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The weight of authority seems clearly against inquiring into the validity of a foreign decree when its effect is intraterritorial. However, the Court in the instant case chose to depart from this view. As a practical matter, the wisdom of the instant decision is doubtful in view of the problems to which it gives rise.[27]

LABOR LAW — APPORTIONMENT OF COLLECTIVE BARGAINING COSTS—NO AUTHORIZATION OF UNION'S POLITICAL SPENDING OVER MEMBER'S OBJECTION. — Nonunion employees filed to enjoin the enforcement of a union-shop contract entered into by appellant union and the employer railroad under Section 2, Eleventh of the Railway Labor Act.[1] Union-shop agreements provide for union membership as a condition to continued employment. The employees alleged that since the union policy was to spend a substantial portion of the dues collected for political causes which they opposed, so much of the Railway Labor Act as authorized union shops was violative of first amendment freedoms regarding association and belief. The Supreme Court of Georgia sustained this contention and the union appealed. Refusing to consider the constitutional question, the United States Supreme Court *held* that the sole purpose of section 2, Eleventh was to apportion collective bargaining costs among all the benefiting employees, and since political spending is not an element of collective bargaining, dues collected cannot be spent for political causes over the objection of a member. *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961).

According to the union-shop provision of section 2, Eleventh a union and employer are permitted to agree, notwithstanding state "right to work" laws, that union membership be a condition of continued employment, provided that the nonpayment of periodic dues, initiation fees and assessments shall be the only reason for refusing or revoking membership.[2]

The constitutionality of such agreements was first tested in *Railway Employes' Dep't v. Hanson*,[3] which involved an action

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executive has not indicated its position on a certain matter or if it were to change its view regarding a particular situation?

[27] Notice of Appeal has been filed in the instant case and it is to be argued before the United States Court of Appeals for the Second Circuit during the current term.

[1] Railway Labor Act § 2, Eleventh, 64 Stat. 1238 (1951), 45 U.S.C. § 152, Eleventh (1958).

[2] *Ibid.*

[3] 351 U.S. 225 (1956).

by several employees of a railroad against the employer and union to enjoin enforcement of a union-shop agreement prior to its taking effect. Plaintiffs offered two arguments: First, they relied on the fifth amendment's protection of property rights and a state "right to work" law.[4] The employees contended they were not, and had no desire to become, union members; and that if they did not join within a sixty day period they would not be permitted to continue in their present employment. Therefore, they must either sacrifice accrued seniority, retirement and pension benefits, or pay the periodic costs of union membership. In rejecting this argument the Supreme Court said that it was within the power of Congress to regulate labor relations within interstate industries, and the choice of permissive union-shop agreements as a method of regulation was not a violation of fifth amendment property rights.[5] The Court then went on to dispose of the plaintiffs' second contention, which was that since the union involved engaged in political activities which they opposed, "compulsory membership will be used to impair freedom of expression [as guaranteed by the first amendment]. . . ."[6] The Court stated: "But that problem is not presented by this record."[7]

Thus, the issues passed on in the *Hanson* case were limited to the questions of deprivation of property and conflict with state "right to work" laws. An investigation of legislative intent had led the Court to conclude that the purpose of section 2, Eleventh was to require those who benefit from collective bargaining agreements to share the cost of collective bargaining.[8] In declaring union-shop contracts constitutional the Court was careful to confine itself to the facts represented,[9] and although the same first amend-

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[4] NEB. CONST. art. XV, § 13, contains a typical "right to work" provision: "No person shall be denied employment because of membership in . . . or because of refusal to join . . . a labor organization; nor shall any individual . . . enter into any contract . . . to exclude persons from employment because of membership in or nonmembership in a labor organization."

[5] Railway Employes' Dep't v. Hanson, *supra* note 3, at 233.

[6] *Id.* at 238.

[7] *Ibid.*

[8] "Benefits resulting from collective bargaining may not be withheld from employees because they are not members of the union." International Ass'n of Machinists v. Street, 367 U.S. 740, 762, quoting H.R. REP. No. 2811, 81st Cong., 2d Sess. 4 (1950).

"As Senator Hill, who managed the bill on the floor of the Senate, said, 'The question in this instance is whether those who enjoy the fruits and benefits of the unions should make a fair contribution to the support of the union.'" Railway Employes' Dep't v. Hanson, 351 U.S. 225, 231 (1956), quoting 96 CONG. REC. 16279 (1951) (remarks of Senator Hill).

[9] "We only hold that the requirements for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not

ment objections which are presented in the instant case were also raised in *Hanson,* the Court then, as now, refused to consider them.

In practice, the first amendment is not interpreted as conferring an absolute immunity for every possible use of language. Thus, when the public interest has been a consideration, statutory measures limiting individual and group rights to free expression have frequently been held not to be in violation of constitutional guarantees.[10]

The Federal Corrupt Practices Act [11] presents a good illustration. Congress recognized the need for restraints regarding political spending by unions, which at the time was threatening the purity of free elections through "the misuse of aggregated funds gathered into the control of a single organization from many individual sources." [12] Broadly drawn, the act outlaws, on its face, all union contributions or expenditures in connection with elections to federal office.[13] But as is often the case with broad legislation, several exceptions to the general prohibition developed.[14] One of the more notable of these exceptions is represented by *United States v. CIO,* which held that it was not an offense under the Corrupt Practices Act for a union financing and publishing a periodical for circulation among its members to include in that publication political comments supporting various federal candidates.[15] As in both the principal case and the *Hanson* case, the argument was urged that the legislation was an unreasonable interference with the right to free speech,[16] and also as in those cases, the Court chose a statutory interpretation which avoided the need to pass on that question.

The impact of the *CIO* decision on union political activity was significant. It served to severely qualify the broad restrictions on political spending ostensibly imposed on unions by the act, and further proved the foundation for future judicial acquiescence

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violate either the First or the Fifth Amendments." Railway Employes' Dep't v. Hanson, *supra* note 8, at 238.

[10] See, *e.g.*, *Ex parte* Curtis, 106 U.S. 371, 373 (1882), which held constitutional a congressional act providing that federal employees are prohibited from giving to or requesting from other federal employees political contributions. The Court grounded its position on the aims of the act, which were to uphold efficiency and integrity in public service and maintain proper discipline without undue influence. Frohwerk v. United States, 249 U.S. 204, 206 (1919).

[11] 43 Stat. 1070, 1074 (1925), as amended, 18 U.S.C. § 610 (1958).

[12] United States v. CIO, 335 U.S. 106, 122 (1948).

[13] Also included are prohibitions covering primary elections, political conventions and caucuses. See note 11 *supra.*

[14] See note 17 *infra.*

[15] United States v. CIO, *supra* note 12, at 123-24.

[16] *Id.* at 109.

to many union political activities which might well have been previously construed to fall within the act's prohibitions.[17] Further, the case had presented to the Court an opportunity to decide the constitutionality of legislation tending to impair first amendment guarantees regarding political expression. For their refusal to pass on that question the Court was accused of "rewriting or emasculating the statute. . . ." [18]

In the instant case this same objection to the majority position is again raised. Although disagreeing among themselves as to the ultimate answer, dissenting Justices Black and Frankfurter take sharp issue with the majority's reluctance to squarely face a constitutional issue laid before the Court. Thus, Justice Black comments:

> I think the Court is once more "carrying the doctrine of avoiding constitutional questions to a wholly unjustifiable extreme." In fact, I think the Court is actually rewriting § 2, Eleventh to make it mean exactly what Congress refused to make it mean.[19]

His position is that there exists no indication Congress wished to limit the purpose for which the dues it authorized to be collected under union-shop agreements might be spent. Justice Frankfurter agrees with this latter interpretation of congressional intent, but at that point agreement ends. Whereas Justice Black concludes that because section 2, Eleventh authorizes political spending it is an infringement on dissenters' rights under the first amendment,[20] Justice Frankfurter asserts that such expenditures are constitutional.[21] Both admit to the close historical relationship between unionism and politics and both refuse to accept, as the majority maintains, that Congress, presumably also aware of this undeniable association, would think to separate the two without bothering to expressly provide for such a separation.[22]

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[17] See United States v. Teamsters Union Local 688, 41 CCH Lab. Cas. ¶ 16,601 (E.D. Mo. 1960), which held that in view of the Supreme Court's attitude in United States v. CIO, contributions or expenditures by a union in connection with the election of federal candidates are lawful if from funds voluntarily designated for such use, with the consent of the union's officers, and providing an accounting is made available to all members. United States v. Painters Local 481, 172 F.2d 854 (2d Cir. 1949), determined certain union political expenditures to be outside the Corrupt Practices Act's prohibitions, thereby reversing a district court which had presumed to pass on the Act's constitutionality.

[18] United States v. CIO, *supra* note 12, at 130 (Justice Rutledge, concurring).

[19] International Ass'n of Machinists v. Street, 367 U.S. 740, 784 (1961) (dissenting opinion).

[20] *Id.* at 791.

[21] *Id.* at 818.

[22] *Id.* at 785-86 (Justice Black), 800-01, 803 (Justice Frankfurter).

In pressing further their criticism of the majority *ratio decidendi* reference is made to the following caveat in *Hanson*:

> The financial support required [from plaintiff employees] relates . . . to the work of the union in the realm of collective bargaining. . . . If "assessments" are in fact imposed for purposes not germane to collective bargaining, a different problem would be presented.[23]

Although this "different problem" is exactly the one raised by plaintiffs in the instant case, the Court has again avoided coming to grips with the question of first amendment infringements. Consequently, the Court may expect in the future, so the dissenters argue, to be faced with a record so clearly documented that it will not be able to avoid, as it does today, passing on first amendment objections to section 2, Eleventh.[24]

This observation is not without merit. In the present case the complaining employees argued as follows: The union actively supports political programs they oppose; section 2, Eleventh authorizes contracts between union and employer which make union membership a condition of continued employment; therefore, section 2, Eleventh violates the employees' rights of freedom of association and thought by requiring them to support union ideologies and political doctrines against their will.[25] When applied to the facts presented and combined with a realistic view of traditional union collective bargaining weapons, this syllogism would clearly seem to establish a proper and necessary reason for passing on the constitutional issue involved.[26]

By sidestepping, the instant holding engenders many potential issues which might have been avoided through a decision which more squarely met the argument presented. Most conservatively construed, the Court has merely said that a union operating under a Railway Labor Act union-shop agreement is not authorized to spend "substantial amounts"[27] for political purposes over the objection of its members.

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[23] Railway Employes' Dep't v. Hanson, 351 U.S. 225, 235 (1956).

[24] International Ass'n of Machinists v. Street, *supra* note 19, at 785 (Justice Black), 799-800 (Justice Frankfurter).

[25] *Id.* at 744-45.

[26] The majority itself admits the record is sufficient to justify passing on the constitutional question raised. *Id.* at 749.

[27] *Id.* at 744 n.2. The trial court found that plaintiffs' dues were being used in "substantial amounts." *Ibid.* It is interesting to note the following stipulation of facts entered into between the parties: "19. The periodic dues, fees and assessments which plaintiffs . . . will be required to pay under the terms of the union shop agreement . . . have been, are being, and *will be used in substantial part for purposes other than the negotiation, maintenance, and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above, but to*

Presumably, the same reasoning which led the Court to decide that political purposes were not included within the meaning of section 2, Eleventh as an element of collective bargaining, would also be valid to support objections to other forms of union expenditure, such as philanthropic donations, resort centers, pension funds, and so on. Unfortunately, the Court has made no attempt to define, other than by exclusion, what pursuits it considers to be in the line of collective bargaining.

First and fifth amendment objections, *i. e.*, speech and property infringements, were raised in the instant, *Hanson*, and *CIO* cases. Although in all three the Court avoided dealing with the free speech question it showed little hesitancy in upholding the legislation involved over alleged property infringements. In view of this judicial approach, it might be speculated that those union spending activities, which represent conflicts with property rights only, stand a good chance of being determined proper collective bargaining expenses; whereas those union activities which conflict in equal degree with the first rather than the fifth amendment are more apt to be disallowed as to those members who oppose such spending.

The instant case also presents problems of definition. What may the unions expect to be considered a "political activity" within the meaning of the congressional exclusion?[28] Where does institutional advertising or philanthropic donation end and political campaigning begin? What distinguishes legal representation before Congress from lobbying? And, is the publication in union newspapers of party platforms, without comment, to be considered political or educational? If the present holding means *no* political expenditures, may unions expect a de minimis rule to develop? On the other hand, if the holding is confined to the facts and only *substantial* political expenditures are to be subject to objection, may the Court be expected in the future to establish a test for dealing with the difficult questions of fact which will arise?

Further, how will the courts face the problem of locals who do not engage in political spending themselves but who contribute to nationals and internationals who do?

It should also be remembered that the *CIO* case, which authorized a degree of political activity by a union, involved the Corrupt Practices Act and not section 2, Eleventh. That is,

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support ideological and political doctrines and candidates which plaintiffs . . . and the class represented by them, were, are, and will be opposed to and not willing to support voluntarily." International Ass'n of Machinists v. Street, 215 Ga. 27, 31, 108 S.E.2d 796, 799 (1959).

[28] International Ass'n of Machinists v. Street, 367 U.S. 740, 770, 775 (1961). The Court is no more specific than "political activities," "political causes" and "political purposes."

there was no question of objection by employees who were forced to support that periodical through union-shop agreements. In predicting the courts' attitude regarding union political activities it will be necessary to keep in mind that specific expenditures will first be subject to the Corrupt Practices Act test and then, where applicable, to section 2, Eleventh limitations as well.

It seems reasonable to assume that the same considerations motivate all union-shop agreements, whether or not authorized under the Railway Labor Act—the argument being that he who benefits should share the burden of achieving the benefit. Therefore, there does not appear to be any substantial reason why the instant holding should not apply to union-shop contracts not covered by the Railway Labor Act but provided for by other state or federal legislation. For example, the Taft-Hartley Act also authorizes union-shop agreements, although it does not demand, as the Railway Labor Act does, that they be permitted in states having "right to work" laws.[29] Thus, if Taft-Hartley union shops are to be covered, it would seem to follow that agency-shop agreements should also be included, since from the employee's point of view they come to the same thing.[30]

The only apparent way to avoid these logical extensions is to maintain that the definition of collective bargaining differs from act to act, a tenuous position to defend. That the instant case extends the effect of previous limitations on union political activities cannot be doubted—the critical question is how far.

The quasi-public aspect of many unions[31] is ample reason for legislation such as the Corrupt Practices Act. Conversely, the necessity for protecting union first amendment rights may justify judicial interpretations of such legislation in a manner illustrated by *United States v. CIO.* But what of the individual union member who, practically speaking, is forced to join and contribute to such union political activities?

The conflicting juridical attitudes of a significant number of Justices precludes resolution of the many speculations prompted

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[29] Labor Management Relations Act, 61 Stat. 136, 151 (1947), 29 U.S.C. § 164(b) (1958).

[30] An agency-shop agreement is one in which all employees of the class represented by the certified union, whether members or not, are required to pay a sum equal to union dues as their share of collective bargaining costs. American Seating Co. v. Pattern Makers League, 98 N.L.R.B. 800, 801 (1952).

[31] See Steele v. Louisville & N.R.R., 323 U.S. 192, 197-98 (1944), which held that a union bargaining under the union-shop provision of section 2, Eleventh speaks for all the members of its class, nonmembers as well, and therefore has a duty to fairly represent them. American Communications Ass'n v. Douds, 339 U.S. 382 (1950), implying that a union's private character is changed by virtue of government protections. Kahn-Freund, *Trade Union Democracy and the Law,* 22 OHIO ST. L.J. 4, 7 (1961).

by the present holding. It may at least be said that the decision represents an indirect revitalization of the Corrupt Practices Act philosophy of restricting union rights in the use of their funds for political campaigning, perhaps made necessary by the somewhat sterilizing effect on the act of the *CIO* holding. Now, a union member under a Railway Labor Act union-shop agreement has the right that his dues not be relegated to support a political activity to which he is opposed, regardless of whether or not the Corrupt Practices Act prohibits that activity.

Although the reasoning advanced by the majority does not directly face the fundamental issue of to what extent the individual's first amendment guarantees are a bondslave to the union's need of financial support for collective bargaining, the Court has nonetheless evidenced a concern, albeit indirectly, lest political freedom be made overly subservient to general group welfare under the guise of sharing the cost burden.

TAXATION — SCOPE OF THE MEDICAL DEDUCTION.— A taxpayer, who was suffering from a heart disease, was advised to take a trip to Florida for the winter months by his physician. The taxpayer claimed the hotel lodging expenses for himself and his wife and child as "medical deductions." The Court of Appeals for the Third Circuit upheld this claim. On the other hand, a taxpayer in the Second Circuit, who had been advised by his physician to take a trip to Bermuda, following major abdominal surgery, had his claim for deduction of lodgings for himself and his wife denied by the Court of Appeals. Both circuits, however, agreed that the costs of the transportation to Florida and Bermuda were allowable "medical deductions." *Commissioner v. Bilder,* 289 F.2d 291 (3d Cir. 1961), *cert. granted,* 30 U.S.L. WEEK 3154 (U.S. Nov. 13, 1961) (No. 384); *Carasso v. Commissioner,* 292 F.2d 367 (2d Cir. 1961).

Both the 1939 and the 1954 Internal Revenue Codes made provisions for the allowances of "medical expenses" as deductions from gross income.[1] Section 24(a)(1) of the 1939 Internal

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[1] Int. Rev. Code of 1939, § 23(x), added by ch. 619, § 127, 56 Stat. 825 (1942), as amended, Int. Rev. Code of 1939, ch. 2, § 24(a)(1), 53 Stat. 16 (1939), as amended, ch. 619, § 127, 56 Stat. 826 (1942) [hereinafter cited as 1939 Code]. INT. REV. CODE OF 1954, § 213 [hereinafter cited as 1954 CODE].