where a person expelled from a union and suing for readmittance would, during the interim of his appeal, be barred from working in a union shop.[9]

5. See Binkowski v. Highway Truck Drivers, Local 107, 8 Pa. D. & C.2d 254, 256 (C.P. 1957), *aff'd per curiam*, 389 Pa. 116, 132 A.2d 281 (1957): "The failure to exhaust remedies provided by the association's rules and regulations is a breach of contractual obligation in itself." See also O'Neill v. United Ass'n of Journeymen Plumbers, 348 Pa. 531, 36 A.2d 325 (1944); Falsetti v. Local 2026, UMW, *supra* note 1.

6. Falsetti v. Local 2026, UMW, *supra* note 1.

7. *Id.* at 157, 161 A.2d at 888.

8. *Id.* at 157-58, 161 A.2d at 888.

9. *Id.* at 159-60, 161 A.2d at 889-90.

Where any of these situations arises, the member may bypass the union's remedial procedures and take his case directly to court. However, these exceptions are strictly construed and applied.[10]

In order to fall within the jurisdiction of the court, a plaintiff must plead affirmatively either that he has exhausted all his internal remedies or that to do so would be futile or prejudicial to his cause, *i.e.*, he must plead one of the exceptions.[11] These pleadings cannot be general averments, but must be specific, either stating how all the remedies have been exhausted or why one of the exceptions should apply.[12] This is a jurisdictional requirement, and the burden of proof is on the plaintiff.

What may the court review once its jurisdiction is established? In *Maloney v. UMW*,[13] it was stated that a decision of a union may not be attacked collaterally. The court may look to see whether the union followed its bylaws and constitution and gave its members a fair trial, and that it had jurisdiction over the dispute in question. The court will not, however, review the merits of the case.[14] It may determine only whether the member received all the rights for which he contracted.

Does the exhaustion of internal remedies rule, as it applies to unions, afford the justice that our legal system seeks? Today, labor unions are mammoth organizations. They were created to serve a public need, that is, to protect the individually powerless laborers from the immense enterprises employing them. Today, however, the laborer may need protection from the unions as well. The exhaustion rule has added to the autonomy of unions. The member who has been wronged must look to the officials of the very union that committed the wrong in order to obtain relief. This situation seems paradoxical in light of the sought-after end. It would seem that one aggrieved by an institution of such social and political importance should be able to bring his complaint into a court of law. The wronged member has been injured by

10. Falsetti v. Local 2026, UMW, *supra* note 1.

11. *Ibid.*

12. Durso v. Philadelphia Musical Soc'y, Local 77, 11 Pa. D. & C.2d 463, 469 (C.P. 1957), *aff'd*, 392 Pa. 30, 139 A.2d 555 (1958): "A mere averment that a remedy is futile or illusory can not result in plaintiff lifting himself up by his own boot straps."

13. 308 Pa. 251, 162 Atl. 225 (1932).

14. [T]he courts may judge whether the exercise is arbitrary, and review the form of proceedings to see whether the tribunal has acted within its jurisdiction and in the line of order, but cannot review the case on its merits. Courts entertain jurisdiction to keep these tribunals within their own laws, and to correct abuses, so as to preserve, on the one hand, the rights of the association, and, on the other, those of the members, but they do not inquire into the merits in a regular course of proceeding.

Maloney v. UMW, *supra* note 13, at 257, 162 Atl. at 226-27. "It is only when the constitution and bylaws themselves are so defective as to deny due process or when the procedure permits those who impose the punishment to sit in review as well that the court will intervene." Durso v. Philadelphia Musical Soc'y, Local 77, *supra* note 12, at 470.

the union and the legislature has not taken away the power of the courts to give redress;[15] why then should a private association be able to deprive the court of jurisdiction?

There are, however, arguments to the contrary. The requirement for exhaustion of remedies within the union does serve a social and judicial function. For example, the injured member may be able to satisfy his complaint without recourse to the courts, which are overflowing with litigation. If a fair remedy is obtainable without resort to the courts, why then should the burden on the courts not be alleviated. Another advantage of requiring a member to exhaust his remedies within the union is that the union is often better able to deal with the individual case.[16] "It makes possible the settlement of such matters by a simple, expeditious and inexpensive procedure, and by persons who, generally, are intimately acquainted therewith."[17] Perhaps a few of the individual's benefits should be sacrificed for the good of all. The union must judge and rule in a manner which furthers the policies which favor its general membership rather than those which benefit that of a single individual only. It also has responsibilities to society, the fulfillment of which is the underlying purpose of the union's existence. Social pressures dictate that the union act fairly and justly, and if it should not, the courts are vested with jurisdiction to review its procedures and attitudes.[18] The union is not imbued with the right to promulgate its own substantive laws, but rather, it acts as a fact-finding body which applies existing law to its factual findings in the manner of courts of law. However, because of its expertise, the union is considered competent to interpret the facts and the law.[19] So, in theory, one who pursues his remedies within the union's judicial machinery should be assured of receiving just results.

In many cases where a member of a union has a dispute with the union or with his employer, the National Labor Relations Board will have primary exclusive jurisdiction[20] over the matter. The jurisdiction of the NLRB pre-empts what formerly had been the jurisdiction of the state and fed-

15. The exhaustion of remedies rule is one that has been established by the courts. Strano v. Local 690, 398 Pa. 97, 156 A.2d 522 (1959).

16. Binkowski v. Highway Truck Drivers, Local 107, *supra* note 5.

17. Cone v. Union Oil Co., 129 Cal. App. 2d 558, 564, 277 P.2d 464, 468 (1954). See also Cox, *Rights Under a Labor Agreement*, 69 HARV. L. REV. 601, 648 (1956).

18. See text accompanying and authorities cited note 14 *supra*.

19. "Intra-association disputes involve specialized problems best left to the disposition of expert tribunals, i.e., the intra-union judicial machinery, more familiar with underlying causes and ramifications of the disputes . . . ." Binkowski v. Highway Truck Drivers, Local 107, *supra* note 5, at 256.

20. "Primary exclusive" jurisdiction, or sometimes merely called "exclusive" jurisdiction, means that the matter before the court *must* be first heard and decided by the appropriate administrative agency before a court will assume jurisdiction. It is only such administrative agency which has original jurisdicton over that subject matter. See DAVIS, ADMINISTRATIVE LAW § 19.01 (1958).

eral courts in many aspects of labor relations. The problem that arises, jurisdictionally speaking, is whether the aggrieved employee union member must bring his action before the NLRB or in the courts. The answer to this problem lies in the provisions of the Labor Management Relations Act.[21] Section 7[22] of the act sets forth the privileges to which both members of the unions and the unions themselves are entitled, and any vitiation of these rights results in a violation of the act. Section 8[23] of the act enumerates "unfair labor practices." Section 10[24] grants jurisdiction to the NLRB whenever any of the aforementioned sections has been violated. Thus, both the United States Supreme Court and the Supreme Court of Pennsylvania have established the rule that "if the activity complained of is *arguably* subject to Section 7 or 8, then exclusive jurisdiction is in the NLRB and the grievances are not subject to litigation in the tribunals of the state or the federal courts. . . ."[25]

The jurisdictional distinctions which arise as a result of the vesting of exclusive jurisdiction in the NLRB in certain instances have given rise to difficult problems in the practical administration of the rule. The Pennsylvania Supreme Court faced these problems in *Wax v. International Mailers Union*[26] and *Bailer v. Local 470, International Teamsters.*[27]

In the *Wax* case, the plaintiff was a mailer who belonged to the defendant union. He was expelled from the union, claimed that his dismissal was unjust, and, as a result, lost his employment and was unable to obtain other employment. Plaintiff brought a suit in equity against the union, asking for reinstatement to membership and damages. After deciding that the plaintiff had not exhausted his available remedies within the framework of the union, and, therefore, that the court did not have jurisdiction, the court considered the question whether it or the NLRB would have jurisdiction if there had been exhaustion of internal remedies. The court felt that the plaintiff's reason for bringing the action was that he had lost his employment due to his expulsion from the union and that he was unable to find new employment of the same kind without being a member of the said union. Thus, the gravamen of his complaint was injury to his employment relationship rather than to his union-member relationship.[28] Because of this, the conduct was arguably in

21. 29 U.S.C. §§ 141-88 (1952).
22. 29 U.S.C. § 157 (1952).
23. 29 U.S.C. § 158 (1952).
24. 29 U.S.C. § 160 (1952).
25. Baker v. Shopmen's Local 755, 403 Pa. 31, 36, 168 A.2d 340, 342 (1961). (Emphasis added.) San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959); see also Wax v. International Mailers Union, *supra* note 1.
26. *Supra* note 1.
27. *Ibid.*
28. Wax, in his complaint, did not allege unfair labor practices on the part of the

violation of Section 8 of the Labor Management Relations Act and consequently the NLRB, and not the court, had jurisdiction over the controversy.

In the *Bailer* case, the plaintiff was fired after he had circulated during working hours a petition demanding democratic procedures within the union's political framework. The circulation of the petition was precipitated by the union's refusal to honor the plaintiff's motion, made at a union meeting, that the union local not vote for James Hoffa for their president, and the plaintiff's being told that the local would vote for Hoffa regardless of what the members desired. After his dismissal, plaintiff asked the union to protect his rights, but the union did nothing. He had been unable to find subsequent employment through the union while members of lesser seniority had been successful.

The court held that, as to the union's alleged breach of its fiduciary duty to the plaintiff,[29] the state court had jurisdiction, but as to the alleged discrimination by the defendant union against plaintiff, the NLRB had jurisdiction.

Thus evolves an important distinction upon which the courts rely to determine the jurisdictional question. "The state court proceedings deal with arbitrariness and misconduct vis-à-vis the individual union members and the union; the Board proceeding, looking principally to the nexus between union action and employee discrimination, examines the ouster from membership in entirely different terms."[30] As with so many distinctions, this one becomes quite hazy in many cases. When is the member claiming injury to his union relationship and when to his employment relationship? Whatever conclusion is reached, it appears that the courts found their decisions upon a technical analysis and interpretation of the pleadings of both parties. Although the plaintiff may allege only the breach of a duty by the union, the court may read between the lines and conclude that the alleged injury is based upon employment discrimination by the union,[31] thus requiring the NLRB to assume jurisdiction.

This distinction, however, seems to be almost a fiction, for in most cases

union, but the court interpreted the complaint as being based solely upon injury to Wax's employment relationship.

29. This alleged breach of duty by the union was their refusal to take any action to aid the plaintiff in regaining his former employment.

30. International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 622-23 (1958). In this case, the Supreme Court held that the court had jurisdiction, for the complaint alleged injury to the union-member relationship, and that the injury to the employment relationship was merely incidental thereto. Chief Justice Warren, in his dissent, felt that this distinction was somewhat illusory and that it would cause a duplication of remedies that would harm the national labor policies.

31. In so concluding, the court looks to the pleadings of both parties and the alleged facts. Where injury to employment seems to be the foundation of the complaint, the court will award the jurisdiction to the NLRB.

when a member who has lost his employment sues his union, his motive in instigating the action is the injury to his employment.[32] That is the benefit for which he joined the union in the first instance. It is difficult to envision a situation where employment and employment opportunities would not be injured as a result of the member's dismissal from the union. Consequently, when there is any question as to what relationship has been injured—the employment or the union relationship—the courts will usually resolve the question in favor of the former.

The policy behind favoring NLRB jurisdiction can be traced to congressional intent. The NLRB was established so that national labor policies would be unified,[33] and the courts recognize that a duplication of forums in which labor disputes might be tried can deeply undermine the national policies that have been created.[34] To allow each individual court to award its own remedies would tend to cause confusion and disrupt the smooth flow of such policy. Thus it seems that where there may be potential conflict with national policy if the courts were to assume jurisdiction, they choose to deny jurisdiction in favor of the NLRB.

When the NLRB has jurisdiction, a state or federal court may not gain the same by attempting to invoke a tort concept embodied in state law, such as interference with employment.[35] "If unfair labor practices are present, the federal power is controlling and superseding."[36] However, the NLRB may, in its discretion, cede jurisdiction to a state court, but only if that state's laws are not inconsistent with the policies established by the NLRB.[37] It is left to the NLRB, however, to decide the controversy whenever it is "arguably subject to" Section 7 or 8 of the Labor Management Relations Act, *i.e.*, whenever the action is based upon an injury to the plaintiff's employment relationship and not to his union relationship.

It seems clear that a court's jurisdiction over a union member's dispute with his union has been very much limited by the exhaustion rule and by the primary exclusive jurisdiction of the NLRB. In both instances, the courts' jurisdiction has been either wrested from them, or voluntarily abdicated by them, in order to further definite policies. In the case of exhaustion of remedies, the purpose is to allow the unions themselves to settle intra-association dis-

32. It is most difficult to distinguish between an injury to employment and an injury to the union-member relationship with incidental damages to employment. Usually, when a plaintiff asks for "back pay" damages, he is complaining of injury to his employment.

33. See San Diego Bldg. Trade Council v. Garmon, *supra* note 25; Wax v. International Mailers Union, *supra* note 1.

34. *Ibid.*

35. Baker v. Shopmen's Local 755, *supra* note 25.

36. *Id.* at 37, 168 A.2d at 343.

37. Garner v. Teamsters Local 776, 373 Pa. 19, 94 A.2d 893 (1953).

putes without having to enter into court litigation. In the case of the NLRB's pre-emptive jurisdiction, the purpose is to establish and apply a uniform national policy in labor disputes. In both cases, the complaining party is afforded access to a tribunal best able to consider his claim and render redress. Abusive or arbitrary action on the part of either tribunal in the administration of his action may be corrected by appeal to the courts.

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