SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 11 | Issue 4

1960

Political Free Speech for the Union Man

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provide them with the practical means of securing justice?[87] Although poverty was once equated with "moral pestilence,"[88] it is presently held to be a constitutional irrelevance.[89] If, however, it prevents a man from effectively asserting his rights in any court of the United States, poverty, rather than being irrelevant, becomes a critical factor bearing upon the individual's right to retain life or liberty.

Human error is universal. To correct this error when it results in unjust convictions, effective appellate review is essential. Unfortunately, the cost of appeal, unless that cost is paid by the state, is prohibitive to the indigent. Steps have been taken in most states to furnish indigents with transcripts for appeal, and to reduce appellate costs generally.[90] But the indigent will never enjoy the "equal justice" he has been promised until he is afforded the right to counsel on appeal. A growing awareness of the importance of effective appellate review, combined with an unwillingness to "sell" justice, promises recognition of the right to appellate counsel as essential to equal protection of the laws.

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Political Free Speech for the Union Man

INTRODUCTION

Society's eternal problem is the conflict between majority will and individual freedom. The individual has always fought for his personal identity against the pressure of the majority. This is true wherever there exists a relationship of one man to another. Our Bill of Rights protects the embattled individual. It has given him basic rights which cannot be disturbed. Free speech is the heart of this protection. Freedom is power, and the power of the individual rests upon his freedom to express his personal views.

Despite constitutional guarantees, the voice of the individual is barely audible in today's powerful industrial society. He has a freedom of speech, but its effect is lost when he is only one of many.

87. "If it is the state's duty to prosecute and to punish proven criminals, it is equally the state's duty to protect and to uphold the rights of all criminal defendants until the burden of proof against them has been successfully established. Where these defendants are impoverished or bankrupt, some provision for legal assistance in their cases must be made." Mars, *Public Defender,* 46 J. CRIM. L., C. & P.S. 199, 205 (1955).

88. City of New York v. Miln, 35 U.S. (11 Pet.) 102, 143 (1837).

89. Edwards v. California, 314 U.S. 160 (1941).

90. See Willcox, Karlen & Roemer, *Justice Lost — By What Appellate Papers Cost,* 33 N.Y.U.L. REV. 934 (1958). The authors estimate that despite the reduction in the cost of appellate procedure, 76 percent of those criminal cases in which appeal is deemed desirable are not appealed because costs are prohibitive.

Thus, men have found a common need to unite and collectively bargain for better conditions under which to live. Unions are the result of this common need. They form the connecting link between the concept of freedom and the concept of work. Freedom does not exist unless someone works to obtain it. In our modern industrial society, the individual is at a disadvantage when he works for freedom by himself. Therefore, the unions have united men where they work, in order to fight together for their basic rights.

In many areas labor unions have championed the cause of individual freedom. They have reaped great benefits for their members. At the same time, however, they have provided a new arena for the conflict of the majority and the individual. The conflict is pointed up in the field of political activity. Union interest in self-preservation requires a union position toward legislation affecting unions and a union position toward the politicians who deal with this legislation. Often, the union position comes into conflict with the feelings of an individual member. When this takes place, there is usually a question of whether or not the individual must give up his basic political rights for what the union says is the common good. The answer to this problem lies at the heart of the philosophy of democratic government.

Punishment for Political Dissenters

The recent California court case of *Mitchell & Mulgrew v. International Association of Machinists*[1] upheld the expulsion by the union of three of its members who campaigned for a "right to work" law which the union had opposed. The three men were all long time loyal union members, and one of them, Cecil Mitchell, had been president of his local lodge for fifteen years. However, they were all in favor of voluntary unionism and appeared on television, made speeches, and distributed handbills to let the people know it. The Machinists' union called this "conduct unbecoming a member," in violation of the union constitution,[2] and the men were expelled. They defended themselves before several union tribunals, but the expulsion was upheld. International Machinist's President, A. J. Hayes, who is also National Chairman of the AFL-CIO Ethical Practices Committee, delivered the official decision. In affirming the expulsion he stated in part:

> While it is agreed that the right to freely express one's views is a privilege guaranteed by the United States Constitution, this does not mean that a member of our Association is entitled to openly denounce the considered position of the Labor Movement and particularly his own

1. No. 730083, Cal. Super. Ct., January, 1960.
2. Int'l Ass'n of Machinists Const. art. K, § 3 (1958).

> organization, without the possibility of losing his rights to retain his standing as an I. A. of M. Union Member . . . .[3]

In other words, Mr. Hayes would have a member's freedom of political expression subordinated to the position of the union. He would resolve the conflict between the majority and the individual heavily in favor of the majority.

The judge in the *Mitchell* case, ruling in favor of the union, reasoned that the individuals had entered into a contractual relationship with the union and that the contract required them to abide by the union's policies. He concluded that since one policy of the union was opposition to "right to work" laws, the contract had been violated. This decision allows a union to control the political activities of its members. What could be a more clear-cut violation of an individual's right of free speech?

Decisions allowing unions to expel members are usually based upon violations of union constitutions or by-laws. A union constitution is the contract between member and union.[4] Most union constitutions provide that a member is bound by the resolutions adopted by the union.[5] Usually, no specific mention is made of political matters, but the language is broad enough to cover anything. However, no group should be allowed to enforce a constitution or by-law which violates the basic freedoms of its members. The test used by courts in judging the validity of union constitutions and by-laws is to see whether they transgress the bounds of reason, contravene public policy, or are contrary to the law of the land.[6] Therefore, contrary to the court's reasoning in the *Mitchell* case, the courts will inquire into the sanctity of union constitutions. A member is not bound by every act of his union simply because he has signed a contract of membership. In a democracy, every man has certain basic freedoms which no contract nor agreement of any kind can take away.[7] Freedom of speech is one such basic freedom. Some of the constitutionally guaranteed freedoms can be eliminated without destroying the essence of a free society. However, if the freedoms of speech, religion, and press are not present there is no freedom. These freedoms apply to everybody as they live day in and day out. They are the heart of democracy. When membership in a union is conditioned upon surrender of one of these basic constitutional rights, public interest demands that the court intervene to protect union members.[8]

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3. Letter from A. J. Hayes to Officers of Int'l Ass'n of Machinists, April 29, 1959.

4. Norfolk & W. Ry. v. Harris, 260 Ky. 132, 84 S.W.2d 69 (1935); Polin v. Kaplin, 257 N.Y. 277, 177 N.E. 833 (1931); Amalgamated Clothing Workers v. Kiser, 174 Va. 229, 6 S.E.2d 562 (1940).

5. Smith v. Kern County Medical Ass'n, 19 Cal.2d 263, 120 P.2d 874 (1942).

6. Aulich v. Craigmyle, 248 Ky. 676, 59 S.W.2d 560 (1933); O'Keefe v. Local 463, 277 N.Y. 300, 14 N.E.2d 77 (1938).

7. Chavez v. Sargent, 52 Cal. 2d 162, 339 P.2d 801 (1959).

8. Cameron v. International Alliance, 118 N.J. Eq. 11, 176 Atl. 692 (1935).

In several cases, the courts have upheld the expulsion of union members for expressing political views contrary to those of the union, when they did so under union titles rather than as private citizens. *Harrison v. Railway and Steamship Clerks*[9] involved a union man who wrote to congressmen, in his capacity as a district chairman of the union, voicing his opposition to a proposed law which his union was supporting. The union constitution stated that the president of the union, in consultation with the executive committee, determines union policy toward federal legislation when no union convention is in session. Harrison was expelled for violating this regulation. The court upheld the expulsion on the basis that plaintiff was not deprived of his right of petition since he could have written to the congressmen as a private citizen without union objection. The decision has great merit. A union has a right to its position on an issue, just as the individual has, and no union member should use his union title to give the wrong impression of the position which his union has taken. However, this case differs fundamentally from the *Mitchell* case, wherein the union denied its members the right to oppose its policy in any fashion.

Most cases upholding union expulsion of members for dissident political beliefs have involved legislation. However, the case of *Phoh v. Whitney*[10] was concerned with the 1940 presidential campaign between Franklin D. Roosevelt and Wendell Wilkie. The decision was based upon the same principle as that in the *Harrison* case. A former president of one of the Ohio lodges of the Brotherhood of Railroad Trainmen signed a letter supporting Wilkie, when his union had announced its support of Roosevelt. The letter was sent to all Ohio union lodges and plaintiff used his union title with his signature. A union regulation required any member sending out a letter for general circulation under his union title to obtain approval from the national president. Plaintiff failed to do this, and the court refused to interfere with the union's judgment that he should be expelled.

Protection for Union Dissenters

To authorize a court to intervene in a labor union's internal dispute, three conditions usually must exist: a property right or a contract right must have been violated; the act complained of must have been in violation of the union's constitution or charter requirements; and, in most cases, the internal remedies of the union must have been exhausted.[11] The courts generally have no trouble finding a property right in labor disputes. An individual's trade is property, and membership in a union is a property right which the courts are authorized

9. 271 S.W.2d 852 (Ky. Ct. App. 1954).

10. 62 N.E.2d 744 (Ohio Ct. App. 1945); *cf.*, Boblitt v. Cleveland C.C. & St. L. Ry., 73 Ohio App. 339, 56 N.E.2d 348 (1943).

11. Dusing v. Nuzzo, 29 N.Y.S.2d 882 (1941).

to protect.[12] This protection is confined, however, to membership in a union which has a union shop or maintenance membership agreement.[13] Union membership is only a property right when failure to maintain it would mean loss of employment.

Once the courts take jurisdiction, the general rule is that they will not allow a union to take away the political freedoms of any of its members. In *Schneider v. Local Union No. 60*,[14] plaintiffs were members of the United Association of Journeymen Plumbers, serving on a local board of examiners. One of the duties of the board members was to vote for a plumbing inspector. Plaintiffs voted for a man who did not have their union's approval. They were fined and expelled from the union. The court overruled the expulsion, stating that this was a violation of a union member's political freedom and of his duty to the public as a board member. Furthermore, a union by-law forbade partisan political activity by the union, so that the plaintiffs' failure to support the union candidate did not violate a law of the union.

Another case involving a union constitution which said union membership is not dependent upon political belief is *Morgan v. Local 1150*.[15] Morgan was a member of the Electrical Radio and Machine Workers Union. During the 1942 election campaign, he handed out Republican literature even though his union had given its support to the Democratic New Deal candidates. The union expelled him. The lower court overruled the expulsion because of the union regulation outlawing partisan political activity by the union.

Often a union constitution will contain a provision forbidding a member to interfere with the union's legislative activities. The courts will not uphold such a regulation if it violates a man's basic freedoms. In *Abdon v. Wallace*,[16] plaintiff was a locomotive headlight inspector and a member of the Brotherhood of Locomotive Engineers. The union had a provision forbidding interference in its legislative activity. Plaintiff was called to testify as an expert before the Interstate Commerce Commission in regard to a standard locomotive headlight they were considering. The union was promoting the headlight, but plaintiff's answers to the commission showed that he was opposed to it. He was expelled from the union. In overruling the expulsion,

12. Lo Bianco v. Cushing, 117 N.J. Eq. 593, 177 Atl. 102 (1935).

13. Union shop agreements require all new employees to join the union within a designated time. They must continue membership as long as the agreement is in effect or they are automatically discharged by the employer. Maintenance membership agreements give new employees a choice to join or not to join the union. Those that do join must maintain their membership as long as the agreement is in effect, or lose their employment. See MATHEWS, LABOR RELATIONS AND THE LAW 447 (1953).

14. 116 La. 270, 40 So. 700 (1905).

15. 16 L.R.R.M. 720 (Ill. Super. Ct. 1946), *rev'd for failure to exhaust internal remedies*, 331 Ill. App. 21, 72 N.E.2d 59 (1946).

16. 95 Ind. App. 604, 165 N.E. 68 (1929).

the court said that no union regulation can be used to instruct a witness on how to testify before a government commission and penalize him for telling the truth.

The same rule was adopted in *Spayd v. Ringling Rock Lodge*.[17] Spayd was also a member of the Brotherhood of Locomotive Engineers, and his activities came into conflict with the same union provision forbidding interference in legislative activities of the union. Spayd signed a petition asking the Pennsylvania state legislature to reconsider the "Full Crew Law," which his union had supported. The union expelled him for violating union regulations. The court overruled the expulsion on the ground that it violated fundamental state constitutional rights. Its decision said in part:

> The right here involved and the voting franchise, are the only means by which peaceful changes in our laws and institutions may be brought about, and they cannot, with safety to the state, or the whole body of the people, be gathered into the hands of the few for any purpose whatsoever.[18]

Union Assessments for Political Purposes

The most frequent question to arise in connection with the political rights of the union member is the authority of his union to levy a compulsory assessment which will be used to finance a political issue to which he may be opposed. The Labor-Management Reporting and Disclosure Act gives a union the authority to levy special assessments if, after reasonable notice, a majority of the members agree.[19] This again presents the question of where to draw the line between the desires of the majority and individual freedom.

The classic case in this area is *DeMille v. American Federation of Radio Artists*.[20] Its decision is on the side of the majority. Cecil B. DeMille received $98,200 a year to produce Lux Radio Theater.[21] In the 1944 election, a "right to work" law was submitted to the voters of California. The local membership of the American Federation of Radio Artists, to which DeMille was forced to belong, approved an assessment of one dollar on each member to oppose the proposed law. DeMille said he was in favor of the "right to work" law, so he refused to pay the assessment. He was expelled from the union on the basis of a union regulation that an assessment may be made to oppose contemplated legislation which, in the opinion of the members, threatens the common good of the union. Expulsion from the union meant the loss of his $98,200 a year job.

The court held that the expulsion was not in violation of free

17. 270 Pa. 67, 113 Atl. 70 (1921).
18. *Id.* at 72, 113 Atl. at 73.
19. § 101 (3), 73 Stat. 519 (1959).
20. 31 Cal.2d 139, 187 P.2d 769 (1947), *cert. denied*, 333 U.S. 876 (1948).
21. 60 Harv. L. Rev. 834 (1947).

speech and should be upheld. DeMille was not prevented from actively campaigning for the "right to work" law, nor was he told not to vote for it. All that he was required to do was to make a contribution of one dollar. Even though the money would be used for something in which DeMille did not believe, the court ruled that he was required to pay it as a duty of his membership. The court established the principle that as long as a union member is free to speak for or against an issue, no freedom is violated by a forced assessment.[22] Thus, the decision is easily distinguished from the *Mitchell* case wherein the plaintiffs were denied the right to speak for or against a "right to work" law in the same state.

The rationale of the *DeMille* case had been generally accepted until the recent decision of *International Association of Machinists v. Street*.[23] The Supreme Court of Georgia held that the payment of union dues and assessments as a condition of employment, when they would be used to finance political programs with which the plaintiffs disagree, violates the plaintiffs' freedom of speech and deprives them of their property without due process of law. The plaintiffs were non-union employees who were going to be forced to join a union because of a closed-shop contract between a union and their employers. The court ruled that they did not have to join the union and could continue their employment. The philosophy behind the court's decision was that:

> One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrines he opposes.[24]

This decision is directly contrary to that of the *DeMille* case. It is now pending before the United States Supreme Court.[25] If the decision is affirmed, it will upset the system of union assessments and give the individual union member a freedom which he has not previously enjoyed. Would such a decision give the individual too much freedom? Although the *Mitchell* case goes too far in depriving the individual of his rights, perhaps the *Street* case goes too far in exempting the union member from the duties which he owes to his union.

CONCLUSION

A union member must have the freedom to express freely his opinions on political issues without fear of being expelled from his union. Free speech is one of the individual's most cherished rights,

22. *Accord,* Warner v. Screen Office Employees Guild, 16 L.R.R.M. 544 (Cal. Super. Ct. 1945).

23. 108 S.E.2d 796 (Ga. 1959).

24. *Id.* at 808.

25. International Ass'n of Machinists v. Street, *appeal docketed,* No. 258, U.S. Oct. 1959 Term.

and no majority, no matter how powerful, should be allowed to take it away from him. No union agreement should be upheld when it requires a man to sign away his free speech and political views as a condition to earning a living. The United States Supreme Court has said that the freedom to advocate ideas is the first amendment's basic guarantee, a guarantee which is not confined to the opinions of the majority.[26] In *Sweezy v. New Hampshire*,[27] the Court stated that the very foundation of our government is the premise that every citizen has the right to engage freely in political expression and association.

For the most part, the courts have upheld the individual union man's freedom of political expression and association. The assessment cases do not deny free speech, since the union member may campaign as he wishes even though he must contribute financially to a cause he opposes. However, with controversies over "right to work" laws raging in many states, decisions such as the *Mitchell* case should be quickly overruled. When a union feels that it is threatened by proposed legislation, it should not be allowed to use the weapon of expulsion to tell its members how to speak and how to vote. This is not liberty. It is a forced conformance to the majority in order to survive. If a union were allowed to demand a member's opposition to "right to work" laws, perhaps it would also be allowed to demand his opposition to any labor reform measure, such as the recent Landrum-Griffin Bill.[28] From there it is just one short step to expelling men who support candidates who advocate such laws. The issue before us is fundamental to our democratic society. Our country is founded upon free speech, and no group should have the power to deny it. Mr. Justice Jackson aptly stated this fundamental democratic principle in *West Virginia State Board of Education v. Barnette*:[29]

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials . . . .[30]
>
> . . . .
>
> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.[31]

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26. Kingsley Int'l Pictures v. Regents, 360 U.S. 684 (1959).

27. 354 U.S. 234 (1957).

28. Labor-Management Reporting & Disclosure Act of 1959, 73 Stat. 519 (codified in scattered sections of 29 U.S.C.A.).

29. 319 U.S. 624 (1943).

30. *Id.* at 638.

31. *Id.* at 642.