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TRADE UNIONS: RIGHT OF MEMBER TO INSPECT TRADE UNIONS' FINANCIAL RECORDS

If one were to approach a group of union members and put to them this question, "Do you, by virtue of your membership in the union, have a right to inspect its financial records?", the replies would contain both affirmative and negative answers. Some of the comments would include statements to this effect—"I never gave it much thought," "I couldn't understand the records even if I saw them," or "Who needs to look at the records when the union publishes financial statements?" From such replies in this imagined situation, it can be discerned that such a question is worthy of thought.

The California Supreme Court has answered the question posed above in the affirmative by their decision in *Mooney v. Bartenders Union Local 284*,[1] which is the only California decision to date which puts this question squarely in issue. In so doing, the court affirmed the judgment of the trial court which had been reversed by the District Court of Appeals.[2]

The facts of the case are as follows: The union is an unincorporated association affiliated with the Hotel & Restaurant Employees and Bartenders International Union. Quarterly statements of its finances prepared by a certified public accountant were available to its members. For several months prior to July 1955, the statements showed that expenditures exceeded income, and there was no detailed explanation as to certain large outlays. Mooney, a member of the union and plaintiff in the proceeding, demanded an itemized accounting of all income and expenses of the union from June 1, 1947, to January 5, 1955, and requested permission to examine all financial records of the union covering that period. The demand was refused by the secretary, who had control of the records, and his action was upheld by the executive board of the union.

One of the principal questions presented on appeal was whether Mooney was required to exhaust the administrative remedies within the union before he could obtain judicial relief. Provisions in union constitutions requiring the exhaustion of internal remedies are generally recognized by the courts as binding on the members.[3] Mooney, subsequent to the adverse decision of the local's president, took all the required steps of internal appeal with the exception of an appeal to the executive board of the International Union. The Supreme Court found that the union constitution made no provision for an appeal from a denial of permission to inspect the records, holding that this fact obviated further internal appeal and entitled Mooney to seek relief from the courts.

The plaintiff's petition for writ of mandate[4] set forth that he was entitled to examine the items in question "by virtue of membership in said union."[5] As a general proposition, the proper function of mandamus is to compel inferior or subordinate courts and all others exercising public authority, such as elected public officials and corporate organizations, to perform the duties imposed upon them by applicable statutes in consequence of their official status. It is not available as

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[1] 48 Cal.2d 851, 313 P.2d 857 (1957).

[2] 302 P.2d 866 (Cal.App. 1956).

[3] Holderby v. Intl. Union Engrs., 45 Cal.2d 843, 291 P.2d 463 (1955); Lawson v. Hewell, 118 Cal. 613, 50 Pac. 763, 49 L.R.A. 400 (1897).

[4] In California, the name "mandate" has been substituted for "mandamus" as the formal title of the writ. Chrisman v. Superior Court, 63 Cal.App. 477, 219 Pac. 85 (1923).

[5] 302 Pac. at 867.

a remedy between individuals to enforce purely private rights, and as a general rule will not lie to compel the performance of purely contractual obligations.[6]

The rights and duties of members of an unincorporated association as among themselves or between them and the association are created by the organic law or rules of the association and are of a private, rather than a public nature.[7] For this reason, it is generally recognized that mandamus will not lie against an unincorporated association or its officers.[8] California courts have adopted a contrary view, however, and take the position that mandamus is available against a trade union, a species of unincorporated association,[9] to compel the performance of such duties as are owed to the members, which are enumerated in the constitution and by-laws.

Mooney contended that he should be awarded either the same right as a partner under section 15019 of the California Corporations Code, or the right of a shareholder of a corporation under section 3003 of the same code. Section 15019 provides that a partner has a right to inspect the books of the partnership.[10] Section 3003 provides that corporate records shall be open to inspection upon the written demand of any shareholder, at any reasonable time, for a purpose reasonably related to his interests as a shareholder.[11] He claimed that a trade union has some of the attributes of a partnership, or if not, attributes of a corporation which would make at least one of the two statutes applicable.

The trial court found that the quarterly financial reports did not set forth sufficient detail with respect to the financial business of the union as to properly advise each and every member of its financial status.[12] The judgment of the trial court recognized Mooney's clear legal right by directing that a writ of mandate issue compelling the secretary to perform his duty and permit Mooney to inspect all books of account, records, papers and documents of the union from July 1, 1947, to the date of the judgment.

The District Court of Appeals reversed on three basic grounds. First, the court recognized that mandate is available against an unincorporated association, yet declined to allow the application of such rule to the *Mooney* case. The court's reason was that the rule with regard to mandate in its application to unincorporated associations developed in situations where, after being wrongfully expelled and having exhausted the internal union remedies, the union member sought judicial relief. Expulsion from a union would seriously affect a workingman's very livelihood. The court was of the opinion that denial of permission to inspect the records was not of such serious consequence to merit the issuance of a writ of mandate.[13] Secondly, the court held section 15019 inapplicable because a union is not a partnership. Thirdly, a trade union is not a corporation. Section 3003 of the California Corporations Code, which allows inspection of corporate records by a shareholder, makes no mention of unincorporated associations. The court reasoned that if the legislature intended to include such groups, it would have done so specifically.

The Supreme Court reversed the decision of the District Court of Appeals and

[6] 34 Am. Jur., *Mandamus* § 91 (1941).
[7] *Id.* § 93.
[8] *Ibid.*
[9] Cason v. Glass Bottle Blowers Ass'n, 37 Cal.2d 134, 231 P.2d 6, 21 A.L.R. 1387 (1951).
[10] CAL. CORP. CODE § 15019.
[11] *Id.* § 3003.
[12] 302 P.2d at 868.
[13] *Id.* at 869, 870.

affirmed the judgment of the trial court, awarding plaintiff the writ he sought. In reaching its decision, the Supreme Court relied heavily upon *Otto v. Journeyman Tailors' P. & B. Union.*[14]

In the *Otto* case, a member had been expelled for an offense which, under the union constitution and by-laws, was punishable only by a monetary fine. The court stated the principle which has recently become accepted doctrine[15] in circumstances where a court provides a remedy for a union member whose rights have been denied:

> "Courts will interfere for the purpose of protecting property rights of members of unincorporated associations in all proper cases, and when they take jurisdiction, will follow and enforce so far as applicable the rules applying to incorporated bodies of the same character."[16]

The Supreme Court, therefore, affirmed the writ of mandate issued by the Superior Court commanding the union to reinstate Otto to membership in the society.

The Supreme Court in the *Mooney* case did not expressly state the specific reasons which justified a combination of the principle as stated in the *Otto* case (courts will, in a proper case, apply corporate rules to unincorporated bodies of the same character) with section 3003 of the California Corporations Code which provides for inspection of corporate records by a shareholder. Nevertheless, the court held that a member of an unincorporated labor union had a clear legal right to inspect the financial records of the union.[17]

No other cases have been found in which a union member sought to compel the union to permit him to inspect the books and records of the organization. However, there are cases from other jurisdictions which are closely related in that they concern the financial management of trade unions.

In *McNichols v. International Typographical Union,*[18] a federal case, a parent trade union sought to abolish its district unions by amendment of the constitution and by-laws. The members of the district unions, who for years had paid dues and assessments, sought relief from the courts. The Circuit Court of Appeals for the Seventh Circuit held, that as the parent union for years had received payments from the members of the district unions, who had acquired thereby a property right in the accumulated funds of the parent union as well as in those of their own district union, the constitution could not be amended so as to abolish the district union. The court stated:

> "It is to the interest in these funds that we must look for the right of the court to interfere in all the affairs of the unions."[19]

The case is related to the *Mooney* case in that the members' property right in the accumulated funds of the union is recognized as the basis for awarding relief. The member cannot be deprived of such property right by the attempted action of the union unless the union takes adequate precautions to preserve such rights,

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[14] 75 Cal. 308, 17 Pac. 217, 7 Am. St. Rep. 156 (1888).

[15] Zepeda v. International Hodcarriers' Union, Local 89, 143 Cal.App.2d 609, 300 P.2d 251 (1956); De Monbrun v. Sheet Metal Workers, 140 Cal.App.2d 546, 295 P.2d 881 (1956); Oil Workers Union v. Superior Court, 103 Cal.App.2d 512, 230 P.2d 71 (1951).

[16] 75 Cal. at 313, 17 Pac. at 219.

[17] 48 Cal.2d at 854, 313 P.2d at 858.

[18] 63 F.2d 490 (7th Cir. 1933).

[19] *Id.* at 492.

such as reimbursing the unexpended funds to the members prior to dissolution of the district unions.

In *Schrank v. Brown*,[20] the president of the International Association of Machinists ordered the suspension of the local president without charging an offense punishable under the constitution and by-laws. The New York court found that the local was in fact being disciplined for its criticism of the parent union. The court compelled reinstatement of the illegally ousted president, holding that:

> "Fair criticism is the right of members of a union as is the right of every citizen."[21]

To fairly criticize, one must have valid information upon which to base his conclusions of fact. It would appear then, that in order for such a right to be of appreciable significance, a union member should be entitled access to a source of information so that he may formulate clear, concise criticism. Access to the financial records coupled with the right to fairly criticize would enable the union member to better protect his property interest in the funds.

The decision of the Pennsylvania Court in *O'Neill v. United Ass'n of Journeyman Plumbers & Steamfitters*[22] disclosed the following facts. Over a twelve-year period, the parent union had installed officers without an election and had rendered no accounting to the members of the local for fees, dues, assessments and other funds. O'Neill sued as president of the local, and a decree compelling defendant parent union to institute elections and render an accounting was affirmed by the Supreme Court of Pennsylvania, stating that the primary objects of such voluntary associations were the protection of the rights of the members.[23]

The *O'Neill* case involved the mismanagement and concealment of financial dealings on the part of the parent union. In this respect, the case is similar to the *Mooney* case where the financial statements, though published, were not adequate to apprise the members of the large unexplained outlays that had taken place.

The three decisions above seem to indicate a solidification of thought on the subject of the growing importance of finance upon the internal affairs of the trade union. California decisions are in accord, apparently recognizing that a new state of affairs has arisen with regard to labor unions and their impact upon the state economy.[24]

As early as 1917, the California Supreme Court recognized that section 3003 of the Corporations Code was capable of interpretative expansion as applied to other than corporate organizations. In *Mushet v. Department of Public Service*,[25] a resident taxpayer of the City of Los Angeles asked for a writ of mandate to compel the defendant public utility, a municipal corporation, to exhibit its records. He contended that he stood in the same relationship to the public utility as a shareholder stood in relation to his corporation, and as such he should be awarded a similar right of inspection as provided the shareholder in section 3003 of the Corporations Code.

Although refusing plaintiff's request on the ground of lack of a beneficial interest, the court recognized that the analogy between the common law right of a stockholder to inspect the corporate records and the right of a citizen to inspect

[20] 92 N.Y.Misc. 80, 80 N.Y.S. 452 (1948).
[21] *Id.* at 84, 80 N.Y.S. at 455.
[22] 348 Pa. 605, 36 A.2d 325 (1944).
[23] *Id.* at 608, 36 A.2d at 328.
[24] Oil Workers Union v. Superior Court, 103 Cal.App.2d 512, 230 P.2d 71 (1951).
[25] 35 Cal.App. 630, 170 Pac. 653 (1917).

the public records was "perfect."[26] The court realized that a new condition of affairs, uncontemplated when the above common law rules were formulated, had developed. Inspection of the records by a citizen will serve as a check upon dishonest public officials and be conducive to the betterment of the public service.[27]

Both the trade union and the public utility were in the stages of infancy when the common law rules, used in the *Mushet* case by plaintiff in his "perfect" analogy, were formulated. It is reasonable to assume that if section 3003 is applicable to a public utility in a proper case, the same section is applicable to an unincorporated trade union, uncontemplated at the time of the formulation of the common law rules stated above.

In *De Monbrun v. Sheet Metal Workers*,[28] the president of the parent union had taken possession of $280,000.00 in bonds and a bank account amounting to $40,000.00 which belonged to the local. He refused to permit the trustees of the local to examine financial statements, books, and records or to conduct an audit. Upon proof of this flagrant mismanagement of union funds, the District Court of Appeals issued an injunction to compel an accounting and other equitable relief, stating that the members who would complain of the mismanagement of the funds had no means of acquiring notice of such illegal practices by the president of the parent union.[29]

Although not expressly stated, it can be fairly implied that the court recognized the right of the member to fairly criticize, the same right as was definitely upheld in the *Schrank* case. A growth in financial resources has taken place in trade unionism. From the decision in the *De Monbrun* case, it would appear that the members' control is to be more extensive with regard to the application of such resources.

The California District Court of Appeals, in *Oil Workers Union v. Superior Court*,[30] held that a union was a *person* for the purposes of being sued under section 388 of the California Code of Civil Procedure which provides that two or more persons, who are associated in any business and transact such business in a common name, may be sued by such common name.[31] Sustaining the jurisdiction of the trial court to hold the union in contempt, the District Court of Appeals made known its reason for so holding.

> "Each union has all of the aspects of an entity. Labor unions are no longer the small unimportant organizations they were once considered. The labor union is a developing institution and with its tremendous growth in importance and power has come to be more akin to the corporation than the partnership or the social or fraternal order. This being so, whenever it can be done without violation of some rule of law, the ends of justice will be more properly served if the courts apply to such organizations the rules applicable to corporations rather than the rules applicable to voluntary fraternal orders or partnerships, at least at the procedural level and in respect to the conduct of the business of a court and the enforcement of its legal orders."
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> "To consider such organizations under present day conditions as mere social or fraternal orders or partnerships is to close one's eyes to the realities now existing."[32]

The Supreme Court, in the *Mooney* case, leaned as heavily upon the decision in the *Oil Workers* case as they did in relying upon the principle stated in the *Otto*

[26] *Id.* at 638, 170 Pac. at 656.
[27] *Ibid.*
[28] 140 Cal.App.2d 546, 295 P.2d 881 (1956).
[29] *Id.* at 560, 295 P.2d at 892.
[30] 103 Cal.App.2d 512, 230 P.2d 71 (1951).
[31] CAL. CODE CIV. PROC. § 388.
[32] 103 Cal.App.2d at 571, 230 P.2d at 106.