

## **Unions Dues and Political Contributions – Great Britain, United States, Canada – A Comparison**

## **Cotisation syndicales et contributions pour fins politiques – Comparaison entre la Grande-Bretagne, les États-Unis et le Canada**

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Article abstract

This paper is concerned with court decisions and statutory enactments which had an effect on active participation of trade unions in political action and, in particular, how the Legislatures, and the courts in interpreting the relevant statutes, attempted to prevent or regularize the use of union dues, levies or funds for political purposes.

# Union Dues and Political Contributions Great Britain, United States, Canada - A Comparison \*

Jan K. Wanczycki

*This paper is concerned with court decisions and statutory enactments which had an effect on active participation of trade unions in political action and, in particular, how the Legislatures, and the courts in interpreting the relevant statutes, attempted to prevent or regularize the use of union dues, levies or funds for political purposes.*

The history of the struggle of trade unionism for official recognition and due place in the social and economic structure of society as the spokesman for the interests of the workers has always had political overtones. To secure legal framework and protection for the existence and activities of trade unions, and to secure better working conditions for workers, trade unions, besides exercising economic pressure, had to use political weapons as well. Political pressure had to be used in order that necessary legislation, favourable to the aims of trade unionism, be adopted. Like any other mass movement, trade unions sooner or later had to enter the political arena, either by forming or affiliating with political parties whose primary aim was to protect the rights of the workers and to improve their position — like the Labour Party in Great Britain; or by supporting and financially contributing to the existing political parties or to particular candidates who would pledge their support to, or appear more sensitive or friendly to the aims of trade unionism.

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This paper is not concerned with the history of the relationship between trade unions and politics, but only with the one aspect restricted to court decisions and statutory enactments which had an effect on active participation of trade unions in political action and, in particular, how the Legislatures, and the courts in interpreting the relevant statutes, attempted to prevent or regularize the use of union dues, levies or funds for political purposes. The subject matter of this paper is to be presented as a comparison between Great Britain, the United States and Canada.

### Great Britain

In Great Britain, the active participation of trade unions in political action by financially supporting a political party and candidates and members of Parliament became a legal and political issue with the formation of the Labour Party in 1906.<sup>1</sup>

Financial support from the affiliated trade unions was essential to the existence and expansion of the Labour Party, as the party machine, the electoral campaigns of the candidates and the maintenance of Labour Party members in Parliament were financed mainly by trade union funds.

Soon, however, the right of trade unions to raise special levies and the right to use union dues to support the Labour Party or any political party was challenged in courts mainly on the ground that such activities were contrary to the statutory definition of trade unions and their objects as contained in the 1871 and 1876 Trade Union Acts. The additional aspects considered by the courts were individual freedom of trade union members and the British constitutional approach to the role of political parties and to the role of a member of Parliament.

The Trade Union Act, 1871,<sup>2</sup> defined a trade union, in S. 23, as follows :

S. 23 The term « trade union » means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between

(1) Regarding the history of gradual involvement and participation of trade unions in Great Britain in political action that led eventually to the formation of the Labour Party see : SIDNEY and BEATRICE WEBB, *The History of Trade Unionism*, London, Longmans, Green & Co., 1911 ; G.D.H. COLE, *A Short History of the British Working-Class Movement*, London, George Allen & Unwin Ltd., 1948.

(2) 34 & 35 Vict., c. 31.

masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

The inclusion in the definition of the words « as would, if this Act had not passed, have been deemed to have been an unlawful combination », etc., implied that the Act applied only to a trade union whose rules were in restraint of trade.<sup>3</sup> This definition also assumed that all trade unions were illegal at common law as being in unlawful restraint of trade.<sup>4</sup> To remedy this defect, the definition of trade unions in the Trade Union Act Amendment Act, 1876<sup>5</sup> was amended (S. 16) and read as follows :

S. 16 The term « trade union » means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive measures on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

By deleting from the original definition the words « as would » and by substituting the words « whether such combination would or would not », the law assumed that not all trade unions were illegal at common law as being unlawful restraint of trade; further, that with the passage of the 1876 Act, it was no longer necessary for a trade union to prove its illegality at common law in order to bring itself within the definition and protection of the Acts. By the enactment of the 1876 Act, it was acknowledged that a trade union could be a lawful body at common law and the definition of trade union in S. 16 of the 1876 Act was a neutral term covering both legal and illegal bodies at common law.<sup>6</sup>

Regarding the purposes and objects of trade unions, it was assumed prior to the passing of the Act of 1871 that a trade union was an association of wage-earners for the purpose of improving or maintaining

(3) N.A. CITRINE, *Trade Union Law*, London, Stevens & Sons Ltd., 1960, p. 207.

(4) N.A. CITRINE, *op. cit.*, p. 29 ; R.Y. HEDGES and A. WINTERBOTTOM, *The Legal History of Trade Unionism*, London, Longmans, Green and Co., 1930, p. 73.

(5) 39 & 40 Vict., c. 22.

(6) N.A. CITRINE, *op. cit.*, pp. 29, 298 ; R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, p. 92.

the conditions of their employment. In this capacity, it bargained with employers for higher wages, shorter hours, and the like. Also, it was assumed that a trade union had the object of a friendly society, providing to its members relief when out of work because of sickness, unemployment or strike. So it was accepted that trade unions had two main purposes : trade union purposes and benevolent purposes.

The Trade Union Act of 1871, in the definition of trade union (S. 23) as amended by the 1876 Act (S. 16), referred only to the trade union purposes of the union, such as the regulation of the relations between workmen and masters without mentioning the benevolent purposes. However, it was assumed that the 1871 and 1876 Acts recognized the benevolent purposes as legitimate objects within the scope of trade union activities.<sup>7</sup>

Since the formation of the Labour Party, whose very existence depended on financial support of trade unions, the political activities of trade unions and the right to levy political contributions and to use union funds for political purposes were challenged in courts on the ground that such activities could not be justified under the 1871 and 1876 Acts and, therefore, were illegal.

In 1907, the first major court decision regarding the legality of union political contributions was decided in favour of the union. In *Steele v. South Wales Miners' Federation*,<sup>8</sup> the action was brought by a member of the South Wales Miners' Federation for a declaration that a union rule which purported to authorize the union to provide funds for maintaining representatives in Parliament was *ultra vires*; for an injunction to restrain the union and its officials from applying any of their existing funds for that purpose, and to restrain them from collecting money for that purpose from the plaintiff or other members of the Federation against their will. The union in question was a trade union registered under the Trade Union Act. The rule of the union (Rule 3, sub-r. 12), of which the legality was challenged, read as follows :

Rule 3(12): « To provide funds wherewith to pay the expenses of returning and maintaining representatives to Parliament and other public councils and boards, and to request them to press forward by

(7) N.A. CITRINE, *op. cit.*, pp. 84, 85.

(8) (1907) 1 K.B. 361.

every legitimate means all proposals conducive to the general welfare of the members of the federation. »

The plaintiff contended that the rule in question was illegal as being outside the purposes for which a trade union could lawfully exist. The plaintiff claimed that the legal purposes of the unions were limited to those specifically stated in Section 16 of the Trade Union Act, 1876, and the maintenance of members of Parliament was not one of them. The Court rejected this contention. Darling J. held that the definition of « trade union » in Section 16 of the 1876 Act was not intended to be exhaustive, or to prevent an association from lawfully doing other acts beyond those mentioned in S. 16. He added that the section was silent about providing benefits for members, which is one of the recognized objects of a trade union. He stated :

So that even if the purposes mentioned in rule 3, sub-r. 12 do not come within those specified in s. 16, there is nothing in that section to render them illegal. But, further, I am of opinion that they do fall within those specified in s. 16. It seems to me that one of the ways of regulating the relations between workmen and masters, or workmen and workmen, or masters and masters, is to get laws passed by Parliament for their regulation, and that one of the first steps towards getting those laws passed would be to send a representative to Parliament to promote a Bill for that purpose. On both these grounds I am of opinion that rule 3, sub-r. 12, is a valid rule, and that, in consequence, there is no ground for an injunction to restrain the defendants from applying any of their existing funds for the purposes of that rule.<sup>9</sup>

Phillimore J., in his reasons for judgment, was also of the opinion that Section 16 of the 1876 Act was not a limiting section at all. He stated :

It says that any association which has any of the objects specified in the section as one of its objects is ipso facto a trade union, but there is nothing in it to prevent such a body from having a great number of additional objects besides. I believe that since 1871, if not before, the collection and administration of benefit funds has been one of the objects of a great many, if not most, trade unions, and there is nothing about that in S. 16. Therefore I see no reason why this trade union should not have as one of its objects that which is expressed in rule 3, sub-r. 12, for there is nothing in that rule which is illegal at common law. I am of opinion, therefore, that injunction cannot be granted.<sup>10</sup>

(9) *Ibid.*, p. 367/8.

(10) *Ibid.*, p. 369.

In the *Steele* case, the Court upheld the legality of having political objects as one of the purposes of trade unions and the legality of having a fund for parliamentary representation, provided that such objects were included in the rules of a trade union and accepted by a majority of union members.

The success of trade unions in the *Steele* case was short-lived and this decision was overruled in *Amalgamated Society of Railway Servants v. Osborne* by the Court of Appeal<sup>11</sup>, which decision was affirmed by the House of Lords.<sup>12</sup> The House of Lords decided, by a majority, that all trade union political action was illegal. This position was taken on the ground that, in the definition of « trade union » in Section 16 of the Trade Union Act, no reference was made to political activity and that such activity could not be regarded as a necessary subsidiary to the union purposes there mentioned. Section 16 of the 1876 Act was exhaustive and enumerated all union activities, and only benevolent objects not specifically mentioned in S. 16 were lawful as being derived by reasonable implication from the provisions of the Act. Consequently, the House of Lords held that a union rule which purported to confer on any trade union registered under the Act of 1871 a power to levy contributions from members for the purpose of securing and maintaining parliamentary representation was *ultra vires* and illegal.

The Earl of Halsbury, in his reasons for judgment, stated that the 1871 Act was, with regard to trade unions, as it were, the charter of incorporation and rendered some union objects lawful which, but for the enactment, would be unlawful, and gave a specific authority to certain contracts and to certain applications of funds that appeared to him to be absolutely exhaustive. Further, he stated :

This statute, I think, gives the charter for all such « combinations », and what is not within the ambit of that statute is, I think, prohibited both to a corporation and a combination ; it only exists as a legalized combination having power to act as a person and to enforce its rules within the limits of the statute, whatever those limits are ; and in the matter most relevant to the present question it has with great care protected from interference three applications of its funds, among which it is too obvious for argument that the object now in question is not one. It is manifest, therefore, that, if confined to the three purposes protected by the 4th section, nothing else is within the purposes of a trade union as defined by the 23rd or 16th sections of

(11) *Osborne v. Amalgamated Society of Railway Servants* (1909) 1 Ch. 163.

(12) *Amalgamated Society of Railway Servants v. Osborne* (1910) A.C. 87.

the two Acts, and it is impossible to uphold this power of taxing the members beyond the purposes for which the trade union exists.<sup>13</sup>

Lord Macnaghten, in his reasons for judgment, stated :

It is a broad and general principle that companies incorporated by statute for special purposes, and societies, whether incorporated or not, which owe their constitution and their status to an Act of Parliament, having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purposes for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned.<sup>14</sup>

Further, Lord Macnaghten stated that there is nothing in any of the Trade Union Acts from which it can be reasonably inferred that trade unions, as defined by Parliament, were ever meant to have the power of collecting and administering funds for political purposes. Therefore, a rule of a trade union which purported to confer such a power on any trade union registered under the Act of 1871, whether it be an original rule or a rule subsequently introduced by amendment, must be *ultra vires* and illegal.

Lord Atkinson was also of the opinion that Parliament did not confer upon a registered trade union, either expressly or by fair implication, power and authority to subsidize, in the manner provided by the impeached rule of the union, a scheme of parliamentary representation; consequently, the rule in question was *ultra vires*. Also, he stated :

It is not disputed that up to 1903, at all events, members of trade unions were not on joining required to subscribe to any political creed, or submit to any political test, no more than are persons who become shareholders in a railway company, and, for all that appears, there may be as great a diversity of political views amongst the members of the one class as of the other. Freedom of opinion was probably permitted amongst the members of both classes because it was not the business of either of the bodies to which they respectively belonged to support particular political parties or to promote a particular political policy. It would be as unjust and oppressive as, in my view, it is illegal to compel, by passing rules such as that impeached, a member of a trade union, who like the respondent joined in the days when freedom of action was permitted, either to contribute to the promotion of a political policy of which he might possibly

(13) *Ibid.*, p. 93.

(14) *Ibid.*, p. 94.



disapprove, or be expelled from the union to which he belonged for so many years and forfeit all benefit from the money he had subscribed.<sup>15</sup>

In 1911, by Court decision in *Wilson v. Amalgamated Society of Engineers*<sup>16</sup>, the principle established in the *Osborne* case was extended also to securing representation on municipal and other local bodies (other than boards of guardians), at any rate where the levies on the members in aid of the funds were in effect compulsory. The question whether the same principle applied to the administration of funds for the purposes of parliamentary and municipal elections, if the sums constituting the funds were voluntarily subscribed by members of a trade union, was left undecided.

In the *Osborne* case, the principle of *ultra vires* regarding political objects of trade unions and prohibition to levy contributions in support of political activities, was applied to a union registered under the 1871 Trade Union Act. Soon the same principle was extended to unregistered unions in *Buck v. Typographical Association*<sup>17</sup> and in *Wilson v. Scottish Typographical Association*.<sup>18</sup> In the latter case, a member of the Scottish Typographical Association brought an action for a declaration that certain rules of the Association making provision for the promotion of labour representation in Parliament were *ultra vires*, illegal, and invalid, and were not binding on the plaintiff or any other member of the Association; that the Association was not entitled to make payments out of its funds to the Labour Party, or for any purpose connected with securing or maintaining Parliamentary representation. The union claimed that the *Osborne* case had no application to an unregistered union; that an unregistered union remained a mere voluntary association, legalized by the Trade Union Acts, but having power to alter its rules and purposes as it chose, subject only to its own constitution. The Court, however, disagreed and, on the ground of the *Osborne* decision, held that the rules complained of were *ultra vires*, illegal and invalid, and were not binding upon the plaintiff or any other members of the Scottish Typographical Association. Lord Dundas, in his reasons for judgment, was of the opinion that the decision in the *Osborne* case, both in the Court of Appeal and in the House of Lords, was applicable to unre-

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(15) *Ibid.*, p. 105.

(16) (1911) 2 Ch. 324.

(17) (1910) Lancaster Chancery Court, July 10, 1910, unreported (referred to in N.A. Citrine, *op. cit.*, p. 19.

(18) (1912) 1 S.L.T. 203.

gistered as well as registered unions. He pointed out that Lord Halsbury's judgment cited the definitions of « trade union » in the Acts of 1871 and 1876, and made references to Sections 2, 3 and 4 of the 1871 Act, all of which applied to unregistered as well as registered trade unions. Consequently, the judicial reasoning underlying the decision in the *Osborne* case was directly applicable to the case at bar, though the union involved was not a registered union. Consequently, the union rules to which the plaintiff took exception, and the payments to which he objected, were *ultra vires* of the Association and invalid. Lord Guthrie also held that the grounds of the *Osborne* case did not depend on the element of registration and were applicable to the case of an unregistered trade union, like the Scottish Typographical Association.

### TRADE UNION ACT, 1913

The decision in the *Osborne* case created financial difficulties for the Labour Party members in Parliament who were maintained by the financial support provided by the unions. To remedy this situation the British Parliament voted in 1911 regular salaries for the members of the House of Commons. This measure helped the working class members of Parliament but still left the trade union candidates at a disadvantage by depriving them of financial support from the unions in electoral campaigns. Trade unions, one by one, had been restrained by legal injunctions from political contributions and the Labour Party faced the disappearance of its sources of income. A political campaign was set in motion with a view to passing legislation that would reverse the effects of the *Osborne* judgment.<sup>19</sup> This was achieved with the enactment of the Trade Union Act, 1913.<sup>19a</sup>

The main purpose of the Act was indicated in its long title — « An Act to amend the Law with respect to the objects and powers of Trade Unions. » The judgment in the *Osborne* case regarded the Acts of 1871 and 1876 as the « charter of incorporation » of a trade union, giving a trade union the authority to use its funds only for the purposes specified in the Acts. These purposes were trade union purposes and benevolent purposes, although the latter were not specifically stated. As the political objects were not specified in the Acts, the union expenditures for such

(19) G.D.H. COLE, *op. cit.*, pp. 312, 313; N.A. CITRINE, *op. cit.*, p. 19.

(19a) (2 & 3) Geo. 5, c. 30. Regarding the interpretation of the Act see: N.A. CITRINE, *op. cit.*, pp. 20, 299-362; R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, pp. 96-110.

purposes were held beyond the powers conferred by the Acts and, consequently, *ultra vires*.

Under the 1913 Act, the objects and powers of the union became unlimited. The Act provided that a trade union, in addition to having normal trade union objectives as specified in the statute, may be endowed under its constitution with any other lawful object or power (including political objects), so long as the statutory objects predominate. Whatever is authorized by the constitution, the union may so do provided it is not unlawful. On the other hand, the union activities outside those sanctioned by the union constitution remained unlawful, not because such activities are *ultra vires* the statutory provisions, but because they would be *ultra vires* the constitution or rules of the trade union and therefore they would constitute a breach of contract between the members, which is embodied in the rules or constitution.<sup>20</sup> However, the inclusion of political objects in the union constitution and the expenditure of union funds for political purposes was to be restrained and regulated with regard to some specific political objects by provisions of the Act.

Because of these restrictions imposed in the Act on union political activities, the 1913 Act was not a total reversal of the *Osborne* judgment but a compromise. This compromise was accepted by the unions under protest. The unions resented the imposition upon them of special restrictions which were not applied to other bodies; they claimed that they had a moral right to take political action as freely as any other society.<sup>21</sup>

The widening of objects and powers of trade unions referred to above was contained in Section 1 of the 1913 Act, which reads as follows:

S. 1 — (1) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts, 1871 to 1906, so long as the combination is a trade union as defined by this Act, and, subject to the provisions of this Act as to the furtherance of political objects, any such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorized under its constitution.

(2) For the purposes of this Act, the expression « statutory objects » means the objects mentioned in section sixteen of the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen,

(20) N.A. CITRINE, *op. cit.*, p. 300.

(21) G.D.H. COLE, *op. cit.*, p. 314.

or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

The expression « a combination » in S. 1 (1) applies to any combination which is a trade union, whether registered or unregistered.<sup>22</sup>

By inserting in subsection (2) of Section I the words « and also the provision of benefits to members », the legislator added to statutory objects of a trade union the benevolent purposes. This clause was inserted apparently because the *Osborne* case had revealed that Section 16 of the Act of 1876 omitted from the definition this very important function of a trade union. The wording of subsection (2) suggests that a society, in order to be recognized as a trade union, must have as a principal object the provision of benefits to members as well as other statutory objects which could be described as essentially trade union purposes as described in subsection (2).<sup>23</sup>

In order that a society could be recognized as a trade union under the Act, and in order that it could under its rules or constitution pursue other objects, including political objects, the statutory objects must be recognized under its constitution as being the principal objects. In this respect, Section 2 (1) of the Act provides :

2. — (1) The expression « trade union » for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects : Provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered.

The proof that a trade union has under its constitution the statutory objects as principal objects is established in the case of registered unions by the fact of registration by the Registrar of Friendly Societies. If the statutory objects are not principal objects under the union constitution, the Registrar must refuse the registration, or he may withdraw certificate of registration if, in his opinion, the constitution of the union has been altered in such a manner that the statutory objects of the union are no longer its principal objects or if, in his opinion, the principal objects pursued by the union are not statutory objects. ( S. 2 (2) ).

(22) N.H. CITRINE, *op. cit.*, p. 301.

(23) R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, p. 99.

Any unregistered trade union may apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of the Act. The Registrar will grant such a certificate if satisfied that under the constitution and in practice the principal objects of the union are statutory objects. However, the Registrar may withdraw such certificate on an application made to him by any person, if satisfied, after giving the union an opportunity of being heard, that the certificate is no longer justified. ( S. 2 (3) ).

The Act provides for the right of appeal to courts in case of refusal by the Registrar to register a combination as a trade union, or to issue a certificate that an unregistered union is a trade union within the meaning of the Act, or in case of the withdrawal of a certificate of registration ( S. 2 (4) ).

Further, the Act provided that a certificate of the Registrar that a trade union is a trade union within the meaning of the Act of 1913, shall, so long as it is in force, be conclusive for all purposes. ( S. 2 (5) ).

The 1913 Act embodied the principle that a trade union should not, or could not, be excluded altogether from participation in political action. Further, the Act provided remedy against compelling the minority of members of a trade union against their will to subscribe to funds for support of a political object or political party with which they were not in sympathy or which they opposed.<sup>24</sup> The Act applied to registered and unregistered unions.

Section 3 (1) of the Act provided that the funds of a trade union should not be applied, either directly or in conjunction with any other trade union, association or otherwise indirectly, in furtherance of the political objects specified in Section 3 (3) (without prejudice to the furtherance of any other political objects), unless two conditions have been fulfilled : First, the pursuit of those political objects must be approved by a majority of the members voting as an object of the union by a ballot vote of the members held under special ballot rules (specified in Section 4 (1) ) and approved by the Registrar. Secondly, the union must adopt political fund rules, approved whether the union is registered or not, by the Registrar of Friendly Societies, providing for the keeping of a separate political fund and for the exemption of any member who does not wish to contribute by following the procedure of « contracting out ».

(24) R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, p. 103.

Further, the political fund rules must provide that a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union or placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund); and that contribution to the political fund shall not be made a condition for admission to the union.<sup>25</sup>

It was commented that statutory restrictions under S. 3 (1) on the furtherance of political objects by trade unions do not apply to all political aims of a trade union but only to the application of the funds of the union to the political purposes specified in S. 3 (3). Other political objectives are free from regulation and are legitimate objects under S. 1 (1) of the Act if sanctioned by the constitution and not otherwise illegal;<sup>26</sup> and in pursuance of such other political objects the general funds of the union may be used without a ballot or the adoption of political fund rules. Where the pursuit of political objectives of any kind is authorized by the constitution, and at the same time the political fund rules have been adopted with respect to political objects enumerated in S. 3 (3), the union, in its pursuit of political objects outside Section 3 (3), is not confined to using the political fund, but may also use its general funds.<sup>27</sup>

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(25) S. 3 (1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing:

(a) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union), and for the exemption in accordance with this Act of any member of the union from any obligation to contribute to such a fund if he gives notice in accordance with this Act that he objects to contribute; and

(b) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(26) R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, p. 104.

(27) N.H. CITRINE, *op. cit.*, p. 334.

Also, it was noted that from Section 3 (1) it follows that any subsequent alteration of the political fund rules, whether of a registered or unregistered union, must be approved by the Registrar of Friendly Societies.<sup>28</sup>

The Act does not require that political funds of the unions must be used only for political purposes. All union funds, political and otherwise, are funds of the union and may be used as authorized by the constitution. On the other hand, the rules of the union may restrict the use of political funds to political purposes exclusively.<sup>29</sup>

Statutory restrictions contained in Section 3 (1) regarding the use of union funds are limited to political objects enumerated in subsection (3) of Section 3 of the 1913 Act, which reads as follows :

S. 3 (3) The political objects to which this section applies are the expenditure of money—

(a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or

(c) on the maintenance of any person who is a Member of Parliament or who holds a public office ; or

(d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office ; or

(e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression « public office » in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

Subsection (4) of Section 3 provided that a resolution under Section 3 « approving political objects as an object of the union shall take effect

(28) N.H. CITRINE, *op. cit.*, p. 335.

(29) N.H. CITRINE, *op. cit.*, p. 336.

as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule ».

The significant aspect of this provision is that, while the resolution to further specific political objects and to establish political funds under Section 3 (3) has to be approved by a ballot taken in conformity with Section 4 (1), in rescinding such resolution (which has become part of the union rules or constitution), the normal procedure used in rescinding union rules has to be followed. The resolution adopted under S. 3 (1) does not impose an obligation on a union to pursue political objects and the union may abstain from implementing such resolution without rescission or amendment.<sup>30</sup>

Subsection (5)<sup>31</sup> of Section 3 deals with associations of unions and makes such associations or combinations a single unit at least for the furtherance of political objects and the establishment of a political fund. A ballot of the aggregate membership of the component unions must be taken, and the resolution passed by a majority of those voting. Such association must maintain a separate political fund and provide for the exemption of individual members. However, the component union may act as collecting agent on behalf of the association, notwithstanding the fact that such component union may have its own political fund.<sup>32</sup>

Section 3 (1) of the Act requires a resolution by a majority of the union members voting, approving the furtherance of the political objects specified in Section 3 (3). Further, it is specified that such a resolution has to be « passed on a ballot of the members of the union taken in accordance with this Act . . . »

The ballot referred to in Section 3 (1) and the statutory conditions imposed on such ballot are specified in Section 4 (1). These conditions are as follows :

- (a) The ballot should be taken in accordance with rules of the union;

(30) N.A. CITRINE, *op. cit.*, pp. 350-351.

(31) S. 3 (5) The provisions of this Act as to the application of the funds of a union for political purposes shall apply to a union which is in whole or in part an association or combination of other unions as if the individual members of the component unions were the members of that union and not the unions ; but nothing in this Act shall prevent any such component union from collecting from any of their members who are not exempt on behalf of the association or combination any contributions to the political fund of the association or combination.

(32) R.Y. HEDGES and A. WINTERBOTTOM, *op. cit.*, p. 105 ; N.H. CITRINE, *op. cit.*, pp. 351-352.



- (b) The rules of the union relating to the ballot should be approved by the Registrar of the Friendly Societies, whether the union is registered or not;
- (c) The Registrar should not approve any such rules unless he is satisfied:
  - (i) That every member of the union has an equal right, and, if reasonably possible, a fair opportunity of voting;
  - (ii) That the secrecy of the ballot is properly secured.

The right of individual union members to “contract out” from contributions to the political fund of the union adopted by the majority of union members in compliance with Section 3 (1), 3 (3) and 4 (1) was already stated in Section 3 (1) (a). Section 5<sup>33</sup> spells out the details of the procedure to be observed in « contracting out » from political contributions. This procedure is as follows :

A union member may at any time give an « exemption notice » that he objects to contributing to the political fund of the union. The notice may be given in a form set out in the Schedule to the Act<sup>34</sup>, or « in a form to the like effect. »

(33) Section 5 reads as follows :

5.—(1) A member of a trade union may at any time give notice, in the form set out in the Schedule to this Act or in a form to the like effect, that he objects to contribute to the political fund of the union, and, on the adoption of a resolution of the union approving the furtherance of political objects as an object of the union, notice shall be given to the members of the union acquainting them that each member has a right to be exempt from contributing to the political fund of the union, and that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from the head office or any branch office of the union or the office of the Registrar of Friendly Societies.

Any such notice to members of the union shall be given in accordance with rules of the union approved for the purpose by the Registrar of Friendly Societies, having regard in each case to the existing practice and to the character of the union.

(2) On giving notice in accordance with this Act of his objection to contribute, a member of the union shall be exempt, so long as his notice is not withdrawn, from contributing to the political fund of the union as from the first day of January next after the notice is given, or, in the case of a notice given within one month after the notice given to members under this section on the adoption of a resolution approving the furtherance of political objects, as from the date on which the member's notice is given.

(34) Schedule

Form of Exemption Notice

Name of Trade Union

Political Fund (Exemption Notice)

I hereby give notice that I object to contribute to the Political Fund of the ..... Union, and am in consequence exempt, in a manner provided by the Trade Union Act, 1913, from contributing to that fund.

A..... B.....  
 Address ..... day of .....19.....

When the union adopts the resolution approving the furtherance of political objects as an object of the union, the members of the union should be given a notice acquainting them that each member has a right to be exempt from contributing to the political fund of the union and how a form of exemption notice can be obtained.

On giving « exemption notice », a union member is free from contributing to the political fund of the union so long as his notice is not withdrawn.

The very essence of the « contracting out » procedure is that the onus is upon the union member to object to contributions to political funds by giving the exemption notice; unless he gives such notice, he is assumed to have accepted all the obligations of membership contained in the union rules, including the obligation to contribute to the political fund of the union. The « contracting out » system has been considered more favourable to trade unions when compared with the « contracting in » system introduced by the 1927 Act.

Section 6<sup>35</sup> deals with methods of contributing to political funds and how exemptions from contributing can be effected. It specifies that the political fund may be raised in one of two ways; either by a separate levy of political contributions or by allocation to that fund of the whole or part of the periodical contributions which the members are required to pay for the general purposes of the union.

Where the political fund is raised by a separate levy, the rules of the union must provide that no other moneys of the union shall be carried to that fund. Those members of the union who « contracted out » under Section 5 are exempt from paying political levies, and only those who did not « contract out » are bound to pay.

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(35) S. 6 — Effect may be given to the exemption of members to contribute to the political fund of a union either by a separate levy of contributions to that fund from the members of the union who are not exempt, and in that case the rules shall provide that no moneys of the union other than the amount raised by such separate levy shall be carried to that fund, or by relieving any members who are exempt from the payment of the whole or any part of any periodical contributions required from the members of the union towards the expenses of the union, and in that case the rules shall provide that the relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment and for enabling each member of the union to know as respects any such periodical contribution, what portion, if any, of the sum payable by him is a contribution to the political fund of the union.

In the case where the political fund is raised by allocation from contributions paid into the general fund, the union members who « contracted out » are relieved from paying that portion of union dues (or any periodical contributions) that is allocated to the political fund. The union rules should also provide that each member of the union who did not « contract out » should know what portion, if any, of his periodical contributions to the general fund of the union is allocated to the political fund.

The Act gives any union member who considers he is aggrieved by a breach of political fund rules relating to the matters specified in S. 3 (1) (a) (b), the right of complaint to the Registrar of Friendly Societies. The Registrar, after hearing the parties involved, may issue an order for remedying the breach. Such order, when recorded in the County Court, may be enforced as if it had been an order of the County Court (S. 3(2)).

#### TRADE DISPUTES AND TRADE UNIONS ACT, 1927

After the general strike of 1926, the Trade Disputes and Trade Unions Act, 1927<sup>36</sup> was passed. It restricted the trade union activities in a number of ways. The restrictions applied to strikes, to the law of picketing, to the union membership of civil servants, to employees of local or other public authorities with regard to union membership, and with regard to political funds of the unions.

With regard to the contribution towards the union political fund, the most important change was the replacement of the « contracting out » formula by « contracting in ». Under the « contracting in » formula, notwithstanding that a union had adopted political objects and political fund rules by majority decision, it was still prohibited for a union to levy political contributions unless a union member gave a notice in writing of his willingness to contribute to such fund (S. 4 (1)). It was noted that the effect of this provision was to deprive unions of the benefit of the inertia of members holding no strong political opinions and to shift the burden of the inertia against the pursuit of political objects.<sup>37</sup>

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(36) (17 & 18) Geo. 5, c. 22, repealed by the Trade Disputes and Trade Unions Act, 1946, (9 & 10) Geo. 6, c. 52.

(37) N.H. CITRINE, *ibid.*, p. 23.

Another restrictive measure with regard to the furtherance of political objects of the union was the provision ( S. 4 (2) ), which made it necessary that the contributions to the political fund should be levied separately from any other contributions; it was no longer possible to allocate to the political fund the whole or part of general contributions (with appropriate reductions for those members who were exempted). Further, it was specifically stated that no assets of a trade union other than those forming the political fund could be directly or indirectly applied or charged in furtherance of any political object to which Section 3 of the 1913 Act applied.

Finally, the 1927 Act provided ( S. 4 (6) ) that an unregistered union having a political fund was required to make to the Registrar of Friendly Societies an annual return with respect to receipts, expenditures, assets and liabilities insofar as the political fund was concerned in pursuance to Section 16 of the Trade Union Act, 1871, which provided for the transmission to the Registrar of Friendly Societies of annual returns by registered trade unions.

#### TRADE DISPUTES AND TRADE UNIONS ACT, 1946

The 1927 Act was resented by the trade union movement and the repeal of the Act became one of the aims of the Labour Party. This was accomplished when the Labour Party returned to power in 1945. One of the first acts of the Labour government was the enactment of the Trade Disputes and Trade Unions Act, 1946,<sup>38</sup> which repealed the 1927 Act in its entirety.<sup>39</sup>

With the repeal of the 1927 Act, the rules regarding political objects and political funds again became subject to the provisions of the 1913 Act exclusively.

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(38) (9 & 10) Geo. 6, c. 52.

(39) The 1946 Act consists of two sections and a schedule containing transitional provisions. Section 1 reads:

1. The Trade Disputes and Trade Unions Act, 1927 (in this Act referred to as « the Act of 1927 ») is hereby repealed, and, subject to the transitional provisions set out in the Schedule to this Act, every enactment and rule of law amended or otherwise affected by that Act shall, as from the commencement of this Act, have effect as if the Act of 1927 had not been passed.

## The United States

The American trade-union movement claims to have produced the world's first labour party in Philadelphia in 1828;<sup>40</sup> however, it never produced anything like the Labour Party in Great Britain and, up to the present day, as a whole, avoided identifying itself with distinctive labour or socialist political parties. Various explanations have been given for the weakness of socialism within the organized labour movement in the United States and for the absence of an American labour party: the vitality of American capitalism; the middle-class psychology of American workers; the American faith in individual rights; the conservative features of the American political system, the anti-socialist role of the Roman Catholic church and the anti-socialist leadership of Samuel Gompers.<sup>41</sup>

Perhaps the most convincing reason for this lack of enthusiasm for a distinctive labour party is the egalitarian character of American society; the lack of distinctive social classes and the absence of the working « proletariat » which have been the historical tradition of Europe, including Great Britain; unlimited prospects (at least in theory) of material (and therefore social) advancement open to everybody; and the middle class « bourgeois » psychology of the American workers. The basic attitude of American labour towards political action was epitomized in the Gompers' exhortation to « reward friends and punish enemies ».

In spite of the fact that the American labour movement did not create a distinct working class political party, the American unions have always been involved in politics.<sup>42</sup> « One cannot draw a line between

(40) In that year, the Philadelphia Mechanics' Union of Trade Associations established the Working Men's Party in Philadelphia. See JOHN R. COMMONS and Associates, *History of Labour in the United States*, Vol. I, New York, 1918, Part II, Chapter II; « Rise and Growth in Philadelphia », pp. 185-230. Also, references in MARC KARSON, *American Labor Unions and Politics, 1900-1918*, Southern Illinois University Press, 1958, p. 3; JACK BARBASH, « The Structure of Union Political Action — A Trial Analytic Framework », *Industrial Relations Research Association*, 1965, Buffalo, published in the *Labor Law Journal*, August 1965, Volume 16, No. 8, pp. 491-496, on p. 493; J. ALBERT WOLL, « Unions in Politics: A Study in Law and the Workers' Needs », *Southern California Law Review*, (1961), Volume 34, pp. 130-151, on p. 145; E.J. FILLENWARTH, « Politics and Labor Unions », *Notre Dame Lawyer*, (1961), Vol. 37, pp. 172-193, contains a comprehensive historical outline of the involvement of the U.S. Trade Unions in political activities (pp. 175-180).

(41) M. KARSON, *op. cit.*, Chapter 10 — « An interpretation of the Politics of American Labor Unions », p. 286.

(42) J. BARBASH, « The Structure of Union Political Action... » *ibid.*, p. 493.

bargaining and politics », stated counsel for U.A.W.-C.I.O. before the Supreme Court of the United States. <sup>43</sup>

While operating within the framework of the traditional two party system, the unions have become powerful pressure groups in order to secure legislation favorable to workers and trade unions, to defeat measures which have appeared detrimental to their interests, to support candidates who pledged their support to trade union legislative objectives. <sup>44</sup>

The growth of trade unions, their wealth and political influence and the apprehension of this influence gave impulse to legislation that was aimed to impose some restrictions on political activities of trade unions.

The restrictive provisions regarding union political activities derived from a statute enacted in response to a plea, among others, by Samuel Gompers, the president of the American Federation of Labor (A.F. of L.), for legislation to free the elections from the power of money contributed by corporations. <sup>45</sup> The original Act was passed by Congress in 1907 <sup>46</sup> making it unlawful for a bank or any corporation organized by authority of any laws of Congress, to make a « money contribution » in connection with any election to any political office, and in connection with any election at which Presidential and Vice-presidential candidates or a Representative in Congress is to be voted for or any election by any state legislature of a U.S. senator.

In 1925, the original prohibition contained in the 1907 Act was incorporated in Section 313 of the Federal Corrupt Practices Act <sup>47</sup> and

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(43) *U.S. v. U.A.W.* (1957) 32 Labor Cases, para. 70, 534, quoted in JOHN F. LANE, « Analysis of the Federal Law Governing Political Expenditures by Labor Unions » *Labor Law Journal*, October 1958, Vol. 9, No 10, pp. 725-744, on p. 725.

(44) Article II of the Constitution of the A.F. of L.-C.I.O. contains twelve « Objectives and Principles », two of which provide that A.F.L.-C.I.O. is organized : 5. To secure legislation which will safeguard and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives. 12. While preserving the independence of the labor movement from political control, to encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities. Quoted in E.J. FILLINWARTH, « *Politics and Labor Unions* », *ibid.*, p. 178, footnote 41.

(45) Hearings before House Committee on Elections, 59th Congress, 1st Session, referred to in the decision of the U.S. Supreme Court, in the *U.S. v. U.A.W.* (1957) 32 Labor Cases, para. 70,534.

(46) 34 Stat. 864.

(47) 43 Stat. 1070.

strengthened (1) by changing the phrase « money contribution » to « contribution » broadly defined, (2) by extending the prohibition on corporate contributions to the election to Congress of Delegates and Resident Commissioners; and (3) by penalizing the recipient of any forbidden contribution as well as the contributor. <sup>48</sup>

As enacted in 1925, Section 313 of the Federal Corrupt Practices Act did not apply to labour organizations. In 1943, when Congress passed the War Labor Disputes Act <sup>49</sup> (the Smith-Connally Act) to secure defence production against work stoppages, the Act contained a provision extending to labour organizations, for the duration of the war, Section 313 of the Corrupt Practices Act.

Commenting on the legislative history of the 1943 Act in *U.S. v. C.I.O.* <sup>50</sup> Mr. Justice Reed of the U.S. Supreme Court stated that Congress believed that labour unions should be put under the same restraint as had been imposed upon corporations. It was also felt that the influence which labour unions exercise over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose. <sup>51</sup>

In 1945, the Senate Special Committee on Campaign Expenditures <sup>52</sup> considered, *inter alia*, a complaint that, despite the extension of Section 313 to labour unions, the C.I.O. had distributed in the national elections of 1944, 200,000 copies of a political pamphlet opposing the re-election of Senator Taft. The C.I.O. contended however, that the Act only referred to « contribution » whereas the publication in question involved an « expenditure » and consequently this outlay of money was not prohibited under the Act. <sup>53</sup>

#### THE TAFT-HARTLEY ACT

With the enactment in 1947 of the Taft-Hartley Act, <sup>54</sup> the temporary wartime extension to trade unions of Section 313 of the Corrupt

(48) *U.S. v. U.A.W.*, *ibid.*, on p. 93,447.

(49) 57 Stat. 163, 167.

(50) (1948) 15 Labor Cases, para. 64,586.

(51) *Ibid.*, on p. 73,803.

(52) 79th Congress, 1st Sess.

(53) *U.S. v. U.A.W.*, (1957) 32 Labor Cases, para. 70,534, on p. 93,448.

(54) The Labor-Management Relations Act, 1947 (61 Stat. 136).

Practices Act became permanent. Section 313 of the Corrupt Practices Act as amended by Section 304 of the Taft-Hartley Act, besides making permanent application of Section 313 to labour organizations, proscribed any « expenditure » as well as any « contribution » to « plug the existing loophole », and extended its coverage to federal primaries and nominating conventions. While the prohibition applied to both the contributor and the recipient, only the penalty for the contributor was spelled out.

Since then, Section 304 of the Taft-Hartley Act has been incorporated in the U.S. Criminal Code, as Section 610.<sup>55</sup> It was amended in 1951<sup>56</sup> to subject to its penalties any person who accepted or received any prohibited contribution, as well as any person or organization which made or consented to prohibited expenditures or contributions. Also, in the case of a wilful violation, the maximum penalty against individual violators was increased to a fine of \$10,000 or imprisonment for two years or both.<sup>57</sup>

As amended, at present the provision reads as follows :

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this Section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000 ; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than \$1,000 or imprisoned not more than one year, or both ; and if the violation was wilful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

(55) 18 U.S.C. Ch. 29, Sec. 610.

(56) Act of October 31, 1951, Ch. 655, Sec. 28(c).

(57) CCH (American) Labor Law Reporter, Vol. 3, para. 4980, on p. 10,181.



For the purposes of this section « labor organization » means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

The provision quoted above makes it unlawful for both corporations and labour unions to make any contribution or expenditure in connection with federal elections and does not forbid expenditures in state and local elections.<sup>58</sup> The prohibition covers Presidential and Vice-Presidential elections, election of Senators, Representatives, Delegates or Resident Commissioners to Congress, primary elections, political conventions, and caucuses. The provision prohibits *both* contributions and expenditures and as it is phrased without any qualification, it is extremely broad.<sup>59</sup>

The definition of the term « labor organization » restricts itself to organizations and agencies which exist for the purpose « in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work ». Apparently the purpose of this definition is to make a distinction between trade unions as such and such political outgrowths of the labour movement as the Committee on Political Education (COPE).<sup>60</sup>

(58) Some states enacted legislation restricting political contributions or expenditures by labour unions. Apparently in only four states (Indiana, New Hampshire, Pennsylvania and Texas) has such legislation remained on the statute books: J. ALBERT WOLL, « Unions in Politics; A study in Law and the Workers Needs », *ibid.*, on pp. 134-136; SAR A. LEVITAN, « Government Regulation of Internal Union Affairs Affecting the Rights of Members », *Daily Labor Report*, No. 109, June 1958, Special Supplement No. 13, on p. 16.

(59) CCH, (American) Labor Law Reporter, Vol. 3, para. 4980, p. 10,181.

(60) CCH, (American) Labor Law Reporter, Vol. 3, para. 4980, p. 10,182. The Committee on Political Education -COPE- resulted from amalgamation of the political committees of the A.F. of L. and C.I.O., following the merger of the A.F.L. and the C.I.O. in 1955. The program of the Committee on Political Education includes « more intensive campaigning for labor's friends and against labor's enemies ». COPE is made up of local and State Committees of A.F.L.-C.I.O. members, and a national committee consisting of the A.F.L.-C.I.O. Executive Council and officers of international unions. It is voluntarily financed by dollar drives as were its predecessor committees. Of every dollar contributed, half is used by local and State Committees and the other half is used by national COPE « to aid worthy candidates for national offices ». The policies of COPE are determined by the National Committee of COPE in the light of action by A.F.L.-C.I.O. conventions, but the endorsements for the Senate and House are made by state and district units of the Committee. (From the brief prepared by the U.S. Solicitor General to the United States Supreme Court in *U.S. v. U.A.W.* (1957) (32 Labor Cases, para. 70,534) as quoted in J.F. LANE « Political Expenditures by Labor Unions », *ibid.*, on p. 742.

There are doubts as to the constitutional validity of this provision as infringing on the constitutional guarantee of freedom of speech and of the press, contained in the First Amendment to the Constitution of the United States, which provides :

« Congress shall make no law... abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances. »

It is necessary for the purpose of this article to examine how the courts approached this issue of constitutionality and how they interpreted the extremely broad prohibition on contributions and expenditures contained in the statute.<sup>61</sup>

In 1948, in *Reuther v. Clark*,<sup>62</sup> the union brought an action before a special three-judge federal court to enjoin the enforcement of Section 304 of the Taft-Hartley Act on the basis that the prohibition of expenditures by labour organization in connection with federal elections is unconstitutional. The union admitted that union funds had already been expended contrary to the provisions of the Act and stated that the attorney general had threatened to prosecute any union for making such expenditures. The union also asked for a declaratory judgment that Section 304 is unconstitutional on the following grounds : (1) It unlawfully restricts freedom of speech, press, assembly and petition; (2) It deprives the union, its officers and members of liberty and property without due process of law, in that it prevents them from acting jointly for political objectives and prevents them from using joint property for such purposes; (3) It unlawfully prevents free elections by restricting joint political activities essential thereto; (4) It unlawfully discriminates against them and denies them equal protection of the laws in that it is not applicable to other unincorporated groups with opposing interests; (5) It is so vague and uncertain as to provide no ascertainable standards of guilt. Finally, the complaint asserted that the restrictions imposed by the statute were not justified by a clear and present or any other danger to American institutions or to the government of the United States.

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(61) In the legal decisions analysed in this article, the statutory prohibitions on spending of union funds for electoral purposes are referred to either as Section 304 of Taft-Hartley Act, or Section 313 of the Corrupt Practices Act, or Section 610 of U.S. Criminal Code (18 U.S.C. Sec. 610); for the purpose of clarity and consistency references will be made to Section 304 of the Taft-Hartley Act, except when excerpts from the decisions are quoted and the prohibition is referred to as Section 313 (of the Corrupt Practices Act) or Section 610 (of the U.S. Criminal Code).

(62) (1948) 14 Labor Cases, para. 64,504 ; pp. 73,459-73,460.

The District Court, District of Columbia, dismissed the action on the ground that the facts alleged were insufficient to justify the exercise of equity powers to enjoin the prosecution of acts in violation of the terms of the statute in question, and consequently the court should not render a declaratory judgment concerning the constitutionality of the statute. This was especially true, the Court added, in view of the admitted deliberate violation of the law, which might subject the plaintiffs to criminal prosecution, in which event they would have the opportunity of directly attacking the constitutionality of the statute.

In 1948, in *U.S. v. C.I.O.*<sup>63</sup> the U.S. Supreme Court considered the question regarding the scope of application and the constitutionality of Section 304 of the Taft-Hartley Act of 1947. The C.I.O. and its president were charged with violation of the Section in question because « The C.I.O. News », a weekly periodical owned and published by the C.I.O. at the expense and from the funds of the C.I.O., published a statement urging all members of the C.I.O. to vote for a particular candidate in the federal election of 1947.

The statement said it was made despite Section 304 in the belief that the Section was unconstitutional because it abridged rights of free speech, free press and free assembly, guaranteed by the Bill of Rights.

The District Court<sup>64</sup> held that Section 304 of the Taft-Hartley Act, which makes it unlawful for any labor organization to make contribution or expenditure in connection with any election at which candidates for a federal office are to be selected or voted for, and which provides penal sanctions for unions offending against the ban as well as for the union officers consenting to such action, was invalid on its face since it abridged freedom of speech, freedom of the press and freedom of assembly, which are guaranteed under the First Amendment to the federal constitution. Consequently, the charge against the C.I.O. and its president of violating the provisions of Section 304 was dismissed. The District Court also held that the circumstances surrounding the enactment of Section 304 do not point out to « clear and present danger » which must exist if any abridgment of the Freedoms of the First Amendment is to be justified.

On appeal, the U.S. Supreme Court held that Section 304 of the Taft-Hartley Act did not make it an offense for a union to expend its

(63) (1948) 15 Labor Cases, para. 64,586 ; pp. 73,799-73,821.

(64) (1948) 14 Labor Cases, para. 64,384.

funds for publication of an issue of a regular union periodical containing statements in support of a candidate for nomination or election for certain federal offices in furtherance of the union's aims, or to expend funds for the distribution of such publication in regular course to those accustomed to receiving copies thereof. Further, the Supreme Court held that an indictment which charges a union with expenditures for such publication and distribution, but does not allege the source of the fund expended or charges the distribution of free copies to persons not entitled to receive them, does not state an offence within the scope of the Act. Consequently, the Supreme Court dismissed the indictment for failure to state an offence under the Act. Also, the Supreme Court declared that, in those circumstances there was no need to determine the constitutionality of Section 304.

The majority of the Supreme Court, in an opinion by Mr. Justice Reed, held, in particular the following :

It will be noted that paragraph (3) <sup>65</sup> (of the indictment) does not allege the source of the C.I.O. funds. The paragraph indicates on its face that « The C.I.O. News » was a regularly published weekly periodical of which the challenged issue was Volume 10, No. 28. *The funds used may have been obtained from subscriptions of its readers or from portions of C.I.O. membership dues, directly allocated by the members to pay for the « News », or from other general or special receipts* <sup>66</sup> (emphasis added).

Further, the Court noted that Senator Taft, during the passage of the Act, stated on the Senate floor that funds voluntarily contributed for election purposes might be used without violating the Section and papers supported by subscriptions and sales might likewise be published. Then the Court added :

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(65) « (3) That at all the times hereinafter mentioned, the said defendant C.I.O. owned, composed, edited and published a weekly periodical known as « The C.I.O. News », and the said defendant C.I.O. paid all of the costs and made all of the expenditures necessary and incidental to the publication and distribution of said periodical, « The C.I.O. News », from the funds of the said defendant C.I.O., including the salaries of the editors and contributors and other writers of texts set forth in said periodical including also the costs of the printing of the said periodical and the cost of the distributing of the said periodical, and all such payments and expenditures, including those representing the costs and distribution of the issue of said « The C.I.O. News » under date of July 14, 1947, and designated as Volume 10, No. 28, were made by said defendant C.I.O. at Washington, in the District of Columbia, and within the jurisdiction of this court. *U.S. v. C.I.O.* (1948) 15 Labor Cases, para. 64,586, Footnote (3) on p. 73,801.

(66) *U.S. v. C.I.O.* (1948) 15 Labor Cases, para. 64,586, on p. 73,801/2.

Members of unions paying dues and stockholders of corporations know of the practice of their respective organizations in regularly publishing periodicals. It would require explicit words in an Act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication. It is unduly stretching language to say that the members or stockholders are unwilling participants in such normal organizational activities, including the advocacy thereby of governmental policies affecting their interests, and the support thereby of candidates thought to be favourable to their interests.

It is our conclusion that this indictment charges only that the C.I.O. and its president published with union funds a regular periodical for the furtherance of such aims, that President Murray authorized the use of those funds for distribution of this issue in regular course to those accustomed to receive copies of the periodical and that the issue with the statement described at the beginning of this opinion violated para. 313 of the Corrupt Practices Act.

We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an « expenditure in connection with any election » of candidates for federal office intended to outlaw such a publication. We do not think para. 313 reaches such a use of corporate or labor organization funds. We express no opinion as to the scope of this section where different circumstances exist and none upon the constitutionality of the sections.<sup>67</sup>

In a separate opinion, four members of the Court concurred with the majority in the result but not in the reasoning. They expressed a strong view that the Section was violating the First Amendment and was unconstitutional. The last paragraph of their opinion stated :

A statute which, in the claimed interest of free and honest elections, curtails the very freedoms that make possible exercise of the franchise by an informed and thinking electorate, and does this by indiscriminate blanketing of every expenditure in connection with an election, serving as a prior restraint upon expression not in fact forbidden as well as upon what is, cannot be squared with the First Amendment.<sup>68</sup>

In 1949, in *U.S. v. Painters' Local Union No. 481*,<sup>69</sup> the United States Court of Appeals relying on the Supreme Court decision in the C.I.O. case, *supra*, held that small expenditures made by a small local

(67) *Ibid.*, on p. 73,806/7.

(68) *Ibid.*, on p. 73,820.

(69) (1949) 16 Labor Cases, para. 64,953 ; pp. 75,023-75,025.

union, which publishes no newspaper of its own, for a newspaper advertisement and for a radio broadcast opposing certain candidates for Federal office, were not unlawful, where these means are a natural way for the union to communicate its opinion to its members, and where the expenditures were duly authorized by vote of the union members. The Court held that such expenditures are no different in principle from those made by a union for the publication of political statements in the union's own newspaper, which expenditures had been held in the *C.I.O.* case, *supra*, by the U.S. Supreme Court not to be within the scope of Section 304 of the Taft-Hartley Act. Circuit Judge Augustus N. Hand, rendering the judgment of the Court, concluded :

We should bear in mind the further important consideration that all of the Justices of the Supreme Court who participated in the *C.I.O.* decision regarded the prohibition of the Statute if applied to the facts of that case either as involving an undue abridgment of the rights of free speech, free press, and free assembly, or at best as of exceedingly doubtful constitutionality. Because of the similarity of the facts before us to those in the *C.I.O.* decision above-mentioned we do not feel free to regard the issue of constitutionality as one completely of first impression, as did Judge Hincks in his thoughtful opinion. Under the circumstances we are constrained to hold that the statute did not cover the publications effected by the defendants in the case at bar.<sup>70</sup>

The Court of Appeals dismissed the indictment for failure to allege an offence under Section 304 of the Taft-Hartley Act.

In 1951, the prohibitions under Section 304 of the Taft-Hartley Act received another restrictive interpretation. In *U.S. v. Construction and General Laborers Local 264*,<sup>71</sup> the Federal District Court, relying on the Supreme Court decision in the *C.I.O.* case, *supra*., ruled that Congress did not intend to include within prohibited expenditures of labour union the payment of compensation to a union employee who was engaging in political activity on behalf of a particular candidate while in the employment of a trade union, or the payment of compensation to a person for work in securing the registration of voters or in transporting voters to the polls on election day. Further, the Court held that evidence that employees of a union received their regular compensation and extra compensation while they were devoting a part of their time to political activities on behalf of an union officer who was running for

(70) *Ibid.*, on p. 75,025.

(71) (1951) 21 Labor Cases, para. 66,736 ; pp. 80,766-80,773.

election to Congress and to the registration and transportation of voters in the election in which such officer was a candidate, was not sufficient to establish a violation of Section 304 of the Taft-Hartley Act. Again, the Court did not find it necessary to rule on the constitutionality of the provision in question because of its findings that the expenditures under review were not prohibited under the Act.

In 1957, the second major interpretation of Section 304 of the Taft-Hartley Act by the U.S. Supreme Court took place in *U.S. v. United Automobile Workers*<sup>72</sup> in which case the legality of use of union dues to pay for political broadcast was the issue. While in the *C.I.O.* case, *supra.*, the U.S. Supreme Court found that certain union expenditures for political purposes in connection with federal elections are not prohibited by the Act, in the *U.A.W.* case the Supreme Court held that the use of union dues to pay for political broadcasts would, if proven, constitute a violation of the Act.

The indictment charged the union with violation of the Act by paying from the general treasury fund for political television broadcasts in support of certain candidates for the U.S. Congress during the 1954 primary and general elections, and designed to influence the electorate. The indictment charged specifically that the fund used came from union dues, was not obtained by voluntary political contribution or subscription from members and was not paid for by advertising or sale. The District Court dismissed the indictment on the ground that it did not allege a statutory offence.

On appeal, the U.S. Supreme Court distinguished the *C.I.O.* case, *supra.*, on the ground that the communication (« The C.I.O. News ») for which the defendants in the *C.I.O.* case were indicted, unlike the union-sponsored political broadcast, was neither directed nor delivered to the public at large but only to the union members or purchasers of an issue of a weekly newspaper owned and published by the C.I.O.. Mr Justice Frankfurter, who rendered the majority decision, stated that the evil at which Congress had struck in Section 304 of the Taft-Hartley Act, was the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party. The Court held that the alleged activity (if proven) would constitute a violation under Section 304. The Court stated that to deny that such activity, either

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(72) (1957) 32 Labor Cases, para. 70,534 ; pp. 93,443-93,455.

on the part of a corporation or a labour organization constituted an « expenditure in connection with any (federal) election » would be to « deny the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital ». The Court reversed the judgment of the District Court and remanded the case to the District Court for prosecution to proceed. The Supreme Court refused to consider the constitutionality of Section 304<sup>73</sup> pointing out among others, that allegations of the indictment may not survive « the test of proof » during a trial on merits. In remanding the case to the District Court, the Supreme Court posed four questions « not to imply answers to problems of statutory construction, but merely to indicate the covert issues that may be involved in this case ». These questions were as follows :

- 1) Was the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?
- 2) Did the broadcast reach the public at large or only those affiliated with the union?
- 3) Did it constitute active electioneering or simply state the record of particular candidates on economic issues?
- 4) Did the union sponsor the broadcast with the intent to affect the results of the election?

The minority of the judges (Douglas, Warren and Black) questioned the constitutionality in Section 304 in view of the First Amendment that Congress shall make no law that abridges free speech or freedom of assembly. Among other arguments, Mr. Justice Douglas stated the following :

Finally, the Court asks whether the broadcast was « paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis ». Behind this question

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(73) The union in its brief stated :

... if such an expenditure is prohibited by Section 18 U.S.C. 610, the statute violates the provisions of the Constitution of the United States in that the statute (i) abridges freedom of speech and of the press and the right peaceably to assemble and to petition ; (ii) abridges the right to choose senators and representatives guaranteed by Article 1, para. 2 of the Seventeenth Amendment ; (iii) creates an arbitrary and unlawful classification and discriminates against labor organizations in violation of the Fifth Amendment, and (iv) is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments. (1957) 32 Labor Cases, footnote 2, on p. 93,451.



is the idea that there may be a minority of union members who are of a different political school than their leaders and who object to the use of their union dues to espouse one political view. This is a question that concerns the internal management of union affairs. To date, unions have operated under a rule of the majority. Perhaps minority rights need protection. But this way of doing it is, indeed, burning down the house to roast the pig. All union expenditures for political discourse are banned because of a minority might object.

. . .

If minorities need protection against the use of union funds for political speech making, there are ways or reaching that end without denying the majority their First Amendment rights.<sup>74</sup>

At this point, Mr. Justice Douglas stated :

There are alternative measures appropriate to cure this evil which Congress has seen in the expenditure of union funds for political purposes. The protection of union members from the use of their funds in supporting a cause with which they do not sympathise may be cured by permitting the minority to withdraw their funds from that activity. The English have long required labor unions to permit a dissenting union member to refuse to contribute funds for political purposes. Trade Union Act, 1913, 2 & 3 Geo. V, c. 30 ; Trade Disputes and Trade Unions Act, 1927, 17 & 18 Geo. V, c. 22 ; Trade Disputes and Trade Unions Act, 1946, 9 & 10, Geo. VI, c. 52.<sup>75</sup>

Finally, Mr. Justice Douglas stated that « The Act, as construed and applied, is a broadside assault on the freedom of political expression guaranteed by the First Amendment ». <sup>76</sup>

As remanded to the District Court, the trial on merits took place before a jury and resulted in a jury verdict acquitting the union.<sup>77</sup>

In 1960, another clarification was made of Section 304 of the Taft-Hartley Act by the U.S. District Court in *U.S. v. Teamsters, Local 688*.<sup>78</sup> The Court ruled that contributions or expenditures by a labour union in connection with the election of federal candidates are lawful providing that : (1) the officers of the union consent; (2) the contributions or expenditures are made from funds voluntarily designated for such

(74) *Ibid.*, on p. 93,454.

(75) *Ibid.*, on p. 93,454, footnote 1.

(76) *Ibid.*, on p. 93,455.

(77) Regarding the details of this trial, see J.F. LANE, « Political Expenditures by Labor Unions », *Ibid.*, pp. 733-735.

(78) (1960-1961) 41 Labor Cases, para. 16,601, pp. 23,380-23,382.

purposes by all or a part of the individual members of the union; <sup>79</sup> (3) there is a good-faith accounting of such funds; and (4) the amount contributed or expended does not exceed the amount of funds so designated. Further, the Court held that there is a voluntary designation of funds for such purposes where approximately two-thirds of the members of a local union sign cards authorizing the allocation of a specified portion of their union dues for that purpose. An interpretation of the law which would prohibit political contributions or expenditures by unions under these circumstances would be, in the opinion of the Court, of doubtful constitutional validity. Also, the Court held that the law prohibiting political contributions or expenditures by unions or corporations requires proof of criminal intent to sustain a conviction. While the evasion of the provisions of the law in question is unlawful, avoidance is not.

It should be noted that the judgment in question brought to the interpretation of Section 304 of the Taft-Hartley Act a concept reminiscent in certain aspects of the British system of « contracting in » as enforced between 1927 and 1946 and creating in this way a political fund constituted by the allocation of a part of union dues to such fund by individual union members. However, it should be noted that, under the British system of « contracting in », when a union member refused to contract in, his union dues were reduced by the amount allocated for political purposes; while in the U.S. context a refusal would not result in the reduction of union dues. The union member would still have to pay his whole union dues which would go entirely to the general union fund and be used for non-political activity. <sup>80</sup>

The recent decision regarding the interpretation of Section 304 of the Taft-Hartley Act is the decision in 1961 of the U.S. District Court in Alaska in *U.S. v. Anchorage Central Labor Council*. <sup>81</sup> In this case, the Court held that a joint union council did not violate the statutory prohibition against union political expenditures by sponsoring four 15-minute televised political broadcasts as, in the opinion of the Court, the payments were made from a fund composed primarily of voluntary contributions made by member locals to defray the costs of the Council's

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(79) In the case at bar, the individual union members signed the cards authorizing such allocation.

(80) JOSEPH L. RAUH, « Legality of Union Political Expenditures », *Southern California Law Review*, (1961) Volume 34, pp. 152-164, on p. 154.

(81) (1961) 42 Labor Cases, para. 16,910, pp. 24,366-24,370.

regular weekly television programs. The Court relied to a great extent on the four points suggested by Mr. Justice Frankfurter in *U.S. v. Automobile Workers* case, *supra.*, for the construction of the section in question. The Court considered as the most important for consideration in the case at bar, whether or not the broadcasts complained of were paid for out of the general union dues of the union membership or whether the funds may « be fairly said to have been obtained on a voluntary basis ». In considering this question, the Court added new elements into the meaning of voluntary contributions. The Court found that the broadcasts were paid by the Anchorage Central Labour Council, largely from the so-called « TV fund » contributed by the several unions who were members of the Council. These contributions were made for the purpose of financing not the particular programs under consideration by the Court but to finance the entire broadcast program conducted over a period of some three years. These TV contributions were purely voluntary. No union was called upon to pay for this program. Each union decided by a vote of its membership, first, whether it would contribute and, second, how much. (Apparently the individual union members did not sign cards authorizing the allocation of a specified portion of their dues to be used for contributions to the TV fund, as was the situation in *U.S. v. Teamsters, Local 688, supra.*, in relation to allocation of funds for electoral purposes.) The evidence also showed that the cost of broadcasting programs sometimes exceeded the voluntary TV contributions and then the Labour Council covered the deficit from the fund received from the per capita tax paid by the unions who formed the Labour Council. However, the amounts paid by the unions into the Council in 1958 as TV fund exceeded the costs of these four political broadcasts, which were indicted. Consequently, the Court held that there was no proof that the political broadcasts in question were paid for by per capita tax. But, even if they were paid out of the per capita tax, the latter tax was voluntary because, in the opinion of the Court, no union needed to belong to the Council. If it did, such a union paid per capita tax of ten cents per member. But the per capita tax was not enforced. Each union could decide how much it could afford to pay. A union of a thousand members could pay a per capita tax on, lets say, five hundred members, which, in the opinion of the Court, made the per capita tax a voluntary one.

Another question considered by the Court was regarding the source of the funds of the several unions contributing to the TV fund and whether or not the statute intended to include such indirect contributions.

The evidence before the Court showed that some, at least, of the unions had sources of income other than dues, as, for example, rental of property owned by the union, or interest on savings accounts or bonds. All these funds were commingled into one general fund. Consequently, it would be impossible to say whether the TV contributions and the per capita tax were paid out of dues or other income.

The Court also considered whether the broadcasts reached the public at large. The answer was that a television program would reach to some extent the public at large. However, the Court thought that there was another problem already considered previously by the courts, that broadcasting was used regularly as the only means the unions or Labour Council had or used to communicate with its members. The evidence was that the costs were considerably lower than trying to get out a newspaper to all of the members of the some twenty-five unions belonging to the Council. The Court held, relying on the decisions interpreting the statute, that under such a circumstance the fact that the broadcast was communicated to the general public did not bring the acts clearly within the prohibition of the statute when such means was used in the regular course of the union activities and was based upon voluntary contributions by the unions for such programs.

In its concluding remarks, the Court stated that the purposes of the statute, which are clearly expressed in the Court decisions and in the debates before Congress, are two :

First, to prevent, in the public interest, corporations and labour unions with their power and wealth from controlling elections; and, second, to protect the union member from having union officials endorse candidates or attempt to influence voters which may be contrary to the wishes of the individual member. In view of these principles, the Court did not find that the broadcast was an act to control elections. And, so far as the consent of the members is concerned, the Court noted that each union (the membership of the union) voted to contribute these funds to the program, so the matter of protection of the union member was not involved in the question at bar.

In conclusion, the court held that the broadcasts in question were the result of voluntary contributions to the TV fund of the Labour Council, and the statute was not designed to prohibit this type of activity. Consequently, the Court granted the motion for acquittal.

In summing up the situation under and effects of Section 304 of the Taft-Hartley Act, it could be stated that the courts referring to the legislative history of the provision, took the position that the prohibitions contained in Section 304 were intended to apply only to union funds called general funds of the union and built up from regular union dues and assessments, and that Section 304 did not affect voluntary contributions from union members collected for political purposes over and above regular union dues. The unions could use such voluntary contributions for the purposes of federal elections (*U.S. v. United Automobile Workers*).

Further, insofar as general union funds are concerned, the courts found lawful the use of such funds for the following purposes :

- a) the support of candidates for federal election in regular union periodicals distributed primarily to union members (*U.S. v. C.I.O.*);
- b) newspaper advertisements or radio or television broadcasts by small local unions which publish no newspapers of their own, opposing or supporting certain candidates, providing that these means are a normal way for the union to communicate its opinions to their members and providing that the expenditures are duly authorized by the vote of the union members (*U.S. v. Painters Local Union No. 481*);
- c) registration of voters or transporting voters to polls on election day (*U.S. v. Construction and General Laborers, Local 264*).

Further, political expenditures were found lawful when the funds used came from voluntary authorization by union members to use a certain part of union dues for political purposes (*U.S. v. Teamsters, Local 688*).

The constitutional validity of Section 304 of the Taft-Hartley Act is doubtful. Some judges of the U.S. Supreme Court, expressing the minority opinions, held the Section invalid as contrary to the freedoms guaranteed by the First Amendment to the U.S. Constitution. However, the U.S. Supreme Court studiously avoided making a decision regarding the constitutionality of the Section. This situation led one author to express the view that Section 304 of the Taft-Hartley Act is almost certainly invalid.<sup>82</sup>

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(82) ALISTER MCALISTER, « Labor, Liberalism and Majoritarian Democracy », *Fordham Law Review*, (1963) Volume 31, pp. 661-696, on p. 691.

RAILWAY LABOR ACT <sup>83</sup>

Apart from the prohibitions contained in Section 304 of the Taft-Hartley Act, the problem of the use of union dues for political purposes has been considered by the United States' courts in connection with the union shop agreements entered into under Section 2, Eleventh of the Railway Labor Act, which was written into the statute in 1951. <sup>84</sup>

Section 2, Eleventh provides that, notwithstanding the law of « any state », a carrier and a labour organization may conclude a collective agreement requiring all employees within a stated time (60 days) to become members of the labour organization, provided there is no discrimination against any employee and provided that membership is not denied or terminated « for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership ». Also the section allowed agreements regarding check-off of union dues on condition that the employee provides the employer with a written revocable assignment to the union of such dues, initiation fees and assessments. <sup>85</sup>

(83) Originally enacted in 1926 (44 Stat. 577).

(84) 64 Stat. 1238 (1951), 45 U.S.C. para. 152 (1958). Prior to 1951, the Railway Labor Act prohibited union shop agreements. The 1934 amendment to the Act stated that no carrier « shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization » (48 Stat. 1186).

(85) The relevant parts of Section 2, Eleventh read as follows :  
S. 2, *Eleventh*. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any state, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted —

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class : *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any person other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership : *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

The issues raised under Section 2, Eleventh were basically two :

- 1) whether the union security agreements providing for union shops and maintenance of membership forcing the employees to join the union within a specified period of time and to remain union members in good standing, were constitutionally valid provisions;
- 2) whether the union dues collected under the union shop agreement could be used by the union for political purposes or causes to which the individual member might object.

Before considering these two issues, it should be noted that the Railway Labor Act, unlike the Taft-Hartley Act, did not contain provisions making compulsory unionism provisions ineffective in the states which prohibit them.<sup>86</sup> On the contrary, the provisions of Section 2, Eleventh apply « notwithstanding any . . . other statute . . . of any state ». In other words, the right-to-work laws enacted by some states do not apply to union shop agreements negotiated under the Railway Labor Act.

Further, the prohibitions under Section 304 of the Taft-Hartley Act were restricted to contributions and expenditures in connection with federal elections. Section 304 did not apply to state or local elections. The states were left free if they wished to enact legislation prohibiting the unions to contribute to state or local elections, and some states did enact such legislation.<sup>87</sup>

The controversy regarding the use, for political purposes, of union dues exacted under the union shop provisions of the Railway Labor Act affected not only political expenditure for federal elections but also for state and local elections, and any other expenditures for political purposes, such as, expenditures to promote or to oppose the passage of specific measures, state or federal.

The constitutional validity of union shop agreements under the Railway Labor Act was upheld by the U.S. Supreme Court in *Railway Employees' Department v. Hanson*.<sup>88</sup> The Court held that the union shop provisions are permissive and not compulsory; that such provisions are a valid exercise of the right of Congress to regulate interstate com-

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(86) CCH, (American) Labor Law Reporter, Vol. 2, para. 4,550, on p. 9,601.

(87) See footnote 58.

(88) (1956) 30 Labor Cases, para. 69,961 ; pp. 91,581-91,588.

merce; that Congress, under that authority has the right to ensure industrial peace along the arteries of such commerce and has great latitude in choosing the means for doing so. Any such choice is a matter of policy. In permitting union shop agreements, Congress made a decision on a matter of policy with which the Court cannot interfere.

Also, the Court held that, under the federal supremacy clause (Article VI) of the U.S. Constitution, a union shop contract, authorized by the Railway Labor Act, notwithstanding the law of any state, cannot be made illegal or unenforceable by the provisions of a state right-to-work law limiting union security contracts, if the federal law is valid. Further, the Court held that the union shop provision of the Act do not infringe the constitutional rights of employees to freedom of conscience, association or thought, since the Act explicitly provides that membership may not be made subject to any conditions except the payment of periodic dues, initiation fees and assessments. But the Court added a very important *caveat* that « if other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. »<sup>89</sup>

Finally, the Court held that a requirement for financial support of a collective bargaining representative by all employees who receive the benefits of its representation is within the power of Congress under its right to regulate interstate commerce and does not infringe individual rights guaranteed by the U.S. Constitution.

Immediately following this decision, the Texas Supreme Court in *Sandsberry v. International Association of Machinists*<sup>90</sup> held that the adoption of a union shop agreement for employees of an interstate railroad is authorized by the union shop provisions of the Railway Labor Act which supersedes the Texas Right-to-Work Act, provided that such an agreement requires the employees to pay only periodic dues, initiation fees and assessments uniformly required as a condition of acquiring or retaining membership in the contracting union. However, a union-shop contract as permitted by the Railway Labor Act does not require payment of political assessments. Mr. Justice Culver, rendering the majority judgment, stated :

(89) *Ibid.*, on page 91,587.

(90) (1956) 30 Labor Cases, para. 70,131 ; pp. 92,160-92,173.



We think a political assessment was not contemplated by the Congress in using the term « assessments » in the union shop statute, nor that the failure to pay a political assessment would be a valid ground for discharge.

. . .

Surely the United States Supreme Court in consideration of *Hanson* case, if not otherwise, judicially knew of union political activity and that funds to carry on that activity are assential. We are of course bound by that decision and can say no more than « if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case ». <sup>91</sup>

In 1961, the U.S. Supreme Court reached a very important decision regarding the use, for political purposes, of union dues exacted under the union shop provisions of the Railway Labor Act. This was the judgment in *International Association of Machinists v. S.B. Street*. <sup>92</sup> The circumstances of the case were as follows. A group of labour organizations and the carriers composing the Southern Railway System, entered into a union shop agreement pursuant to the Act. The agreement required the employees of the carriers, as a condition of continued employment, to pay the union representing their particular class or craft the periodic dues, initiation fees and assessments uniformly required as a condition of acquiring or retaining union membership. Some of the employees brought an action in the Superior Court of Bibb County, Georgia, alleging that the money each was thus compelled to pay to hold his job was in substantial part used to finance the campaigns of candidates for federal and state offices whom he opposed, and to promote the propagation of political and economic doctrines, concepts and ideologies with which he disagreed. <sup>93</sup>

(91) *Ibid.*, on page 92,163.

(92) (1961) 42 Labor Cases, para. 17,009 ; pp. 24,667-24,699.

(93) *Ibid.*, on pages 24,668/69. It would also appear that the allegations in the Superior Court covered also the prohibitions contained in Section 304 of the Taft-Hartley Act, that is, the use of union dues to finance the campaigns of candidates for federal office, besides the expenditures not covered by the prohibitions contained in the Taft-Hartley Act such as the financing of electoral campaigns for state offices, the promotion of political and economic doctrines, concepts and ideologies apparently as a general object of the unions and not necessarily connected with any specific electoral campaign, as well as the promotion of legislative programs. However, the U.S. Supreme Court stated (on page 24,680, footnote 21) that « No contention was made below or here that any of the expenditures involved in this case were made in violation of the Federal Corrupt Practices Act, 18 U.S.C. para. 610, or any state corrupt practices legislation ».

The Superior Court found that the allegations were proved and enjoined the enforcement of the union shop agreement on the ground that Section 2, Eleventh violates the Federal Constitution to the extent that it permits such use by the trade unions of the funds exacted from employees. The Supreme Court of Georgia upheld the ruling, which decision was appealed to the U.S. Supreme Court.

In its judgment, the U.S. Supreme Court had stated (Mr. Justice Brennan) that, in the *Hanson* case, *supra*, the court upheld the constitutional validity of Section 2, Eleventh of the Railway Labor Act on its face, and not as applied to infringe the particular constitutional rights of any individual. Thus, all that was held in the *Hanson* case was that Section 2, Eleventh was constitutional in its bare authorization of union shop contracts requiring workers to give « financial support » to unions legally authorized to act as their collective bargaining agents. But the Court did not make any decision in the *Hanson* case regarding forced association in any other aspect nor regarding the issue of the use of exacted money for political causes which were opposed by the employees. In the case at bar, each employee who brought the action made known to the union representing his craft or class his dissent from the use of his money for political causes which he opposed. The Court examined the legislative history of the Section in the context of the development of unionism in the railroad industry under the Act, to determine whether a construction is « fairly possible » which denies the authority to a union, over the employee's objections, to spend his money for political causes which he opposes. The Court concluded that such a construction was not only « fairly possible » but entirely reasonable; consequently, the Court found it unnecessary to decide whether or not this section could constitutionally permit the use of exacted funds for political purposes contrary to a member's wishes.

The analysis of the legislative history led the Court to the conclusion that Section 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements and the costs of the adjustment and settlement of disputes. However, there was no indication that Congress also meant in Section 2, Eleventh to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.

Further, Mr Justice Brennan stated that the Court could assume that Congress was fully conversant with the long history of intensive involvement of the railroad unions in political activities. Then he added :

But it does not follow that para. 2, Eleventh places no restriction on the use of an employee's money, over his objection, to support political causes he opposes merely because Congress did not enact a comprehensive regulatory scheme governing expenditures.<sup>94</sup>

The Court held that the Section in question did not vest the unions with unlimited power to spend exacted money. The purpose of this Section was to eliminate « free riders » by permitting a union to exact dues and other fees from all members of the bargaining unit; however, the political use of funds to support candidates for public office and advance political programs does not further this purpose, since such a use does not help defray either the expenses of negotiations or administration of union contracts or the expenses entailed in the adjustment of disputes. Consequently, the Court held that Section 2, Eleventh denies the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes. However, the Court held that this interpretation of the Section did not involve any curtailment of the traditional political activities of the railroad unions. It meant only that those unions must not support those political activities, against the expressed wishes of a dissenting employee, with his exacted money.

Further, the Court held that, although a union may not use exacted fees for political purposes over a member's objection, the union security provision (union shop agreement) is not itself unlawful, and an injunction restraining collection of all funds would not be appropriate, particularly where such an order would interfere with the bargaining duties imposed on the union by the Act.

Further Mr. Justice Brennan stated :

Whatever may be the powers of Congress of the States to forbid unions altogether to make various types of political expenditures, as to which we express no opinion here, many of the expenditures involved in the present case are made for the purpose of disseminating information as to candidates and programs and publicizing the positions of the unions on them. As to such expenditures an injunction would work a restraint on the expression of political ideas which might be offensive to the First Amendment. *For the majority also has an interest in stating its views without being silenced by the dissenters. To obtain the appropriate reconciliation between majority and dissenting interests in the area of political expression, we think the courts in administering*

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(94) *Ibid.*, on p. 24,678.

*the Act should select remedies which protect both interests to the maximum extent possible without undue impingement of one on the other.*<sup>95</sup> (Emphasis added).

Then the Court proceeded to suggest two possible remedies which may be enforced with a minimum of administrative difficulty<sup>96</sup> and with little danger of encroachment on the legitimate activities or necessary functions of the union.

In the opinion of the Court, any remedy would properly be granted only to employees who have made known to the union officials that they do not desire their funds to be used for political causes to which they object. But the dissent is not to be presumed — it must affirmatively be made known to the union by the dissenting employee. The two possible appropriate remedies suggested by the Court were as follows :

- 1) An injunction against expenditure for political causes opposed by an employee of a sum which is the same proportion of the total money exacted from him as the union's total political expenditures is of the entire union budget. However, the union should not be in a position to make up such sum from money paid by a nondissenter, for this would shift a disproportionate share of the costs of collective bargaining to the dissenter and have the same effect of applying his money to support such political activities.
- 2) Restitution to an individual employee of that portion of his money which the union expended, despite his notification, for the political cause he opposed. However, there should be no necessity for the employee to trace his money up to and including its expenditure; if the money goes into general funds and no separate accounts of receipts and expenditures of the funds of individual employees are mentioned, the portion of his money the employee would be entitled to recover, would

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(95) *Ibid.*, on p. 24,680.

(96) In footnote 22 on page 24,681 the Court stated the following : We note that the Labor Management Reporting and Disclosure Act of 1959 requires every labor organization subject to the federal labor laws to file annually with the Secretary of Labor a financial report as to certain specified disbursements and also « other disbursements made by it including the purposes thereof... » para. 201 (b), (6). Each union is also required to maintain records in sufficient detail to supply the necessary basic information and data from which the report may be verified. Para. 206. The information required to be contained in such report must be available to all union members. Para. 201 (c).

be in the same proportion that the expenditures for political purposes of which he had advised the union he disapproved bore to the total union budget.

The U.S. Supreme Court reversed the judgment of the Supreme Court of Georgia and remanded it to the Court below for proceedings not inconsistent with this opinion.<sup>97</sup>

In 1963, in *Railway and Steamship Clerks v. Allen*,<sup>98</sup> the U.S. Supreme Court expanded on this decision. It reaffirmed its position that Section 2, Eleventh of the Act is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes. Further, the Court held that it would be impracticable to require a dissenting employee to allege and prove each distinct union political expenditure to which he objects; it is enough that he manifests his opposition to *any* political expenditures by the union. However, as stated in the *Street* case the dissent is not to be presumed — it must affirmatively be made known to the union by the dissenting employee, and no relief may be granted in favour of members who fail to make complaints.

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(97) Following the judgment of the U.S. Supreme Court, the unions suggested that the petition should be dismissed because the union offered to refund all dues and assessments collected from the complaining employees and, also, the unions advised the employees that if they desired to leave the union they could do so. The Georgia Supreme Court [(1961) 43 Labor Cases, para. 17,204] declined to give such direction since such action would not have protected the complaining employees against future action (that is, a dismissal from jobs) by the railroads under the union shop contract. Consequently, in compliance with the mandate of the U.S. Supreme Court, the Georgia Supreme Court vacated its judgment and remanded the case to the lower Court with the directions: (1) to provide for a hearing and the taking of evidence so as to enter a final decree requiring unions to give oral testimony and produce documents and records disclosing the sources and amounts of money paid to support political causes; (2) to exercise general equitable discretion to derive a fair system of making refunds to employees who object to the use by unions of their money for purposes other than collective bargaining; (3) to enter a decree granting relief to complaining employees or enjoin unions from spending moneys collected from the employees for political purposes; and (4) to notify and allow all employees of a railroad, who so desire, to intervene as the parties' plaintiff.

The suggested injunction against all union political expenditures in case of difficulties in devising proportional remedies was criticized on the ground that such injunction would be patently unconstitutional. Among the grounds for such a view, it was indicated that the suggested injunction would even forbid expenditures in state and local elections which are not prohibited by Section 304 of the Taft-Hartley Act [18 U.S.C. para. 610 (1958)] and would collide with the union's constitutional right of political participation. Besides such extreme remedy would no doubt be struck down by the Supreme Court as too excessive, and not contemplated by the Railway Labor Act. (A. McALISTER, « Labor, Liberalism and Majoritarian Democracy », *ibid.*, pp. 691-692).

(98) (1963) 47 Labor Cases, para. 18,250; pp. 29,026-29,033.

The Court held that an injunction relieving dissenting employees of all obligations to pay the moneys due under the union shop agreement is not permissible. Such an injunction would interfere with the union's performance of those functions and duties (collective bargaining) which the Railway Labor Act placed upon them to attain its goal of stability in the industry. The dissenting employees remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement because their grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, and not from the enforcement of the union shop agreement by the mere collection of funds.

Further the Court held that in the *Street* case, the Court had suggested that, among the permissible remedies for dissenting employees, were « an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the money exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget », and restitution of such a sum already exacted from the complainant and expended by the union over his objection. This would require a division of the union's political expenditures from those germane to collective bargaining, since only the former expenditures, to the extent that they have been made from exacted funds of dissenters, are not authorized by the Act. Consequently, it is necessary for the Court to determine what expenditures disclosed by the record are political and what percentage of total union expenditures is for political purposes. Since the defendant unions possess the facts and records from which the proportion of political expenditures to total union expenditures can reasonably be calculated, basic considerations of fairness compel the unions, not the individual employees to bear the burden of proving such proportion. Then the Court added :

Absolute precision in the calculation of such proportion is not, of course, to be expected or required ; we are mindful of the difficult accounting problems that may arise. *And no decree would be proper which appeared likely to infringe the union's right to expend uniform exactions under the union-shop agreement in support of activities germane to collective bargaining and, as well, to expend nondissenters' such exactions in support of political activities.*<sup>99</sup> (Emphasis added.)

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(99) *Ibid.*, on page 29,030.

Then the Court suggested (1) the form of practical Court decree for appropriate relief, and (2) the form of internal union remedy. A Court decree would order (1) the refund to a dissenting employee of a portion of the exacted funds in the same proportion that union political expenditures bear to total expenditures, and (2) a reduction of such future exactions from him by the same proportion.

The Court recognized practical difficulties in reducing the contributions under union shop agreement by a fixed proportion, since the proportion of the union budget devoted to political activities may fluctuate. (Then a decree once entered could be modified upon showing the changed circumstances).

However, the difficulties in judicially administered relief should, in the opinion of the Court, encourage the unions to consider the adoption by their membership of some voluntary plan by which dissenters would be afforded an internal union remedy. At this point, the Court referred to the British Trade Union Act of 1913 as re-enacted by the Trade Disputes and Trade Unions Act of 1946. The Court noted, that although the British Act is a legislative solution to the problem of dissenters' rights, it might be possible for unions to adopt the substantial equivalent without legislation. The Court stressed that it was not suggested that the British Act provides a perfect model for a plan that would conform with the opinions expressed in the case at bar or in the *Street* case, nor that all aspects of the British Act are essential, for example, the actual segregation of political funds, nor that the particular boundary drawn by the Act between political expenditures and those germane to collective bargaining is necessarily sound.

Further, the Court noted that one possible solution to the problem of fluctuating union political expenditures might be adoption by the unions of a proportion calculated on the basis not of present political expenditures but projected future expenditures, so as to anticipate possible fluctuations, with the dissenting employee free to contract out of this proportion of his dues and fees. Alternatively, unions might consider actually fixing a percentage ceiling of political expenditures, from which proportion dissenters could contract out.

Finally, the Court added that, if a union agreed upon a formula for ascertaining the proportion of political expenditures in its budget, and made available a simple procedure for allowing dissenters to be excused from having to pay this proportion of moneys due from them under the

union shop agreement, prolonged and expensive litigation might well be avoided. In an appendix to the judgment, the pertinent portions of the 1913 British Trade Union Act were set out.

To complete the picture of the situation in the United States, mention should be made of the Landrum-Griffin Act.<sup>100</sup> This did not amend Section 304 of the Taft-Hartley Act, nor did it amend Section 610 of the U.S. Criminal Code.<sup>101</sup> However, Section 501, dealing with fiduciary responsibility of officers of labour organizations, provides in subsection (a), in part, the following :

S. 501 (a). The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder,...

During the passage of the Act, Congress debated the meaning of subsection (a). The issue was raised whether Section 501 (a) would automatically preclude political contributions and expenditures.

However, Senator McClellan stated that it was never his idea to try to « curb the authority of the members of a union to do whatever the members want to do ». <sup>102</sup>

In discussing the same Section 501 (a), the then Senator Kennedy stated :

« Section 501 (a) recognizes that the special problems and functions of a labor organization be taken into consideration in determining whether union officers and other representatives are acting responsibly in connection with their statutory duties. The problems with which labor organizations are accustomed to deal are not limited to bread-and-butter unionism or to organization and collective bargaining

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(100) Labor-Management Reporting and Disclosure Act of 1959 (« Landrum-Griffin Act »), 73 Stat. 519, 29 U.S.C. ch. 7, sub-chapter II, para. 151-168.

(101) E.J. FILLENWARTH, « Politics and Labor Unions », *ibid.*, on p. 193.

(102) 105 Cong. Rec. 6526 (1959), referred to in E.J. FILLENWARTH, « Politics and Labor Unions », *ibid.*, on p. 193.



alone, but encompass a broad spectrum of social objectives as the union may determine.<sup>108</sup>

Fillenwarth<sup>104</sup> concluded that it appears reasonable to contend that Section 501 (a) of the Landrum-Griffin Act should have no effect whatsoever upon political contributions and expenditures, so long as such are approved by the members and officers of a labour union, and not otherwise contrary to law.

A question was raised whether the Court's decision regarding the use of union dues for political purposes under the union shop provisions of the Railway Labor Act would apply to the similar agreements concluded by the unions covered by the Taft-Hartley Act. The Taft-Hartley Act expressly granted to the states the right to control or prohibit the union shop (S. 14 (b)) and the « right-to-work » laws in the several states are applicable to employees covered by the Taft-Hartley Act.

In these states, no union shop is lawful and there can be no forced exaction of union dues. Therefore, it was argued that there could be no unlawful expenditures of dues for political purposes in these states that have « right-to-work » legislation. Under the *Street* decision, unions are apparently free to make expenditures for politics if members can voluntarily join or refuse to join, and under the Court decision in the *Allen* case, in the case of a union shop the expenditures of nondissenters' dues for political purposes are lawful. Consequently, it was argued that only in the states which permit the union shop can an employee in an industry covered by the Taft-Hartley Act have a right of action and the right to remedies given by the decisions of the Court under the Railway Labor Act. The argument in favour of application of the rulings under the Railway Labor Act to similar situations under the Taft-Hartley Act is based on the fact that, in the Taft-Hartley Act, there is no express authorization for union political expenditures and there is a similarity between the clause in the Taft-Hartley Act which authorizes the union shop agreements and the corresponding clause in the Railway Labor Act. On the other hand, it was pointed out that, when Congress passed the Taft-Hartley Act, it was aware that unions used dues for political activities and that Congress may have intended to limit this activity only to the extent of Section 304 of the Act, which made contributions and expendi-

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(103) 105 Cong. Rec. on p. 17,900, quoted by E.J. Fillenwarth, *ibid.*, on p. 193.

(104) E.J. FILLENWARTH, *ibid.*, on. p. 193.

tures by unions on behalf of candidates in federal elections a criminal offence, and that no other limitations were intended. So, the question as to whether the rulings in the *Street* case and the *Allen* case would apply to the union shop agreements under the Taft-Hartley Act remains open to argument. Since the Court's decisions under the Railway Labor Act were premised on the legislative history of that Act, probably they would not be binding in cases involving unions covered by the Taft-Hartley Act. And this issue will have to be settled by the courts on the basis of examination of the language and history of the Taft-Hartley Act in the same way as in the case of union shop agreements under the Railway Labor Act.<sup>105</sup>

### Canada

The impact of history and geography on the formation of the Canadian national identity has also been felt in the attitude of the Canadian trade union movement towards political action. Throughout the history of organized labour in Canada, we observe the crosscurrents of the American labour tradition of « rewarding friends and punishing enemies » within the traditional framework of the two-party system and the desire for direct political action by forming a distinctive political party on the model of the Labour Party in Great Britain.

A break with the traditional policies of organized labour of avoiding direct political action came when the Canadian Congress of Labour (formed in 1940), at its convention in 1943, endorsed the Co-operative Commonwealth Federation (C.C.F.) formed in 1932 as the « political arm » of labour. The resolution to this effect read :

Whereas in the opinion of this Congress, the policy and programme of the C.C.F. more adequately expresses the views of organized labour than any other party :

Be it therefore resolved that this Convention of the C.C.L. endorse the C.C.F. as the political arm of Labour in Canada, and recommend to all affiliated and chartered unions that they affiliate with the C.C.F.<sup>106</sup>

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(105) JAMES PARSONS, « Labor Law — Employee's Right not to support Political Candidates and Causes he opposes under Union Shop Agreements Authorized by Railway Labor Act », *The American University Law Review*, (1963) Vol 13, pp. 104-108, on pp. 107-8 ; « Union Shop Provision of the Railway Labor Act held not to Authorize use of Union Dues for Political Purposes », *Columbia Law Review*, Vol. 61 (1961), pp. 1513-1518, on p. 1518.

(106) H.A. LOGAN, *Trade Unions in Canada*, Toronto, the Macmillan Co. of C. Ltd., 1948, p. 555.

The endorsement of the C.C.F. as the « political arm of Labour » was reaffirmed at each C.C.L. convention until the formation of the Canadian Labour Congress (C.L.C.) in 1956.<sup>107</sup>

In 1958, the C.L.C. convention in Winnipeg adopted the historic resolution to work for the formation of a broadly based political movement in concert with the Co-operative Commonwealth Federation (C.C.F.), other sections of the labour movement, farm organizations, professional people and other liberally minded persons interested in basic social reform and reconstruction through the parliamentary system of government.<sup>108</sup>

After the 1958 convention, the C.L.C. played an important role in the formation of the New Democratic Party which came into being at the founding convention in 1961. The Congress, however, did not affiliate itself with the party, but encouraged its members to participate actively in the affairs of the N.D.P. and urged the unions affiliated with the C.L.C. to affiliate with the N.D.P.<sup>109</sup>

The constitution of the N.D.P. provides for two kinds of membership: individual and affiliated. The affiliated membership is open to trade unions, farm groups, co-operatives, women's organizations and other organizations. The per capita membership fee for affiliated organizations is five cents per member per month.<sup>110</sup>

The national convention which formed the New Democratic Party took place between July 31 and August 4, 1961. A few months earlier, in March 1961, the British Columbia Labour Relations Act Amendment Act<sup>111</sup> came into effect, which made a number of amendments to the provisions of the B.C. Labour Relations Act.<sup>112</sup> Among them was a new subsection (6) of Section 9.

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(107) EAMON PARK, « Labour's Political Diary », *Canadian Labour*, Vol. 6, No. 9, Sept. 1961, p. 21.

(108) STANLEY KNOWLES, *The New Party*, McClelland and Stewart Limited, 1961, pp. 19-20, 33, 127.

(109) CLAUDE JODOIN, « The C.L.C. and Politics », *Canadian Labour*, Vol. 6, No. 9, Sept. 1961, pp. 5-7 (Excerpts from the address of the C.L.C. president to the founding convention of the New Democratic Party, Ottawa, July 31, 1961).

(110) The Federal Constitution of the New Democratic Party, Article II, Article III, S. 2 (1).

(111) 1961 (B.C.) c. 31.

(112) R.S. B.C. 1960, c. 205.

Section 9 of the B.C. Labour Relations Act contains provisions regarding check-off of union dues. Subsection (1) provides that every employer shall honour a written assignment of wages to a trade union certified under the Act, except where the assignment is declared null and void by a judge or is revoked by the assignor. Subsection (2) sets out the form of the assignment for the purpose of securing to the union payment of initiation fees and membership dues. Subsection (3) provides for the remission each month by the employer to the union of the fees and dues deducted.

The new subsection (6) reads as follows :

S. 9 (6) (a) No employer and no one acting on behalf of an employer shall refuse to employ or to continue to employ a person and no one shall discriminate against a person in regard to employment only because that person refuses to make a contribution or expenditure to or on behalf of any political party or to or on behalf of a candidate for political office.

(b) No trade-union and no person acting on behalf of a trade-union shall refuse membership to or refuse to continue membership of a person in a trade union, and no one shall discriminate against a person in regard to membership in a trade-union or in regard to employment only because that person refuses to make or makes a contribution or expenditure, directly or indirectly, to or on behalf of any political party or to or on behalf of a candidate for political office.

(c) (i) *No trade-union and no person action on behalf of a trade-union shall directly or indirectly contribute to or expend on behalf of any political party or to or on behalf of any candidate for political office any moneys deducted from an employee's wages under subsection (1) or a collective agreement, or paid as a condition of membership in the trade-union.*

(ii) Remuneration of a member of a trade-union for his services in an official union position held by him while seeking election or upon being elected to public office is not a violation of this clause.

(d) Notwithstanding any other provisions of this Act or the provisions of any collective agreement, unless the trade-union delivers to the employer who is in receipt of an assignment under subsection (1) or who is party to a collective agreement, a statutory declaration, made by an officer duly authorized in that behalf, that the trade-union is complying with and will continue to comply with clause (c) during the term of the assignment or during the term of the collective agreement, neither the employer nor a person acting on behalf of the employer shall make any deduction whatsoever from the wages of an employee on behalf of the trade-union.

(e) Any moneys deducted from the wages of an employee and paid to a trade-union that does not comply with this subsection are the property of the employee, and the trade-union is liable to the employee for any moneys so deducted. (Emphasis added.)

The prohibition contained in S. 9 (6) (c) (i) is framed in the widest terms and does not leave any loop-holes. It applies to federal as well as provincial politics. A trade union cannot use, either directly or indirectly, to support a political party or a candidate for political office, any union dues or initiation fees collected from an employee either under statutory check-off assignment, or under check-off arrangement in a collective agreement, or paid as a condition of membership in a trade union, whether or not there is a check-off. The provisions contained in clauses (d) and (e) of subsection (6) are ancillary and are designed to secure obedience to the prohibition contained in clause (c).<sup>113</sup>

Another province which enacted provisions restricting the use of union dues for political purposes is Prince Edward Island. The Industrial Relations Act of 1962<sup>114</sup> contains such a provision in the part of the Act dealing with check-off of union dues.

Section 48, in subsection (1), provides that the parties to a collective agreement may include in the agreement a provision for check-off of union dues.

Subsection (2) provides that, where there is no provision for check-off in the collective agreement, such deductions shall be made by the employer only

- a) if the officers of such trade union duly authorized by its members make application to the Minister of Labour for the taking of a vote to ascertain the wishes of the employees of such industry in respect of such deductions; and
- b) if, upon a vote taken by a ballot at the times and under conditions fixed by the Minister of Labour, a majority of the employees in the unit vote in favour of the making of such deductions; and
- c) if the individual employee being a member of such trade union makes to the employer a signed written request that such de-

(113) JUDSON, J. (1964) 41 D.L.R. (2d), on p. 19.

(114) 1962, Ch. 18.

ductions be made from the wages due to him, indicating the name of the person to whom such deductions shall be paid.

Paragraph (d) provides that any written request made by the employee under subsection (c) may not be revoked within six months from the date thereof.

Subsection (3) provides :

(3) Notwithstanding anything contained in subsections (1) and (2) hereof, no employer shall be required to deduct any amount which the employee, or the trade union, shall have assigned to the support of, or to be paid to, any political party, and any written authorization for deduction to be filed by the employee with the employer shall certify that no part of the amount required to be deducted shall be used by him, or by the trade union, for that purpose.

It would appear from the wording of subsection (3) that, when the check-off is operating under provision of a collective agreement (subsection (1)) the employer is not bound to deduct that part of union dues of an employee which the employee or the trade union assigned to the support of, or to be paid to, any political party.

The second part of subsection (3) seems to be concerned with the situation where union dues are deducted by the employer under subsection (2), that is, upon a written authorization filed by the employee with an employer. Unless such authorization contains a declaration that no part of the deducted dues shall be used for the support of political parties, such authorization is ineffective.

It would seem that, in Prince Edward Island, the prohibition with regard to the use of union dues for political purposes is restricted only to the dues collected through the check-off arrangement, whether statutory or under collective agreement; otherwise, the prohibition does not apply.

The prohibition under the P.E.I. legislation does not go as far as the prohibition under the Labour Relations Act in British Columbia. Under the latter Act, political contributions are prohibited from moneys derived not only from the check-off, but also from moneys paid as a condition of membership, whether or not there is a check-off; the B.C.

Act only allows a voluntary collection for political purposes made outside the machinery of the Act and the collective agreement.<sup>115</sup>

The British Columbia legislation, prohibiting the use of union dues to support political parties or candidates for political office, was challenged in the courts in *Oil, Chemical and Atomic Workers International Union, Local 16-601 v. Imperial Oil Limited*<sup>116</sup> on the issue of constitutionality.

The circumstances of the dispute were as follows :

By the terms of the collective agreement between Local 16-601 and Imperial Oil Limited, the Company was obliged to make monthly wage deductions of union fees and membership dues. When the union refused to give the statutory declaration required by Section 9 (6) (d) of the Act, the employer in turn declined to make the wage deductions. The union thereupon brought action for specific performance of the check-off clause of the collective agreement and a declaration that it was not within the jurisdiction of the Provincial Legislature to enact the prohibitive measures contained in subsection 6.

Under the Canadian Constitution, the Parliament of Canada and provincial Legislatures are sovereign, within the limits of subject and area assigned to them by the British North America Acts (save that the Dominion Government can disallow any provincial Act within one year). The union's challenge to the constitutional validity of Section 9 (6) (c) of the Labour Relations Act was therefore based on the contention that subsection 6 (c) was beyond the powers of the British Columbia legislature.

Mr. Justice Whittaker of the B.C. Supreme Court upheld the constitutional validity of the subsection. He ruled that it was *intra vires* as being legislation relating to property and civil rights in British Columbia under Section 92 (13) of the B.N.A. Act.<sup>117</sup>

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(117) *Oil, Chemical and Atomic Workers International Union, Local 16-601 v. Imperial Oil Limited* (1961) 36 W.W.R., Part 9, p. 385.

(115) JUDSON, J. (1964) 41 D.L.R. (2d), on p. 17.

(116) (1961) 36 WWR, Part 9, p. 385; (1962) 33 DLR (2d) 732; (1964) 41 DLR (2d) p. 1.

This decision was affirmed by the unanimous judgment of the Court of Appeal of British Columbia.<sup>118</sup> From that judgment, the union appealed to the Supreme Court of Canada.<sup>119</sup>

The Supreme Court of Canada, by a majority of four to three, dismissed the union appeal and upheld the constitutional validity of Section 9 (6) (c) on the same ground as the courts below, that the impugned legislation was valid provincial legislation in relation to property and civil rights. In some respects, the stand taken by the Supreme Court of Canada resembled that of the United States courts, in some ways it differed.

#### THE ISSUE OF CONSTITUTIONALITY

Basic constitutional issues were different. The Constitution of the United States contains the Bill of Rights (the first ten amendments), which guarantees basic civil liberties and prohibits any legislation or action on the part of federal or state authorities that would infringe on, *inter alia*, freedom of religion, speech, of the press and of assembly. The Supreme Court of the United States, being the supreme guardian and interpreter of the Constitution, may declare any federal or state legislation unconstitutional as being contrary to the Bill of Rights.

The British North America Act does not contain a Bill of Rights or any explicit guarantees of civil liberties. As already noted, Parliament and the Legislatures are sovereign within their spheres. Nothing is beyond the reach of one or the other (or both together).<sup>120</sup> Whatever freedoms Canadians enjoy may be reinforced or reduced, or even taken away by Parliament or the provincial Legislatures.<sup>121</sup>

(118) *Oil, Chemical and Atomic Workers International Union, Local 16-601 v. Imperial Oil Ltd. and Attorney-General of British Columbia* (1962) 33 D.L.R. (2d) p. 732.

(119) *Oil, Chemical and Atomic Workers International Union v. Imperial Oil Ltd.* (1964) 41 D.L.R. (2d) p. 1.

(120) See BORA LASKIN, *Canadian Constitutional Law*, Second Edition, The Carswell Company Ltd., 1960, on pp. 938-944.

(121) A dissent from this doctrine of absolute legislative supremacy was stated by Mr. Justice Abbott in *Switzman v. Elbling* [(1957) 7 D.L.R. (2d), 337] where he stated, at p. 371 :

... the Canadian constitution being declared to be similar in principle to that of the United Kingdom, I am also of opinion that as our constitutional Act now stands, Parliament itself could not abrogate this right of discussion and debate. The power of Parliament to limit it is, in my view, restricted to such powers as may be exercisable under its exclusive legislative jurisdiction with respect to criminal law and to make laws for the peace, order and good Government of the nation.



« Property and civil rights in the Province » were assigned to the provincial Legislatures. But there is judicial controversy over just what « civil rights » covers. Some judges have said that the term does not include freedom of worship or freedom of speech, and that such matters are within the jurisdiction of the Parliament of Canada.<sup>122</sup>

So the issue the Canadian courts had to decide in *Oil, Chemical and Atomic Workers International Union, 16-601 v. Imperial Oil Limited*, was whether the prohibitive clauses contained in the B.C. Labour Relations Act were *intra vires*.

The union claimed that the impugned legislation was *ultra vires* because it related to the subject of federal elections and curtailed the fundamental rights of Canadian citizens, which are essential to the proper functioning of parliamentary institutions; and because the legislation affected the political activity of trade unions and the right to curtail such activities was beyond the powers of a provincial Legislature.

On the other hand, the Attorney-General of British Columbia argued that the legislation limits only the power to use certain specified funds for particular purposes; that this limitation is valid legislation in respect of the field of labour relations and the Legislature of British Columbia has the authority to enact such legislation as property and civil rights in the province.

The majority of the Supreme Court of Canada like the courts below, held that Section 9 (6) (c) was *intra vires*, as being legislation in relation to civil rights of individual employees. The main grounds for this decision were as follows : In the decision in the case of *Toronto Electric Commissioners v. Snider* (1925) 2 D.L.R. 5, (1925) A.C. 396, it was established beyond doubt that the field of legislation in relation to labour relations in a province is within the sphere of provincial legislative jurisdiction coming under Section 92 (13) — Property and Civil Rights in the Province.<sup>123</sup> Under the Labour Relations Act, a certified trade union is a bargaining agent for all employees in a defined unit

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(123) Except for works, undertakings or business within the legislative authority of the Parliament of Canada.

(122) *Re Alberta Legislation* (1938) 4 D.L.R. 433; *Saumur v. City of Quebec and Attorney-General of Quebec* (1953) 4 D.L.R. 641; *Switzman v. Elbling* (1957) 7 D.L.R. (2d), 337.

and may, through a collective agreement, compel contributions to its funds by employees who are not members (the Rand Formula), and may even make membership in a union a condition of employment. In the opinion of the majority of the Court, the Legislature which has granted the right of check-off to a union under Section 9 (1) of the Labour Relations Act, may limit it as it has done under Section 9 (6) (c) and may equally limit the effect and use of a check-off under a collective agreement. As Mr. Justice Martland stated :

The Labour Relations Act has materially affected the civil rights of individual employees by conferring upon certified trade unions the power to bind them by agreement and the power to make agreements which compel membership in a union. Such legislation falls within the powers of the Legislature of the Province of British Columbia to enact, as being labour legislation, and, therefore, relating to property and civil rights in the Province. The legislation which is under attack in the present proceedings, in my opinion, does nothing more than to provide that the fee paid as a condition of membership in such an entity by each individual employee cannot be expended for a political object which may not command his support. That individual has been brought into association with the trade union by statutory requirement. The same Legislature which requires this can protect his civil rights by providing that he cannot be compelled to assist in the financial promotion of political causes with which he disagrees. Such legislation is, in pith and substance, legislation in respect of civil rights in the Province.<sup>124</sup>

Mr. Justice Ritchie expressed similar views and added that, even if it could be said that Section 9 (6) (c), (d) had any effect on political elections, the effect could only be incidental and would not alter the character of such provisions as being in relation to labour relations and not in relation to federal or provincial elections.<sup>125</sup>

Mr. Justice Judson, in his dissenting opinion, held that the questioned clauses do not fall within the field of labour relations but are in relation to the political activity of trade unions and that the subject matter of the impugned legislation concerns political and constitutional rights, not property and civil rights. Further, he added that, in his opinion, it would be a grave and unwarranted extension of principle to hold that the decision in *Toronto Electric Commissioners v. Snider, supra*, enables the Province to control and curtail the political contributions of the

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(124) *Oil, Chemical and Atomic Workers International Union v. Imperial Oil Ltd.* (1964) 41 D.L.R. (2d) 1, on pp. 11-12.

(125) *Ibid.*, on pp. 22-23.

trade unions. Any such extension, in his view, would be in direct conflict with the fundamental bases of the decision of the Supreme Court in *Switzman v. Elbling*,<sup>126</sup> (1957) 7 D.L.R. (2d) 337, where all the judges, in the majority, were of the opinion that the legislation there in question was outside the provincial power. Five members of the Court held that it was outside the provincial power because it was legislation in relation to criminal law. Three judges held that it was not within any of the powers specifically assigned to the Provinces and that it constituted an unjustifiable interference with freedom of speech and expression essential under the democratic form of government established in Canada.

Further, Mr. Justice Judson held that the legislation in question is directly related to elections, including federal elections, and that the Provincial Legislature has no power to restrict the right of any person or organization within the province to make contributions at federal elections and to federal candidates.<sup>127</sup>

Mr. Justice Abbott, in his dissenting opinion, stated that the purpose of Section 9 (6) (c) is to prohibit political contributions made directly or indirectly by one class of voluntary organization — a trade union — out of moneys received as a condition of membership, whether or not there is a check-off. In his view, such legislation cannot be supported as being in relation to property and civil rights in the Province, nor can it be said to be in relation to matters of a merely local or private nature in the Province.<sup>128</sup>

#### THE ISSUE OF THE NATURE OF TRADE UNIONS

Another issue considered by the Supreme Court of Canada and by the courts in the United States in connection with union expenditure for the political purposes, was whether a trade union has complete autonomy in disposition of its funds, or whether such autonomy could be curtailed by statutory provisions. In other words, is a trade union a private organization with complete autonomy of action or is it basically a creation of statute, endowed with statutory rights and obligations for the purpose of performing, as a sort of governmental agency, certain specific aims of governmental policy?

(126) In this decision, the Supreme Court of Canada ruled *ultra vires* the Quebec Communistic Propaganda Act (*An Act to Protect the Province against Communistic Propaganda*), R.S.Q. 1941, ch. 52.

(127) *Oil, Chemical . . . Ibid.*, on pp. 18, 19, 20.

(128) *Ibid.*, on p. 5.

The position taken in this respect by the Supreme Court of Canada and the courts in the United States was basically the same — that trade unions are not entirely autonomous organizations, but act within a statutory framework designed to make them perform a definite aim of governmental policy, namely to secure industrial peace.

Their purpose is to stabilize industrial relations through the machinery of collective bargaining. A trade union is able to fulfil its social function by becoming a bargaining agent for the unit of employees who are not all members of the union. Under statutory provisions, the unions are able to enter into agreements with regard to union security, such as union shop or check-off of union dues. If the membership in the union is not entirely free, but could be imposed as a condition of employment, then the union cannot claim complete autonomy as to the disposition of funds exacted from union members as a condition of employment, and the state, through legislative measures, or the courts in interpreting law, may impose some limitations as to the use of the exacted funds and provide some safeguards for the rights of the dissenting minorities.

Mr. Justice Black of the U.S. Supreme Court, in the *Street* case, *supra*, in his dissenting opinion, noted that a union or other private group may spend its money for political causes if its members voluntarily join it and can voluntarily get out of it. Then the dissenter has no right except to disagree with the majority and to leave the organization if he wishes to do so. But the situation is different « when a federal law steps in and authorizes such a group to carry on activities at the expense of persons who do not choose to be members of the group as well as those who do ». <sup>129</sup> Then such a law cannot be used in a way that abridges the specifically defined freedoms of the First Amendment. Further, he stated :

Unions composed of a voluntary membership, like all other voluntary groups, should be free in this country to fight in the public forum to advance their own causes, to promote their choice of candidates and parties and to work for the doctrines or the laws they favor. But to the extent that Government steps in to force people to help espouse the particular causes of a group, that group — whether composed of railroad workers or lawyers — loses its status as a voluntary group. <sup>130</sup>

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(129) *Machinists v. Street*, *ibid.*, on p. 24,687.

(130) *Ibid.*, on p. 24,690.

It is significant that Mr. Justice Martland of the Supreme Court of Canada, when considering the objects of the B.C. Labour Relations Act, quoted Mr. Justice MacDonald who, in *Re Labour Relations Board (N.S.)* (1952) 3 D.L.R. 42, stated at pp. 57-8 the following :

To my mind the object of the Act is to facilitate collective bargaining and stabilize industrial relations by enabling a union to establish before the Board its ability to represent a group of employees ; and, with this controversial question settled, to require the employer, upon notice from the union, to negotiate with it and (with the aid of conciliation services), to promote the conclusion of an agreement which shall be legally enforceable ; and *generally to ensure a greater measure of industrial peace to the public*. Certification is, of course, not necessary for collective bargaining, but *the policy of the Act undoubtedly is to promote it as a means to more orderly bargaining*. (Emphasis added.)

Further, Mr. Justice Martland noted that the instrument for collective bargaining is a trade union as defined in the Act and the primary purpose of the Act is, therefore, « to spell out the respective rights and obligations of the employer, the employee and the certified trade union, *each of which is subject to its mandatory powers.* »<sup>131</sup>

Finally, Mr. Justice Martland stressed the fact that, as the result of the Supreme Court decision in the *Therien* case, a trade union, when it becomes certified as a bargaining agent, becomes a legal entity. And when the Legislature clothes that entity with wide powers for the exaction of membership fees, by methods which previously it did not, in law, possess, it can set limits to the objects for which funds so obtained may be applied.<sup>132</sup>

The implication of this statement is clear : that a trade union, being a legal entity with rights and obligations defined by the statutes and with membership that may be enforced, is not a private organization and cannot claim complete autonomy regarding the management and spending of its income, particularly in connection with the spending of funds collected from the exacted dues.

#### THE ISSUE OF THE RIGHT OF THE UNIONS TO POLITICAL ACTIVITIES

The Supreme Court of Canada (as the courts in the United States) upheld the union right to political activity and to support financially political causes.

(131) *Oil, Chemical . . . Ibid.*, on p. 9 (emphasis added).

(132) *Ibid.*, on p. 13.

Mr. Justice Martland, expressing the views of the majority, stressed the fact that the impugned legislation did not affect the right of individual union members to engage in any form of political activity. He also emphasized that the legislation does not prevent a trade union as such from engaging in political activities. It does not prevent a trade union from soliciting funds from its members for political purposes, or limit in any way, the expenditure of funds so raised. Also, he stressed that the legislation does not prevent the use of funds, which are obtained in particular ways, from being used for political purposes. He pointed out that the issue before the Court was not the right to engage in political activity but the right to use funds obtained through the check-off or as a condition of membership in a trade union for the support of a political party or candidate. He added :

A trade union, when it becomes certified as a bargaining agent, becomes a legal entity (*International Brotherhood of Teamsters et al. v. Therien*, 22 D.L.R. (2d) 1, [1960] S.C.R. 265). When the Legislature clothes that entity with wide powers for the exaction of membership fees, by methods which previously it did not, in law, possess, it can set limits to the objects for which funds so obtained may be applied. Legislation of this kind is not in my view, a substantial interference with the working of parliamentary institutions.<sup>133</sup>

The majority of the Supreme Court concurred with Mr. Justice Martland that the Legislature which has by statute brought employees into association with a trade union may protect their civil rights by forbidding their compelled assistance in the promotion of political causes with which they may disagree, and therefore may forbid use for political purposes of money paid as a condition of membership in the union.

#### THE ISSUE OF THE MAJORITY RIGHTS VERSUS THE RIGHTS OF INDIVIDUALS

One of the basic issues facing a democratic society is the relationship of the individual to the group; the problem of reconciling the authority and corporate interests of the group with the dignity and separate personality of individuals. Democracy is the system of majority rule and minority rights, and to maintain necessary balance between them seems to be the very essence of a democratic society. The need for reconciling the competing interests of the individual and the group

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(133) *Ibid.*, p. 13.

is a problem of the utmost importance in the area of union political activity. The question is, can the political rights of both the union majority and its dissenting minority be honoured simultaneously?<sup>134</sup>

In the United States, the judges of the Supreme Court, in the cases discussed above, felt the necessity of reconciling the rights of minorities with the will of the majority. Mr. Justice Douglas, in his dissenting opinion in *U.S. v. U.A.W.*, *supra*, questioning the constitutionality of Section 304 of the Taft-Hartley Act, expressed the view that the unions operate under the rule of the majority and, if there is a need to protect the rights of the minority, this should not be done by « burning down the house to roast the pig ». « If minorities », he added, « need protection against the use of union funds for political speech-making, there are ways of reaching that end without denying the majority their First Amendment rights ».<sup>135</sup> At this point, Mr. Justice Douglas referred to the British system of « contracting out ».

In the *Street* case, *supra*, where the Court was concerned with the protection of minority rights under union shop agreements, Mr. Justice Brennan, in rendering the judgment for the majority, also expressed concern for the rights of majorities. He stated :

For the majority also has an interest in stating its views without being silenced by the dissenters. To attain the appropriate reconciliation between majority and dissenting interests in the area of political expression, we think the courts in administering the Act should select remedies which protect both interests to the maximum extent possible without undue impingement of one on the other.<sup>136</sup>

The Court sought to reconcile the rights of majorities with the protection of minorities by applying the British system of « contracting out ».

The ban on the use of union dues for political purposes contained in Section 9 (6) (c) of the B.C. Labour Relations Act is absolute. Apparently, in order to protect the rights of individuals not to be forced to contribute to political parties or causes that they may disapprove of, the legislation disregarded the rights of the majority that might be in favour

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(134) ALISTER McALISTER, « Labor, Liberalism and Majoritarian Democracy », *Ibid.*, on p. 661.

(135) *U.S. v. U.A.W.*, *Ibid.*, p. 93,454.

(136) *International Association of Machinists v. Street*, *Ibid.*, on p. 24,880.

of such contributions. The aim of the legislation to protect individual rights of dissenting minorities was stressed before the Supreme Court of Canada in the arguments presented in support of it. The same solicitude for the rights of dissenting minorities not to be forced to support political causes which they may disapprove of was voiced in the majority ruling of the Court. However, the basic weakness of the legislation in question is the absence of concern for the rights of the majority and the unwillingness on the part of the legislator to provide for a reasonable compromise which would secure the legitimate rights of the majority while protecting at the same time the rights of the dissenting minorities.

To sum up, the situation in Canada in relation to the prohibition of use of union dues for political purposes is as follows :

Out of eleven jurisdictions (federal and ten provinces) only British Columbia and Prince Edward Island enacted prohibitive measures in this matter. The prohibition contained in the Prince Edward Island Industrial Relations Act of 1962 seems to be restricted to preventing the use for political purposes only of the union dues collected through check-off arrangement, whether by statute or by collective agreement.

On the other hand, in British Columbia, the prohibition contained in the 1961 amendment to the Labour Relations Act on the use of union dues for political purposes is total and applies to all union dues and initiation fees whether collected through the check-off or paid directly to the union as a condition of membership. The prohibition applies to federal and provincial politics. The only money the unions may expend for political purposes is that obtained from union income other than union dues, or money collected from union members on a voluntary basis.

## **COTISATIONS SYNDICALES ET CONTRIBUTIONS POUR FINS POLITIQUES — COMPARAISON ENTRE LA GRANDE-BRETAGNE, LES ÉTATS-UNIS ET LE CANADA**

### **GRANDE-BRETAGNE**

Par la décision qu'elle a rendue dans la cause Osborne (1910), la Chambre des Lords de Grande-Bretagne refusait aux syndicats ouvriers le droit de faire de la politique, d'appuyer financièrement les députés au Parlement et les candidats



aux élections législatives et à d'autres charges publiques. La Chambre des Lords s'est surtout fondée sur les deux raisons suivantes pour rendre sa décision :

- (a) une interprétation stricte de la définition de l'expression « syndicat ouvrier » apparaissant dans la Loi de 1876 sur les syndicats ouvriers (Trade Union Act), où l'on ne mentionne pas l'action politique comme un des buts des syndicats ouvriers ;
- (b) la protection des droits des syndiqués dissidents que la majorité ne peut pas obliger à appuyer financièrement des causes politiques qu'ils n'endosseraient pas.

Cette interdiction fut levée avec l'adoption de la Loi de 1913 sur les syndicats ouvriers. Cette loi permettait aux syndicats d'ajouter l'action politique aux buts des syndicats prévus dans la loi et contenait une disposition relative à la création d'une caisse d'action politique afin d'aider financièrement les députés au Parlement et les candidats aux élections législatives et à d'autres charges publiques. On sauvegardait les droits des minorités dissidentes avec la formule dite « contracting out ». Tout adhérent en désaccord avec les buts politiques de la majorité pouvait être exempté de contribuer au fonds politique du syndicat au moyen d'un avis d'exemption. En 1927, on vota la Loi sur les conflits du travail et les syndicats ouvriers dans laquelle la formule « contracting out » était remplacée par la formule « contracting in ». Selon cette dernière formule, il était interdit à tout syndicat d'exiger des contributions pour fins politiques, à moins que l'adhérent ne consente par écrit à les verser, même dans le cas où les buts politiques et les règles relatives à la caisse d'action politique du syndicat avaient été adoptés par la majorité.

La loi de 1946 sur les conflits du travail et les syndicats ouvriers abrogeait la loi de 1927, de sorte que les dispositions de la loi de 1913 étaient rétablies intégralement et la procédure « contracting out » était réintroduite.

## ETATS-UNIS

### *La Loi Taft-Hartley*

En vertu de l'article 304 de la Loi Taft-Hartley (qui a été inséré plus tard dans le Code criminel des Etats-Unis à l'article 610), il devenait illégal pour les entreprises et les syndicats ouvriers de verser des contributions ou de faire des dépenses concernant les élections fédérales. Cette interdiction vise les élections présidentielles et vice-présidentielles, l'élection des sénateurs, des députés, des délégués ou commissaires résidants du Congrès, les élections primaires, les congrès et les réunions politiques. On exprime des doutes sur la validité constitutionnelle de cette disposition ; on prétend qu'elle enfreint la garantie constitutionnelle de la liberté d'expression et de la presse, contenue dans le Premier amendement de la Constitution des Etats-Unis.

Les tribunaux ont statué que les interdictions contenues dans l'article 304 ne visaient que les caisses syndicales, désignées sous le nom de caisses générales, qui sont alimentées par les cotisations syndicales, normales et spéciales, et ne s'appliquaient pas aux contributions volontaires recueillies chez les adhérents pour des fins politiques, en sus des cotisations syndicales normales.

En plus, les tribunaux ont décidé qu'il était légal d'utiliser les fonds des caisses générales pour les fins suivantes :

- a) donner un appui aux candidats aux élections fédérales dans les périodiques réguliers des syndicats distribués principalement aux adhérents ;
- b) faire de la publicité dans les journaux, à la radio, à la télévision, dans le cas de petits syndicats locaux qui ne distribuent pas de journal à leurs adhérents, pour appuyer certains candidats ou s'y opposer, à la condition que ces moyens de communications soient la façon normale pour le syndicat de faire connaître ses avis aux adhérents mais à la condition que ces dépenses soient dûment autorisées et votées par les membres ;
- c) faire inscrire des votants ou les transporter aux bureaux de scrutin le jour des élections.

De plus, il a été décidé que les dépenses de caractère politique étaient légales lorsque les sommes utilisées avaient été autorisées volontairement par les adhérents qui permettaient qu'on utilise une certaine fraction des cotisations pour des fins politiques.

#### *La Loi concernant les cheminots (Railway Labor Act)*

Les tribunaux des Etats-Unis ont été saisis du problème de la protection des droits des minorités dissidentes surtout au sujet des conventions qui, conclues en vertu de la Loi concernant les cheminots, imposent au travailleur l'obligation d'adhérer à un syndicat dans un certain délai. Le paragraphe 11, article 2, de la Loi prévoit qu'un transporteur et un syndicat ouvrier peuvent conclure une convention collective obligeant tous les employés à adhérer au syndicat dans un délai spécifié. Le paragraphe 11, de l'article 2, soulevait au fond deux questions, à savoir : (1) si les clauses de sécurité syndicale relatives à l'obligation d'adhérer à un syndicat après un certain délai étaient constitutionnellement valides ; (2) si les cotisations prélevées en vertu des conventions prévoyant cette obligation pouvaient être utilisées par le syndicat pour des fins politiques ou des causes auxquelles certains adhérents pourraient s'opposer. La Cour suprême des Etats-Unis a soutenu la validité constitutionnelle du paragraphe 11, de l'article 2, comme étant pour le Congrès un exercice régulier des pouvoirs que lui confère la Clause sur le commerce. La Cour a aussi soutenu que les dispositions de la loi concernant l'obligation d'adhérer n'enfreignaient pas le droit qu'ont les employés, selon la Constitution, à la liberté de conscience, d'association ou d'opinion.

En ce qui a trait à la question de savoir si les cotisations syndicales prélevées en vertu des dispositions relatives à l'adhésion obligatoire à un syndicat pourraient être utilisées pour des fins politiques, la Cour suprême des Etats-Unis a décidé que les syndicats ont droit de faire de la politique et qu'ils ont droit d'utiliser pour fins politiques les cotisations syndicales versées par les adhérents qui ne s'opposent pas d'une façon expresse à cette utilisation. Par contre, afin de sauvegarder les droits des dissidents, la Cour suprême des Etats-Unis a décidé qu'on devait remettre, aux dissidents qui s'opposent d'une façon expresse à cet usage, la fraction de leurs cotisations qui servirait aux fins mentionnées et qu'on devait par la suite déduire cette fraction de leurs cotisations. En outre, la Cour suprême a suggéré aux syndi-

cats, en attendant l'adoption d'une loi concernant cette question, de mettre en vigueur un système volontaire d'un genre « *contracting out* » semblable à celui qui existe en Grande-Bretagne en vertu de la Loi des syndicats ouvriers (1913).

#### CANADA

En 1961 était votée la Loi modificatrice de la loi de la Colombie-Britannique sur les relations ouvrières où figurent un certain nombre de modifications de la Loi de la Colombie-Britannique sur les relations ouvrières. Parmi ces modifications, il y en a une qui stipule qu'un syndicat ouvrier ne peut utiliser, ni directement ni indirectement, pour appuyer un parti politique ou un candidat à une charge publique, toute cotisation syndicale ou droit d'initiation obtenus d'un travailleur, soit par un précompte conforme aux statuts ou par un précompte prévu dans une convention collective, soit comme versement nécessaire pour pouvoir adhérer à un syndicat ouvrier, qu'il y ait eu ou non précompte. Cette interdiction vise la politique fédérale autant que la politique provinciale.

Dans l'Île du Prince-Edouard, la Loi de 1962 sur les relations industrielles contient des dispositions restreignant l'utilisation des cotisations syndicales à des fins politiques. Cependant, il semble que cette restriction n'aille pas aussi loin que celle que pose la Loi de la Colombie-Britannique sur les relations industrielles et qu'elle se limite au cas des cotisations retenues par précompte, soit statutaire, soit en vertu d'une convention collective ; dans les autres cas l'interdiction ne s'applique pas.

La législation de la Colombie-Britannique interdisant l'usage des cotisations syndicales pour appuyer un parti politique ou un candidat à une charge publique, a été remise en question dans la cause *Syndicat international des travailleurs des industries pétrolières, chimique et atomique, local 16-601, v. Imperial Oil Limited* pour la raison que ladite législation aurait dépassé les pouvoirs de la législature de la Colombie-Britannique. Les tribunaux (y compris la Cour suprême du Canada) ont décidé que l'interdiction était dans la limite des statuts puisque cette législation concerne la propriété et les droits civils en Colombie-Britannique en vertu de l'article 92(13) de l'Acte A.B.N.

La Cour suprême du Canada a examiné un autre point en litige, à savoir si un syndicat ouvrier est complètement libre de disposer de ses fonds comme il l'entend ou bien si son autonomie peut être restreinte par des dispositions légales. Sous ce rapport, la Cour a décidé que les syndicats ouvriers ne sont pas des organismes complètement autonomes, mais qu'ils exercent une action au sein des cadres juridiques conçus afin de leur faire remplir un but précis de la politique gouvernementale, c'est-à-dire afin d'assurer la paix industrielle. Lorsqu'un syndicat ouvrier acquiert une personnalité légale après avoir été accrédité et lorsque l'adhésion à un syndicat peut être posée comme une condition d'emploi, alors celui-ci ne peut s'attendre à pouvoir disposer à sa guise des sommes exigées de ses membres de sorte que l'Etat peut, par des mesures législatives, imposer des restrictions quant à l'usage des sommes exigées.

Du reste, la Cour suprême du Canada a confirmé le droit des syndicats de faire de l'action politique et d'appuyer financièrement des causes politiques. De

l'avis de la Cour, cette législation contestée n'empêche pas un syndicat ouvrier de solliciter des fonds de ses membres pour des fins politiques ou d'utiliser ces sommes pour des fins politiques. Le point en litige devant les tribunaux n'était pas le droit de faire de la politique, mais le droit de se servir des sommes perçues par précompte ou comme condition d'appartenance syndicale pour appuyer un parti politique ou un candidat. La Cour a statué que l'assemblée législative, qui a par une loi, amené des travailleurs à se grouper en un syndicat ouvrier, peut protéger leurs droits civils en empêchant qu'ils soient obligés de contribuer aux activités politiques qu'ils n'endossent pas et peut par conséquent interdire l'usage à des fins politiques de sommes perçues comme condition d'appartenance syndicale.

#### LA QUESTION DES DROITS DE LA MAJORITÉ CONTRE LES DROITS DES PARTICULIERS

En démocratie, c'est la majorité qui gouverne mais les minorités ont des droits ; il semble bien qu'un équilibre nécessaire entre ces éléments constitue l'essence d'une société démocratique. Dans le domaine de l'action politique des syndicats et, particulièrement, en ce qui concerne l'emploi des cotisations syndicales pour des fins politiques, il s'agit de savoir si on peut respecter à la fois les droits politiques de la majorité syndicale et ceux des dissidents minoritaires.

En Grande-Bretagne, la solution au problème du maintien des droits de la majorité, tout en protégeant les droits des minorités dissidentes, a été trouvée au moyen de la Loi de 1913 sur les syndicats ouvriers par la formule « *contracting out* ».

Aux Etats-Unis, les tribunaux ont essayé de concilier les droits de la majorité avec ceux de la minorité, en appliquant le système britannique « *contracting out* ».

Au Canada, la Loi de la Colombie-Britannique sur les relations ouvrières prononce une interdiction absolue d'utiliser les cotisations syndicales à des fins politiques. Apparemment, afin de protéger les droits des particuliers, pour qu'ils ne soient pas obligés de contribuer des sommes à des partis politiques et à des causes qu'ils n'endossent pas, la législation n'a pas tenu compte des droits de la majorité qui pouvait approuver de telles contributions. Le manque de préoccupation pour les droits de la majorité et le refus du législateur de trouver une formule de compromis raisonnable, qui assurerait les droits légitimes de la majorité tout en protégeant les droits des minorités dissidentes, semblent être à la base de la faiblesse de la législation en question.