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Article 8

Labor Law - Service of Process on Unincorporated Unions

William P. McEniry

RECENT DECISIONS

Labor Law — Service of Process on Unincorporated Unions — The plaintiff, a train conductor and member of defendant union, commenced a suit against the defendant to recover damages alleged to have resulted from a violation of his rights as a member of the defendant union. The Brotherhood of Railroad Trainmen was an unincorporated voluntary association. It further operated an insurance department as a collateral activity, this section being incorporated under the laws of Ohio. Upon commencement of the action a summons was issued directing the sheriff of Dawes County, Nebraska, to notify the "Brotherhood of Railroad Trainmen" that it had been sued. The sheriff's return showed that the summons was served by leaving a copy at its usual place of doing business in the county, with the secretary-treasurer of the defendant association. The return further recited that the summons was further served by delivering a copy to its president, the Director of the Department of Insurance, and to the Auditor of Public Accounts. The defendant appeared specially and objected to the jurisdiction of the court over the person of the defendant. *Held:* That in the absence of a statute authorizing such procedure, an unincorporated society or association could not be sued by its name in Nebraska as an entity, and that no one of the services recited in the sheriff's return gave the court jurisdiction of the person of defendant. *Hurley v. Brotherhood of Railroad Trainmen* 25 N.W. (2d) 29 (Nebraska, 1946).

In cases involving the suability of a union, one of the most consistently quoted maxims is that at common law, an unincorporated association cannot ordinarily sue or be sued in its own name.[1] This rule was adopted by the court in the principal case. It has been said "that the real reason for the decisions (that unincorporated associations are not legal entities separate from their members) is the conclusion of the courts that to sue or be sued in the association name is exclusively 'corporate' legal relations, which will not be accorded to the associates in the absence of grant from the sovereign."[2] This is the view in most states in the absence of enabling statutes.[3] Admitting that most state legislatures have not passed such statutes, it appears that they all have recognized in many other laws the existence of such unincorporated unions as entities, and it can be argued that an inference is created thereby that the legislatures in dealing

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[1] Green County Law Library Assoc. v. Curlett, 63 N.E. (2d) 455 (1945).
[2] "Unincorporated Assoc. as Parties to Actions," 33 Yale Law Journal 394 at page 400 (1924).
[3] Milam v. Settle, 32 S.E. (2d) 269 (W.Va. 1944); Baskins v. United Mine Workers, 150 Ark. 398, 234 S.W. 464 (1921); Pickett v. Walsh, 192 Mass 590 (1906); St. Paul Typothetae v. St. Paul Union, 94 Minn. 351 (1905).

with them as separate entities intend that they be responsible parties and thus by implication authorize the bringing of such suits for and against them.

The United States Supreme Court, permitting such suits, noted in the Coronado case,[4] that, "The growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provision for their protection which their members have found necessary." The court then pointed out that while means of suing such associations had not been specifically provided by statute, the fact that they were recognized in many ways by other statutes showed the legislative intent that they should be separate entities capable of suing and being sued and proceeded to allow a representative suit against one of them. The logic of this decision is today embodied into the federal rules.[5]

Nebraska has seen fit to allow such organizations to register their names with the secretary of state, after which the names may not be used by others.[6] Further that state has given labor unions the right to sue to enjoin infringement of registered union labels or trademarks;[7] has made such misuse a criminal offense;[8] has made embezzlement of funds of labor unions a special offense;[9] and by judicial decision has exempted them from th eanti-trust laws.[10] Thus it would seem that while the court holds the union not to be a suable entity, yet the legislature daily deals with it in other laws as such.

Many other jurisdictions have provided by statute for representative suits for or against unincorporated associations in the name of one or more members, and usually these statutes provide for the method of service of process.[11] Equitable procedure, adapting itself to these needs, has grown to recognize the need of representation by one person of many too numerous to sue or be sued.[12] Such enactments permit these associations to sue and be sued in their adopted

[4] United Mine Workers v. Coronado, 259 U.S. 344, 42 Sup. Ct. 570, 60 L. ed. 975 (1922); Comment on Coronado Case, 5 Ill. Law. Qtly. 200 (1922).

[5] Federal Rule of Civil Procedure 17 (b) provides: "that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States."

[6] Nebraska Revised Statutes (1943) 21-617 and 21-620.

[7] Nebraska Revised Statutes (1943) 87-109.

[8] Nebraska Comp. Statutes (1911) 4169-4173.

[9] Nebraska Rev. Statutes (1913) 8659.

[10] 102 Neb. 768 (1918). 169 N.W. 717.

[11] 79 ALR 306; Hamilton v. Delaware Motor Trades, Inc., 4 Harr. (Del.) 486, 155 Atl. 595 (1931); Branson v. Industrial Workers, 30 Nev. 270, 95 Pac. 354 (1908); F. R. Patch Mfg. Co. v. Capeless Lodge, 79 Vt. 1, 63 Atl. 938 (1906); U.S. Heater Co. v. Iron Molders' Union, 129 Mich. 354, 88 N.W. 889 (1902).

[12] St. Germain v. Bakery and Union 97 Wash. 282 (1917); 166 P 665; 232 Ill. 402; 83 NE 932 (1908).

name,[13] or in the name of their officers, trustees et cetera;[14] while other statutes authorize actions against but not by certain associations.[15] Such statutes are constitutional, and are to be construed in the light of the purpose of their enactment.[16] Such statutes have been held to have no extra-territorial force or effect.[17]

However an express statutory provision is not indispensible to an association's capacity to sue or be sued in its associate name; such a suit may be maintained by virtue of a necessary implication arising from statutory provisions,[18] as in cases where an unincorporated association is recognized as a legal entity by statute which does not in terms authorize it to sue or be sued.[19]

In Wisconsin the question seems to be settled by judicial decision, in the absence of express statutory provisions authorizing representative suits, service to be made upon the officers.[20] In the particular case, lack of jurisdiction of the person of defendant due to improper service of process was alleged as a defense. The Wisconsin Supreme Court noted the allegation but made no specific determination of the point in its decision. Nevertheless, the court determined other points of pleading and the merits of the case. Thus a capacity to be sued was presumed, though denied by defendant. The court in determining the merits, must have determined that the service of process was adequate, for without jurisdiction of the person of defendant, the court would have improperly decided upon the merits. A union has also been held a proper party plaintiff in Wisconsin.[21] Under the Employment Peace Act of Wisconsin,[22] the method of service in Labor disputes is provided for in actions before the Wisconsin Employment Relations Board, and appeal of such disputes from .the Board to Circuit Court. Whether this statute would apply to actions other than labor disputes appears to be an undetermined question.

In considering whether an unincorporated association could be made a party to a suit the Supreme Court pointed out,[23] in a case

[13] 70 ALR 71· Jardine v. Superior Court, 2 P (2d) 756, Calif. (1931); St. Paul v. St. Paul BookBinders' Union, 102 NW 725, (1905); Patch Mfg. Co. v. Protection Lodge, 60 Atl. 74, (1905).
[14] McCabe v. Goodfellow, 30 NE 94, Mass. (1885).
[15] Snowden v. Crown Cork & Seal Co., 80 Atl. 510, (1911).
[16] Jardine v. Superior Court, 213 Cal. 301, 2 P (2d) 751, 79 ALR 291, (1931), appeal dismissed in 284 U.S. 592 (1931).
[17] Edwards v. Warren Linoline & Gasoline Works, 47 N.E. 502, Mass (1897).
[18] Brown v. U. S., 276 U. S. 134 (1927).
[19] Clark v. Grand Lodge, Brotherhood of Railroad Trainmen, 43 SW (2d) 404, Missouri (1931).
[20] Trade Press Publishing Co. v. Milwaukee Typographical Union No. 23, 180 Wis. 449, 193 N.W. 507 (1923); Wisconsin Statutes 260.12 (1945).
[21] Trustees of Wis. State Federation of Labor v. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N.W. 56 (1934).
[22] Wisconsin Statutes 111..07 (2) a. (1945).
[23] Allis-Chalmers v. Iron Molder's Union No. 25, 150 F. 155 (1906)

involving a Wisconsin corporation against four unions, that a trade union in Wisconsin is simply an assemblage of persons and that no statute of Wisconsin permits it to sue or be sued in its common name; that its members may sue or be sued either by joining all of them or one or more for all where the members are so numerous that it is impracticable to bring them all in, but that it is a suit of the members, not of the union. In this case the defendants were four unions, and a general appearance was entered in the names of the four unions. The Court held that such appearance operated as a waiver of any objection of nonjoinder of parties, and that individual members not mentioned in the bill or sued in a personal or representative capacity were not by the general appearance of all defendants brought in or joined in any manner. So the objection might have prevailed if it had been seasonably made, but the members could have been reached of course, either by naming and serving them all or if that were impracticable because of their numbers by suing some as representatives of all. The representative suit is the only certain means available.

It is unfortunate that great labor organizations may be free from liability, for instance, for injuries from torts or for breach of contract with their own members or others dealing in reliance upon their responsibility. To all appearances the member here is left remediless against the organization whose avowed purpose is to aid his station in life. We think and speak of such associations as entities, the law should treat them as such.

Under Federal rule 17(b) it would appear that if suit is brought involving a Federal right, it may be instituted in the common name of the union even though the rule of the state is otherwise. Most jurisdictions have not adopted the Federal rule,[24] and it is submitted that such adoption by the several states would prevent the sacrificing of substance to form. If such should be, the need for incorporation of these bodies would be reduced.

WILLIAM P. MCENIRY

[24] Ibid., Note 5.