the court's decision in Gordon v. Elliman. By including an action to compel the declaration of a dividend within the confines of Section 61-b, the court has taken away one more right of the stockholder. Because of the inequitable results flowing from Section 61-b, one would expect the Court of Appeals to strictly construe it; however, it has adopted the opposite attitude. It appeared to go out of its way to hold that this type of action was within the Legislature's intention in enacting this section.

This case clearly illustrates the harshness and inequity of Section 61-b, and the firmness with which it is now rooted in our law. The remedy is in the Legislature. It is hoped that it will re-evaluate its position on this matter, and by open hearings, obtain a solution that will both protect against "strike suits" and once more return to the minority stockholder his right to effectively demand fair treatment by the management.

THE ABUSE OF THE UNION WELFARE FUND—A PROPOSED REMEDY

There is a great deal of difference between the collective bargaining agreement of today and the bargaining agreement of yesterday. Whereas the latter merely concerned the negotiation of basic standards of wages and hours, provision for the well-being of the worker outside the factory is increasingly becoming part and parcel of the modern collective bargaining agreement. This trend has led to the establishment of union death and disability benefits commonly referred to as "welfare funds."¹ "The new point of view, namely, that it is desirable and proper for a union to write a contract that covers matters of health, welfare, vacation, retirement, in addition to hours and wages, brought new problems with it in the administration of such funds."² Of current national interest is the question of whether or not these funds should be put under state or federal regulation in order to prevent their dissipation through misappropriation or sheer mismanagement.

¹ One of the criticisms against the passage of Section 61-b was that it was denied a public hearing. See Hornstein, The Death Knell of Stockholders' Derivative Suits in New York, 32 Calif. L. Rev. 148 (1944).

² Some union leaders look upon these funds with disfavor since they believe that a union's task is solely to concern itself with wages and hours.

³ See Dubinsky, Safeguarding Union Welfare Funds, 7 American Federationist 10 (July 1954).
Historical Background

The first union to make provision for the financial protection of its members due to illness was the Journeymen Barbers, who introduced such benefits in 1893. However, their plan and the ones adopted shortly thereafter did not function too smoothly. It also appears that the welfare plans did not make much progress in the labor movement as a whole. The first collective bargaining agreement establishing a health and welfare fund was signed in 1926 between the Newburgh (New York) Public Service Corporation and the Amalgamated Association of Street and Electric Railway Employees, American Federation of Labor. In 1938, Local 91 of the International Ladies' Garment Workers' Union negotiated a contract in which the employers promised to contribute a percentage of their payroll to a pooled fund, to be used to provide vacation pay for members of the union. Subsequently, employers in Philadelphia agreed to extend the pooled fund plan to include health and welfare benefits. However, it is to be noted that the great majority of welfare plans prior to World War II were financed through dues and assessments of union members, and not through employer contributions. During the war years, Executive Order 9250 and the Little Steel Formula froze wages and employers, in order to hold their labor force, developed a series of "fringe benefits." These benefits provided a method of attracting and holding employees without the granting of illegal wage increases. The National War Labor Board approved the benefit plans and permitted unions and employers to establish group insurance and health and welfare plans, provided that the cost of such plans did not exceed five per cent of the wages or salaries of

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3 A welfare plan was set up by the Tobacco workers in 1896; the Pattern-makers in 1898, and the Plumbers in 1903. See Held, Health and Welfare Funds In The Needle Trades, 1 IND. & LABOR REL. REV. 247 (1948).
4 Ibid.
5 Statistics indicate that the total number of unions reporting payment of sick benefits were: 28 in 1903; 27 in 1913; 30 in 1933, and 18 in 1943. Ibid.
6 See Sackman, Welfare Collective Bargaining In Action, NEW YORK STATE SCHOOL OF INDUSTRIAL AND LABOR RELATIONS, CORNELL UNIVERSITY, RESEARCH BULL. No. 3 at 1 (1949).
7 See Held, supra note 3, at 249.
8 Ibid.
9 See Dubinsky, Safeguarding Union Welfare Funds, 7 AMERICAN FEDERATIONIST 10 (July 1954).
10 See Sackman, supra note 6, at 1-2. (Wage increases were believed to be inflationary, and thus were prohibited to safeguard the wartime economy.).
11 Among these benefits were vacations, night shift bonuses, overtime and health and welfare plans. Ibid.
12 See Gordon, Tax Effects of Union Welfare Funds, 6 TAX L. REV. 1 n.1 (1950). Thus millions of dollars, which under the wage freeze might have become employers' profits, were diverted into union welfare funds.
the employees. The establishment of these funds received further impetus when the employers' contributions to such funds were classified, for federal tax purposes, as a permissible business deduction. Soon, health and welfare funds were among the standard goals of all unionized workers.

In 1938 the convention report of the American Federation of Labor showed total benefit payments—covering death, sickness, old age, disability and miscellaneous benefits—of some $25 million for all AFL affiliates.

Dramatic evidence of the growth in welfare funds is contained in the single fact that in 1953 the International Ladies' Garment Workers' Union paid out benefits of more than $36 million and had an income of $54 million. This one union in 1953 paid out more than the combined affiliates of the AFL did in 1938.

The Bureau of Labor Statistics reports that nine to ten million employees are covered by some form of union welfare plan. The administrators of these funds are believed to have more than twenty billion dollars at their disposal. In 1953, in New York State alone, 365 million dollars were paid into union welfare funds covering an estimated three million employees.

Nature of the Funds

Today the majority of union welfare funds are employer contributed, i.e., the employer pays a certain percentage of his payroll into a fund administered by trustees for the benefit of the employees.

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14 Ibid.
15 Dubinsky, Safeguarding Union Welfare Funds, 7 American Federationist 10 (July 1954).
19 "Health and welfare plans established by collective bargaining generally follow these patterns:"

1. The fund is administered wholly by the employer with no union participation. The collective bargaining agreement spells out the benefits to be provided and the financing of the plan. The method of underwriting the benefits and the cost of the program are left to the employers. In such cases, employers almost always purchase their group insurance from private commercial carriers and/or Blue Cross.

2. The employer and union establish a fund administered either jointly or by the union alone. This fund then purchases group insurance from private carriers and/or Blue Cross. The collective bargaining agreement usually stipulates the method of financing the plan and the method of administration (selection of trustees, etc.). The determination of the amount of benefits to be provided, and the rules of eligibility, are left to the trustees of the fund.
The fund itself has been described as a "beneficial charitable trust." Employer contributions are tax deductible, while the trust fund as such is tax exempt. In *Inland Steel Co.*, it was held that it is an unfair labor practice for the employer to refuse to bargain collectively with the union on the issue of welfare funds. As a result of this holding, welfare funds are a proper subject of collective bargaining and employers must bargain, although they may not come to any agreement concerning the establishment of a welfare plan. The Taft-Hartley Act permits the investment of these funds, as well as the making of reasonable loans to members of the union. However, the trust funds may only be used for the purpose for which they were intended. It has been held that where the collective bargaining agreement provides that the trustees shall receive the payments from the employer and administer the fund according to rules which they shall adopt, the title to the funds is in the trustees and not in the union. Mere authorization for the union, in its constitution or by-laws, to participate in such a fund is not evidence of title to the fund.

"3. The employer and union establish a self-insured fund through collective bargaining. This fund may be administered solely by the union or by the union and employer jointly. This fund pays the benefits directly to the claimants, although hospital and surgical benefits may be purchased from Blue Cross. In this case, the collective bargaining agreement stipulates how the fund is to be financed and the method of administration, leaving the determination of benefits and rules for eligibility to the trustees of the fund." *Sackman, Welfare Collective Bargaining In Action, New York State School Of Industrial And Labor Relations, Cornell University, Research Bull. No. 3 at 3 (1949).*

Two of the most well known welfare plans are those of the United Mine Workers and the International Ladies' Garment Workers' Union. For an insight into the internal structure of the I.L.G.W.U. plan see *Held, Health and Welfare Funds in the Needle Trades, 1 Ind. & Labor Rev. 247 (1948).*

20 Van Horn v. Lewis, 79 F. Supp. 541, 545 (D.D.C. 1948); "The treasurer... was not, in our view, the custodian of this fund merely as an officer of that organization but he held it as a trustee solely for the benefit of the members. ..." *Kearney & Trecker Corp. v. NLRB, 210 F.2d 852, 857 (7th Cir. 1954).*

21 *Int. Rev. Code § 404(a).*

22 *Int. Rev. Code § 501(a).* However, the amount distributed to any beneficiary is taxable to him. *Int. Rev. Code § 402(a).*

23 77 N.L.R.B. 1, 36 (1948), *enforcement granted sub nom. Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949).*

24 "The Board has frequently recognized that, as the Act does not require final agreement or the granting of concessions, the parties may reach an impasse which does not reflect on the good faith of the bargaining." *National Maritime Union, 78 N.L.R.B. 971, 981 (1948).*


27 *See Suffidge v. O'Grady, 84 N.Y.S.2d 211, 217 (Sup. Ct. 1948).*


29 *Id.* at 330.
Henshaw v. Lewis the court reasoned that where the trust is vested in designated individuals, they all form but one collective trustee, and they must exercise jointly all those powers that call for their discretion and judgment, unless the trust instrument or declaration authorizes an apportionment of powers. Therefore, New York courts would not entertain a suit against the trust fund unless all the trustees were personally served in New York, or the situs of the trust fund was within the jurisdiction of the court.

Present Regulation of Welfare Funds

Although unions are given a comparatively free hand in the running of their welfare funds, they have been subject to some degree of restriction. The Taft-Hartley Act requires that: (1) such payments are to be held in trust; (2) the detailed basis on which payments are to be made is to be specified in a written agreement with the employer; (3) the employers and employees are to be equally represented in the administration of these funds, together with such neutral persons as these representatives may agree upon; (4) in the event that the employer and employee groups deadlock on the administration of such fund, and there are no neutral persons empowered to break the deadlock, such agreement shall provide that the two groups agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district in which the trust fund has its principal office; (5) the agreement shall contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in the agreement; (6) payments intended to be used to provide pensions or annuities for employees are to be kept in a separate trust, and the funds held therein cannot be employed for any purpose other than the payment of such pensions or annuities; (7) any person who wilfully violates any of the foregoing provisions shall be guilty of a misdemeanor, and be subject to a fine of not more than ten thousand dollars or to imprisonment for not more than one year, or both. However, the number of welfare funds covered by the terms of the Taft-Hartley Act is rather limited. First, the Act does not apply to unions whose activities do not affect interstate commerce. Therefore, many of the welfare funds of local

31 Ibid.
unions are not within the scope of the statute. Secondly, the Act specifically exempts from its purview all contributions to trust funds established by collective agreement prior to January 1, 1946. This exemption has been construed to mean that welfare funds established before 1946 are without the scope of the statute, even though the employer only began to contribute to the fund subsequent to 1946.

Some limitations have been placed on welfare fund activity by decisions of the National Labor Relations Board. Despite earlier decisions to the contrary, the Board has recently held that collective bargaining agreements limiting welfare benefits to union members, without fulfilling the statutory requirements on the closed shop agreement, violate the Taft-Hartley Act. A similar decision was reached in the Jandel Furs case.

The Jandel case held that both the employer and the union committed unfair labor practices by providing in the collective bargaining agreement that participation in the welfare fund should be limited to members of the union. The employer was found guilty of committing unfair labor practices because the illegal contract clause violated Section 8(a)(1) of the National Labor Relations Act by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the act (which protects the right of employees to engage in or to refrain from engaging in concerted activities for mutual aid or protection); violated Section 8(a)(2) by encouraging membership in and contributing support to a union; and violated Section 8(a)(3) by discriminating against nonunion employees. The union was found guilty of violating Section 8(b)(1)(A), the counterpart of Section 8(a)(1), and of violating Section 8(b)(2), the counterpart of Section 8(a)(3).

When the remedy for the illegal exclusion of nonmembers of a union from a welfare fund is considered in its broadest aspects, the explosive nature of the holding in Jandel Furs becomes evident. The Board's discretion in fashioning any remedy which will effectuate the purpose of the act has been almost unfettered in the courts.

Another source of regulation has been judicial intervention. The power of the courts to prevent or rectify misappropriation or misconduct on the part of union officials has long been recognized. The

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38 100 N.L.R.B. 1390 (1952).
39 See Katz and Jaffe, Illegal Pension and Welfare Funds, 4 Labor L.J. 13 (1953).
40 Id. at 16.
41 For the procedure by which a member of the union may sue in its behalf see Perkins, Protection of Labor Union Funds by Members' Representative Suits—Massachusetts Practice, 27 B.U.L. Rev. 1 (1947).
courts have recently expanded the application of this power to include welfare fund abuses.

Union welfare or trust funds, as far as case law is concerned, is something new in the law. Despite the rarity of decisions involving them however, the benign light in which the courts will view them has already appeared on the horizon. As seen in United Garment Workers of America v. Jacob Reed's Sons . . . "[t]he Court considers such funds as rather sacred, and it is the purpose of the law that they be available when due under the contract." Therefore, whenever the trustees use, or attempt to use, directly or indirectly, the fund for a purpose other than for the sole and exclusive benefit of the employee-members, this court, when called upon, will enjoin the trustees from making the improper expenditure. The burdening of the fund with undue administrative expenses or lush salaries for union officials will not be tolerated; excessive restrictions, either in the insurance policies or the by-laws and regulations, or the providing of small benefits to the employee-members in proportion to the amount contributed . . . or the premiums paid, taking into consideration the risk involved, will cause more than a lifting of the eyebrows. A provision in the by-laws or regulations denying the employee-members the right to resort to the courts to protect their beneficial interest in the fund is of no legal effect.42

One such instance of an individual union member invoking the aid of the courts in order to protect his interest in the fund is found in Forrish v. Kennedy.43 There the trustees were ordered to grant the plaintiff the pension they were wrongfully withholding. The trustees had denied the plaintiff's claim that he was among the class of those entitled to a pension, and maintained that under the terms of the pension plan they had sole discretion in the matter. Nevertheless, the court held that, although it could not control the trustees' discretion, it could compel them to exercise it in good faith and within the bounds of reasonable judgment.

A minor source of regulation has been union self-discipline. In some local unions, the constitution or by-laws provide for superintendence or inspection of the welfare fund on the part of the international union. An illustration of the parent union policing the welfare activities of its locals is presented by the International Ladies' Garment Workers' Union. The I.L.G.W.U.'s system combines local control of the 124 separate funds with supervision on the part of the International.

The key to the proper policing of these funds lies in the international union's practice of auditing the local's books. This right of the international union to audit the books of the locals goes back many years in ILGWU. The auditing of the local books—including the local health and welfare and retirement funds—by a well-trained corps of international auditors is the key to vigilant policing.

A companion to our international audit is the publication by the international of the full financial facts about the welfare funds administered by locals and joint boards. How much received? How much paid out? And how much towards administrative costs?

It is with respect to this last item—administrative costs—often covering a variety of strange practices, that publication of the thoroughly audited facts will check many abuses.\(^4^4\)

The International Ladies’ Garment Workers’ Union also provides for approval of all plans by the health and welfare committee of the International. The union’s constitution requires the separation of welfare funds from other accounts of the union; regulates the securities in which the union may invest and limits the administrative costs to five per cent of the contributions to the fund for the current year.\(^4^6\) Although this union presents a picture of strong control of local welfare funds on the part of the International, in actual fact, many internationals have little, if any, control over the affairs of their locals. The latter oppose any attempted regulation on the part of internationals, fearing that regulation will give way to loss of local autonomy.\(^4^6\) Consequently, the internationals are now of little value as a check on the local’s welfare activities.

Abuse of Welfare Funds

The abuse of welfare funds on a national level is small compared to the abuse on the local level. This is so because the funds usually remain on the local plane and are not passed up to the higher organizations in the union. Although most of the misappropriation takes the form of “padded administration costs,” the ways and means of exploiting the funds are numerous and sundry, limited only by the imagination of the individual manipulator. Some of the more common methods employed are:

(a) *Union officials use the position of welfare administrator as a source of patronage.* Some relative or associate is placed in charge of the fund. The office is staffed with other relatives and friends, all drawing large salaries.\(^4^7\) Sometimes the union officials receive two salaries, one from the union and one from the welfare fund.

(b) *An outside agency is set up to handle the administration of the welfare fund.* Once again, friends or relatives are put in charge. The outside agency charges the union a fee for


\(^{4^5}\) Ibid.

\(^{4^6}\) See Dubinsky, *supra* note 44, at 12; 77 Monthly Labor Rev. 441 (1954).

administering the fund, and also receives a commission from the insurance company for placing the fund's business with that particular insurance company.48

(c) The fund administrators follow a practice known as "switching" insurance companies.49 Since the insurance companies wish to attract the unions' multi-million dollar business, they offer exorbitant commissions to anyone who will secure the business for them. However, the commissions are greatest in the first year and diminish every year thereafter. Accordingly, many labor officials make it a practice to change their insurance companies every year in order to take advantage of the abnormally high first year commission rates. A little reflection discloses the fact that the cost of these high commissions is eventually borne by the welfare fund itself. The insurance company pays the commissions, secures the union's business, and then passes the cost along to the fund in the form of smaller benefits. The union is getting less in return for its premiums than it normally would if the high commissions were not paid out. This nefarious practice induces the administrators to shop around for the insurance company paying the highest commission rather than the company giving the most benefits for the lowest premium.

Fraud on a smaller scale is perpetrated through gifts and annuities to welfare officials, high salaries, vacations at welfare expense, etc.

Contributing Factors to the Growth of Abuse

The dissipation of welfare funds through fraud and mismanagement has only recently come to the attention of the public. However, the factors contributing to the inception and spread of these abuses have been at work for over a decade. Had these factors not been operative, the evils now coming to light would have been kept to a minimum if not prevented altogether. The five major causes of the abuses under consideration may be briefly summarized as follows:

1. The employers' indifference to the management of these funds: Although the Taft-Hartley Act requires the employers to have an equal voice in the management of these funds,50 few employers take an active interest in their administration. The same is true on the local level where the Taft-Hartley Act dual-management principle is not controlling. The motivating force behind this neglect of duty is the widespread feeling among the employers that the wel-

49 Ibid.
fare plans are a form of "pay" and hence belong to the employees and should be looked after by the employees.\textsuperscript{51} As far as the employers are concerned, they will be required to pay the same amount into an honest welfare fund as into a dishonest one. Therefore, there is no reason why they should worry about fraud and mismanagement. The end result of the absenteeism of the employer-trustees is to give the union-trustees a free hand. That, in turn, encourages fraud.\textsuperscript{52}

2. The employees' disinterest in the funds' management: Formerly, when the welfare funds were employee-contributed, the employees kept a close watch on their administration.\textsuperscript{53} Today, however, with the contributions coming from outside sources, the employees tend to "let things ride" as long as things are running smoothly. This breakdown in union democracy is reflected in statistics that indicate that the normal attendance at union meetings is about two to eight per cent of union membership.\textsuperscript{54} Thus, the affairs of the union are left in the hands of a few. The importance of this concentration of power is illustrated by the fact that the same people who negotiate for the funds naturally tend to control them.\textsuperscript{55}

3. Union leaders cementing themselves into their jobs: Correspondingly, as union democracy declined, the self-perpetuation in office on the part of union officials increased.\textsuperscript{56} This removed the check on union officials' activities formerly supplied by the turnover of union officers.\textsuperscript{57}

\textsuperscript{52} An example of the lax supervision of these funds by the employers was disclosed in a recent investigation which brought out the fact that minutes of the annual meeting of a welfare fund board (composed of three employers and three union members) were typed in advance, always including a statement that the board found "everything satisfactory." The investigation also showed that the funds were being depleted via high salaries taken by the administrators. See U.S. News & World Report, Sept. 24, 1954, p. 132, col. 1.
\textsuperscript{53} See Dubinsky, Safeguarding Union Welfare Funds, 7 AMERICAN FEDERATIONIST (July 1954).
\textsuperscript{54} See Strauss and Sayles, The Local Union Meeting, 6 IND. & LABOR REL. REV. 206, 209 (1953). A survey of a union in the steel industry having a membership of 14,000, revealed that, apart from the 36 officers of the local, only 89 members bothered to come to 4 or more meetings a year. See Business Week, June 2, 1951, p. 31, col. 1.
\textsuperscript{56} In one fund belonging to an American Federation of Labor affiliate, the administration was placed in the hands of the local's vice-president. He then negotiated an agreement giving him the job of administering the fund for life, with a salary of ten per cent of all fund contributions, plus two per cent for expenses. In another union the executive board adopted a resolution giving the president and secretary-treasurer successive ten year terms, with a two-thirds vote of the local's membership necessary to oust them from their positions. See U.S. News & World Report, Sept. 24, 1954, pp. 130-131.
\textsuperscript{57} "The top leadership has also fought to maintain itself in office. The present-day emoluments of office simply make the fight more intense. The im-
4. **Insurance companies closing their eyes to the long range implications of the excessive commissions they have been paying:** Since much of the misuse of funds has taken place in the area of "placing the insurance," the insurance companies have much to answer for.\(^{58}\) Had the companies refrained from paying exorbitant commissions and other questionable practices, a good deal of the "milking" of the funds would not have taken place.

5. **Mismanagement due to the lack of specialized knowledge necessary to run the funds efficiently:** The comparative newness of the welfare funds, as well as their vastness, have been contributing factors in the dissipation of the funds. Union leaders, unaware of the necessity for skilled insurance training, have attempted to establish and administer the funds themselves.\(^{59}\) Their inexperience has proven very costly to the funds. In a recent examination of 145 such funds, twenty-one were found to be badly mismanaged, while forty-one others were criticized.\(^{60}\)

**Labor's Attempts to Clean Its Own House**

Several attempts have been made recently, on the part of labor leaders, to remedy the abuses in order to ward off government control. Mr. David Dubinsky, President of the International Ladies' Garment Workers' Union, has put forth a twofold program.\(^{61}\) He advocates supervision of local welfare funds by the international, and cooperation with the legislatures in order to secure minimum standards for their administration, rather than far-reaching government regulation. The C.I.O. Executive Board recently established a standing committee "to investigate any charges or allegations of maladministration of welfare or other funds within the C.I.O." Similarly, the American Federation of Labor National Executive Council has called on its affiliates to set up rules and regulations to govern such funds for the protection of their members.\(^{62}\) On the local level, the

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59 An illustration of a basic error on the part of welfare fund administrators is the tendency to adopt the financial set-ups of the larger, more successful unions. This usually invites disaster, as the smaller funds become depleted due to failure to anticipate the correspondingly higher administrative costs involved in a smaller union.


61 See Dubinsky, Safeguarding Union Welfare Funds, 7 American Federationist 10 (July 1954).

New York City American Federation of Labor Central Trades and Labor Council in mid-February created a board of inquiry to investigate the funds, with the primary objective of drafting "ethical and economic standards" for their management. The Council has set up a three-man commission assisted by advisory experts and an accounting and clerical staff. The above-mentioned remedies offered by union officials will be of some value if they serve to foster the reawakening of union democracy and self-regulation. However, it is seriously doubted that they will be able to stave off the all but inevitable statutory regulation.

Current Investigations by Federal and State Governments

The recent exposés in the field of welfare funds have caused much concern, and have given rise to a demand for regulation of these funds. Investigations are underway in five states as well as in the House of Representatives and the Senate. The investigation in New York State is being conducted by the State Superintendent of Insurance. Up to the present time in New York, unions were not subject to the state Insurance Law. Therefore, a special statute was passed in order to facilitate the inspection of these funds by the Department of Insurance. Under its terms, the Superintendent may examine the affairs of any welfare fund as often as he deems expedient, but at least once every five years. The trustees are required to maintain accurate records and accounts in conformance with generally accepted accounting practices. This inquiry, as well as the investigations conducted by the other states and congressional committees, will seek to ascertain whether the abuses are so widespread as to require regulation by law. Their reports and recommendations will largely determine the nature and scope of the controls to be imposed.

Conclusion

The publicity attendant upon these evils has helped popularize the belief that today the unions, and not management, present the

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63 See 77 MONTHLY LABOR REV. 441 (1954).
65 The House Committee on Education and Welfare has appointed an eight-man subcommittee, under the chairmanship of Representative Samuel K. McConnell, Jr. of Pennsylvania, to study union welfare activities.
66 An investigation of welfare funds has been begun by the Senate Committee on Labor and Public Welfare, under the chairmanship of Senator Irving M. Ives of New York.
67 N.Y. INS. LAW § 466(1) (a).
68 Laws of N.Y. 1954, c. 278.
69 Under N.Y. INS. LAW § 466(3), the Superintendent had power to investigate, but solely for the purpose of determining whether or not the union merited an exemption from the Insurance Law.
greatest threat to labor.\textsuperscript{70} Several proposals have been made which would subject labor unions to strict regulation.\textsuperscript{71} For example, compulsory incorporation of unions has been advocated in some quarters.\textsuperscript{72} But a state statute requiring such incorporation has been declared unconstitutional as denying to unincorporated unions, and their individual members, the right to function to promote their common welfare by lawful means.\textsuperscript{73} Another solution that has been offered is the establishment of a new administrative agency to supervise the internal affairs of unions.\textsuperscript{74} However, each of these suggested remedies presents a danger, in that there would be a measurable increase in government control over labor, particularly federal control.

Since the problem is both local and national it appears that federal and state regulation are necessary if the evil is to be effectively combated. The Federal Government's power to regulate unions whose activities seriously affect interstate commerce is little questioned.\textsuperscript{75} The state governments may exercise their police power to control union activities as long as the regulations imposed do not conflict with the Constitution or existing federal legislation.\textsuperscript{76} However, it is felt that statutory control of labor should be kept to a minimum, and wherever possible, left to the state government.

In recent years there has been a growing tendency to look upon union activity as being "quasi public" in nature and therefore subject to governmental regulation. Another indication of impending regulation of labor is found in recent decisions which treat collective bargaining and other rights of unions as being dependent upon the will

\textsuperscript{70} "It would seem that the public should have as great an interest in the protection of labor from labor, as in the protection of labor from capital." Hamilton v. International Union of Operating Engineers, 262 S.W.2d 695, 700 (Ky. 1953).

\textsuperscript{71} For a comprehensive treatment of some of the recent proposals for the regulation of internal union matters see Aaron and Komaroff, \textit{Statutory Regulation of Internal Union Affairs—II}, 44 Ill. L. Rev. 631 (1949).

\textsuperscript{72} See Unkovic, \textit{Should Labor Unions Be Incorporated?}, 45 Dick. L. Rev. 23, 32 (1940).

\textsuperscript{73} See American Federation of Labor v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944). See discussion of this case in 58 Harv. L. Rev. 1256 (1945).


\textsuperscript{75} "It is too well known to require citation of authority that the sovereign may regulate activities charged with a public interest, and may prescribe the qualifications of the persons engaged in these activities." National Maritime Union of America v. Herzog, 78 F. Supp. 146, 173 (D.D.C.), aff'd mem., 334 U.S. 854 (1948).

\textsuperscript{76} "For the same reasons, the National Labor Relations Act does not preclude a state from requiring a labor union, or its officers and agents, as such, to procure licenses or make reports or perform other duties which do not materially obstruct the exercise of rights conferred by the National Labor Relations Act or other federal legislation." Chief Justice Stone, concurring in Hill v. Florida \textit{ex rel.} Watson, 325 U.S. 538, 545 (1945).
of Congress and federal statutes. The ease with which the government could dominate the labor field is illustrated by the cases of United States v. United Mine Workers of America and Linehan v. Waterfront Commission of New York Harbor. In the Mine Workers case, the Supreme Court held that the miners became government employees when the government seized the mines, and could be enjoined from striking, since the Norris-La Guardia Act did not apply to the Federal Government. The constitutional rights of both the union and the individual employees were swept away by means of government seizure. In the Waterfront Commission case, the Supreme Court upheld the validity of a bi-state agreement giving a commission power to register dock laborers and to deny registration to all those who, in the discretion of the commission, were thought to be a danger to the public peace and safety. In the last analysis, this enactment sets up a commission to determine who shall and who shall not work.

Welfare funds are in a precarious position since they are falling into the pattern followed by these last mentioned activities immediately prior to governmental intervention and control. In each, the sequence of abuse, adverse publicity, public indignation and eventual regulation is clearly discernible. What must be avoided, however, is the sweeping control imposed in the former cases, with consequent union subjection and loss of individual freedom. The forthcoming legislation should seek to strike a balance by limiting the abuse without an appreciable increase in the power concentrated in the Federal Government.

Suggested Provision for Regulatory Legislation

(1) The federal statute should contain a clear expression on the part of Congress that it does not intend to pre-empt the field and thereby foreclose state regulation of welfare funds.

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77 See, e.g., Hill v. Florida ex rel. Watson, supra note 76; National Maritime Union of America v. Herzog, supra note 75 at 161.
80 "At a time when government enterprise and government intervention in business and industry inevitably are bound to increase, the Court has refused to recognize that government employees have any constitutional rights which the Court need protect. The long fight of labor to secure recognition of its rights to carry on the struggle with capital 'in a fair and equal way' comes to naught in the shadow of the sovereign. A more undemocratic result in a world desperately in need of democracy could hardly be imagined." Watt, The Divine Right of Government By Judiciary, 14 U. of Chi. L. Rev. 409, 453 (1947).
(2) State statutes should provide:

(a) That fund administrators shall keep accurate books and accounts of all finances, including a breakdown of administrative costs, commissions received, etc.

(b) That a financial report shall be filed with the state department of labor each year, and that such report shall be published for the information of the union membership.

(c) That the books of the fund may be audited, by the proper state authorities, as often as deemed necessary, but at least once every two years.

(d) That the financial structure of welfare plans shall be subject to the approval of the state department of insurance. This provision will aid in preventing the waste brought about by the adoption of ill-advised welfare plans.

(e) That fund administrators shall be elected or appointed for a period of no longer than four years. However, this provision should not be so worded as to prohibit the re-election or reappointment of administrators, since experience may be a valuable asset to the proper administration of these funds.

(f) A comprehensive prohibition against anyone with a criminal record having any connection with the administration of these funds.

(g) Heavy criminal penalties for the misappropriation of welfare funds.

Legislation intended to bring about an improvement in the moral standards prevalent in labor unions will be successful, therefore, primarily to the extent that it has the effect of inducing union members themselves to return morality to the labor field through the rebirth of union democracy.

It is generally agreed that trade union democracy cannot be achieved by a government fiat. Model union constitutions have not always prevented despotic rule by union officers, and there is little reason to hope that statutory requirements could not similarly be subverted as a result of hostility, indifference or fear on the part of a union's membership, coupled with action on the part of its leaders in violation of the letter and spirit of the law.82

The power and influence of unions today carry with them the responsibility to maintain a democratic administration of their own internal affairs. Most unions recognize this obligation, but a significant minority do not. Adequate remedies for abuses of union power are not presently available to union members or would-be-members, either at common law or under existing state

82 Aaron and Komaroff, Statutory Regulation of Internal Union Affairs—II, 44 ILL. L. REV. 631, 635 (1949).
and federal legislation. The enactment of minimal federal legislation regulating internal union affairs is therefore desirable. Such legislation should be designed, not only to afford adequate relief against abuses of union power, but also to encourage and assist unions to improve their own self-government.\(^8\)

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**REAL PROPERTY TAX EXEMPTION OF CHURCHES**

**Introduction**

The power to tax is an inherent attribute of sovereignty.\(^1\) In the United States it is vested exclusively in the legislative branch of government unless limited by constitutional provision.\(^2\) Incidental to this power is the power to exempt, and, in the absence of constitutional prohibition, its exercise is essentially a question of a choice of policy. In response to the will of the people, this legislative discretion has traditionally been resolved in favor of exempting the real property of religious institutions from taxation.

At the present time thirty-three state constitutions contain provisions pertaining to this type of exemption. In eighteen constitutions these provisions are mandatory;\(^3\) in fourteen they are permissive;\(^4\) and the remaining one contains a combination of both features.\(^5\) Jurisdictions which lack specific constitutional authorization grant like exemption by general legislation.\(^6\) It has long been settled that

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\(^{83}\) Id. at 674.

\(^{1}\) See Curry v. McCanless, 307 U.S. 357, 366 (1939); Transportation Co. v. Wheeling, 99 U.S. 273, 281 (1878); The Delaware Railroad Tax, 18 Wall. 206, 226 (U.S. 1873); McCulloch v. Maryland, 4 Wheat. 316, 429 (U.S. 1819).

\(^{2}\) See People ex rel. Griffin v. Mayor of Brooklyn, 4 N.Y. 419, 426 (1851); see also Meriwether v. Garrett, 102 U.S. 472, 515 (1880).


\(^{5}\) Colo. Const. Art. 10, § 5.