Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent, and J. JESUS R. CONCHOLA, Charging Party.	)	Case No. 78-CL-14-M 6 ALRB NO. 16

DECISION AND ORDER

On June 5, 1979, Administrative Law Officer (ALO) Kenneth Cloke, on the basis of a stipulated record, issued the attached Decision in this proceeding. Thereafter, the General Counsel filed timely exceptions and a supporting brief. The United Farm Workers of America, AFL-CIO (UFW), filed a reply brief.

The Board has considered the stipulated record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the ALO's rulings, findings, and conclusions, as modified herein.

This case presents for the first time the "good standing" clause of Section 1153 (c),[1/] which is part of the

[1/] Section 1153(c) of the ALRA provides that it is an unfair labor practice for an agricultural employer:

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of

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ALRA's union security provision. [2/] The issue before us involves the UFW's Citizen Participation Day (CPD) program, and its effect on employees who object to making financial

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(fn. 1 cont.)

employment, to encourage or discourage membership in any labor organization.

Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condittion of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership

2/ Union curity agreements are generally included in collective bargaining agreements between employers and labor organizations. Such provisions require employees, as a condition of employment, to become members of the union or to pay a specified amount to the union. The most common forms of union security are the union shop and the agency shop. In a union shop agreement, all employees must join the union within a prescribed period of time after their initial hiring, and must remain members as a condition of continued employment. In an agency shop agreement, employees are not required to join the union, but nonmembers must pay to the union an amount equivalent to union dues and initiation fees as a condition of continued employment.

contributions to the program. Jesus Conchola, the Charging Party, an agricultural employee of Mann Packing, wishes to abstain from contributing to the CPD Fund, but fears loss of his job for this refusal. The General Counsel alleges that Respondent has violated ALRA Sections 1154(a)(1) and (b) and 1155.5.

Factual Background

The UFW and Mann Packing are parties to a collective bargaining agreement which provides for a holiday, known as CPD, on the first Sunday in June. The Employer is required to pay the employees for that day, although they do not work. If the employee executes an authorization, however, his or her holiday pay is remitted by the Employer directly to the Citizen Participation Committee (CPC). The collective bargaining agreement requires the Employer to discharge, at the union's request, any employee who fails to maintain good standing in the Union, and provides that the UFW be the sole judge of good standing of its members.

The UFW has enacted a number of rules concerning requirements for membership, and procedures for review of internal discipline. In August, 1977, a resolution was passed at the Union's constitutional convention, making contributions to the CPD Fund mandatory for all UFW members. The purpose of this resolution was to provide the financial base needed for the achievement of active political power for farm workers. The goals of the CPD Fund include helping to improve farm workers' lives off the job, ensuring that benefits won through

collective bargaining are not lost by action of the legislature, and financing civic activities of union members.

The manner of financing activities through the CPD Fund is the subject of resolutions passed by the UFW's National Executive Board (NEB) in September, 1978. A CPD Board, composed of the members of the NEB, is empowered to allocate money in the Fund consistent with UFW policies and resolutions. The NEB created two different programs through which CPD money would be expended. The National UFW Civic Action Program (CAP), was designated to engage in civic and social welfare activities designed to improve the economic and social conditions of UFW members and their families, and to promote the "general welfare" and "democratic way of life" for all people. The money which is allocated to CAP cannot be spent for activities regulated by state or federal election laws. CAP is empowered to endorse candidates and to recommend contributions to the other CPD program, the National UFW Political Action Committee (PAC). PAC was created to make political expenditures and contributions to influence the nomination and election of state, local, and party officials, and the passage or defeat of ballot propositions.

The NEB also passed a resolution in September, 1978, establishing a procedure whereby members could object to the expenditure of money contributed to CPD for political or ideological purposes which they oppose. A member may object to the portion of his or her contributed funds which is spent for particular candidates or programs. To do so, the

member must notify the UFW's National Secretary-Treasurer within the first 14 days of union membership, or during 14 days of each anniversary of membership. An NEB Committee then determines the proportion of the individual's deduction which goes to such candidate or program. The individual has the option of contributing that portion of the deduction to one of three charitable funds designated by the NEB. The member may appeal aspects of this procedure to the full NEB, and then to the UFW's Public Review Board (PRB) or to the UFW convention.

The three charitable funds to which a dissenting employee may choose to contribute are the Martin Luther King Farm Workers Fund (King Fund), the National Farm Workers Health Group (Health Group), and the National Farm Workers Service Center (Service Center). According to the stipulated record, the King Fund provides educational and charitable benefits to farm workers and their families; the Health Group provides services to farm workers and their families, including medical care and treatment, health maintenance, education, training, and clinical studies and research; and the Service Center provides medical, educational, and welfare services to farm workers. Many collective bargaining agreements negotiated by the UFW require employer contributions to the King Fund. The Health Group and Service Center are independent-and separate from the UFW.

Alleged Violations

Section 1153(c) of the ALRA permits unions which

are certified as exclusive bargaining representatives to negotiate union security agreements with agricultural employers. For purposes of this section, membership is defined as:

> the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

An employer who discriminates against employees on the basis of union membership, or the lack thereof, except in compliance with a union security provision which follows the requirements set forth above, violates Section 1153(c). In turn, a union which causes or attempts to cause an employer to violate Section 1153(c) violates Section 1154(a)(1) and (b).

The General Counsel does not claim, however, that Respondent caused or threatened to cause any discrimination. In fact, there is no evidence in the record that the Charging Party was forced to make any contributions to the CPD Fund or to any of the charitable options. Rather, Conchola asserts that he desires to refrain from authorizing such uses of his funds and fears he will be discharged from his job as a result. The General Counsel claims that the UFW has violated Sections 1154(a)(1) and (b) and 1155.5 by requiring CPD contributions on the threat of loss of employment. We agree with the ALO that no violation of any of these sections occurred in the instant case.

Sections 1154(a)(1) and (b) are modeled after

Sections 8(b)(l)(A) and (2) of the NLRA. [3/] Section 8(b)(1)(A) of the NLRA, and Section 1154(a)(1) of the ALRA permit unions to adopt their own rules regarding the acquisition and retention of membership. Citing the principle of majority rule, the Supreme Court has held that the internal rules and regulations of labor organizations are beyond the reach of

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[3/] Section 1154 of the ALRA provides, in part:

> It shall be an unfair labor practice for a labor organization or its agents to do any of the following:
>
> (a) To restrain or coerce:
>
> (1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to acquisition or retention of membership therein....
>
> (b) To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

Section 8(b) of the NLRA provides, in part:

> It shall be an unfair labor practice for a labor organization or its agents -
>
> (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; ...
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; ...

Section 8 (b)(1)(A), so long as the labor organization makes no attempt or threat to enforce the rule by inducing employers to discriminate against their employees. NLRB v. Boeing Co., 412 U.S. 67, 83 LRRM 2183 (1973); Scofield v. NLRB, 394 U.S. 423, 70 LRRM 3105 (1969); NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 65 LRRM 2449 (1967). In the present case, there is no evidence of any attempt or threat by the UFW to affect Conchola's relationship with his employer. We therefore dismiss the allegations of the complaint as to violations of Section 1154(a)(1) and (b) of the ALRA.

We also find that the General Counsel has not proven a violation of Section 1155.5 of the ALRA. [4/] This section

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[4/] Section 1155.5 provides: "It shall be unlawful for any pers to request, demand, receive, or accept, or agree to receive or accept, any payment, loan or delivery of any money or other thing of value prohibited by Section 1155.4."

Section 1155.4 provides:

> It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following:
>
> (a) Any representative of any of his agricultural employees.
>
> (b) Any agricultural labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the agricultural employees of such employer.
>
> (c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through

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makes it an unfair labor practice for any person to request or receive any money or thing of value prohibited by Section 1155.4, which proscribes payments by agricultural employers or their agents to unions or other employee representatives. Section 1155.6, however, provides, "Nothing in Section 1155.4 or 1155.5 shall apply to any matter set forth in subsection 186 of Title 29 of the United States Code," thus adopting the NLRB's exceptions to a similar rule, which include exceptions for union dues. Section 302 of the Labor Management Relations Act (LMRA), 29 U.S.C. Section 186(c).

Section 302 of the LMRA was enacted in an effort to prevent corruption in labor organizations. Arroyo v. United States, 359 U.S. 419, 44 LRRM 2028 (1959). The question of a violation under Section 302 has been construed as completely independent of a violation of Section 8 of the LMRA (Sections 1153 and 1154 of the ALRA). Crown Prods. Co., 99 NLRB 602, 30 LRRM 1098 (1952); Salant & Salant, Inc., 88 NLRB 816, 25 LRRM 1391 (1950). Particularly, the section does not apply to any monies paid by employers to labor organizations pursuant to a dues checkoff authorization. 29 U.S.C. 186 (c) (4).

The CPD Fund is essentially an assessment or a form

(fn.4 cont.)

representatives of their own choosing.

(d) Any officer or employee of an agricultural labor organization with intent to influence him in respect to any of his actions, decisions or duties as a representative of agricultural employees or as such officer or employee of such labor organization.

of union dues. It is a payment required of all employees for the benefit of the union and its membership. It is not the sort of payment contemplated by Section 1155.5. We shall therefore dismiss the complaint in its entirety.

Constitutional issues

While we find no violation in the instant case, the importance of this area of the law justifies some analysis of the parameters of the ALRA's union security provision. The significance of the constitutional and statutory issues raised in the parties' briefs and the ALO's decision, and the fact that this case presents the novel issue of the nature and extent of Board control over internal union procedures, warrant an attempt to provide some guidance in this area.

A. Governmental Action

The General Counsel argues that compulsory contributions to the CPD Fund, as a condition of employment, may violate objecting employees' constitutional rights of free speech and association. Both the state and the federal constitutions prohibit the state or any governmental entity from denying free speech and association. U.S. Constitution, First Amendment? California Constitution, Art. I, Section 2.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." West Virginia Board of Education v. Barnetta, 319 U.S. 624, 642 (1943).

We must determine, therefore, whether there is sufficient

governmental action in the enforcement of union security agreements under the ALRA for a constitutional issue to be raised. See, Gay Law Students Assn. v. Pacific Telephone & Telegraph Co., 24 Cal. 3d 458 (1979).

In Railway Employes Dept. v. Hanson, the Supreme Court upheld' the constitutionality of the union security provision of the Railway Labor Act, Section 2, Eleventh; 45 U.S.C. Section 152, Eleventh, which overrides any conflicting state law.[5/] Railway Employes Dept. v. Hanson, 351 U.S. 225 (1956) The Court found that because the clause invalidated conflicting state laws, the RLA provision had the "imprimatur" of the federal law and a constitutional question could be raised.

[5/] RLA Section 2, Eleventh provides, in part:

> 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 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 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.

In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the U.S. Supreme Court considered the constitutionality of an agency shop agreement made pursuant to a Michigan public employee relations act. As in Hanson, the Abood Court found that there was sufficient state action in the enforcement of the agency shop agreement to raise constitutional issues. The conclusion there was based on the state's role as the employer in any discharge or discrimination pursuant to the agreement.

Neither Hanson nor Abood is necessarily dispositive of the state action issue under the ALRA. In Hanson, the Court specifically relied on the preemptive nature of the federal act in finding governmental action. And in Abood, the governmental action was clear, since the employer was a governmental entity.

The union security provision of the NLRA, unlike that of the RLA, does not preempt contrary state law. NLRA, Sections 8(a)(3) and 14(b), 29 U.S.C. Sections 158(a)(3) and 164(b). Thus, where states have passed "right-to-work" laws, employers and unions under the jurisdiction of the NLRA may not enforce union security agreements. Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525, 23 LRRM 2199 (1949); A.F. of L. v. American Sash S Door Co., 335 U.S. 538, 23 LRRM 2204 (1949).

The Federal Circut Courts have differed on whether union security agreements under the NLRA bring constitutional considerations into play. See, e.g., Linscott v. Millers Falls

Company, 440-F.2d 14 (1st Cir. 1971), cert. denied, 404 U.S. 872; Reid v. McDonnell Douglas Corporation, 443 F.2d 408 (10th Cir. 1971). The California Supreme Court, however, has indicated its view that union security agreements require constitutional scrutiny because of the control that labor relations statutes allow unions to exercise over employment opportunities and bargaining rights. Gay Law Students Assn. v. Pacific Telephone & Telegraph Co., supra.

Furthermore, while the NLRA limits the requirement of union security agreements to payment of union dues and fees, the ALRA provisions require some review of the union's internal procedures by the Board.

Section 1153(f) prohibits agricultural employers from negotiating collective agreements with labor organizations unless this Board has acted to certify the unions. Section 1153(c) provides, in part, that membership in the union may be made a condition of employment and:

> membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

In a hearing before the Assembly Ways and Means Committee on May 27, 1975, Assemblyman Berman, an author of the Act, stated that the Board has the authority to determine whether the reason for expulsion from a union was "reasonable" under Section 1153(c). See Hearings on Senate Bill No. 1 Before the Assembly Ways and Means Committee on May 27, 1975,

page 5. Then Secretary of Agriculture and Services Bird expanded on the meaning of the above-quoted portion of the section:

> [this section] gives to the board the power to look into the internal workings of every labor organization that files under this Act and has any kind of activity wherein there is a complaint lodged against the labor organization because they are asking one of their members to do something that does not comport with fairness and with due process. Now, that is a trememdous power that labor organizations traditionally have never been willing to give up and have never been willing to give to a board, and, in effect, this language is giving to the board that power, and, if you look at other sections of the Act, this would allow the board, in extreme cases, to even go so far as to decertify a union, if, in fact, they're carrying on practices that the gentleman here described. See Hearings on Senate Bill No. 1 Before the Senate Industrial Relations Committee on May 21, 1975, pp. 71-72.6/

6/ The gentleman to whose comments Secretary Bird referred, cite examples of requiring union members to go to demonstrations or meetings, or to take oaths of allegiance. Ibid, at pp. 68-69. We have not yet been presented with any such requirements in a case before us. If presented with mandatory rules contested by a dissenter, however, we would of course consider any constitutional rights claimed, such as the right of free speech, which might be threatened by requiring employees to attend political demonstrations.

While the federal law allows discharges from employment pursuant to the union security provisions only for failure to pay union dues and initiation fees, internal disciplinary measures for violations of other union rules are permitted. Examples include expulsion or fines for crossing picket lines. Under the ALRA, if such discipline affects a worker's employment, this Board would have to consider the reasonableness of the union's action, Section 1153 (c), and the many federal decisions dealing with such factors as the imposition of union penalties on nonmembers, the fairness of the union's rules in permitting resignation, and the reasonableness of their application. See, e.g., NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 65 LRRM 2449 (1967); Scofield v. NLRB (Wisconsin Motor Corp.), 394 U.S. 423 (1969); NLRB v. Granite State Joint Board, Textile Workers, Local 1029, 409 U.S. 213 (1972); Machinists, Booster Lodge 405 (Boeing Co.) v. NLRB, 412 U.S. 84 (1973); Auto Workers, Local 1384 (Ex-Cello-Q Corp.), 219 NLRB No. 123, 90 LRRM 1152 (1975); NLRB v. Machinists Lodge l871, 575 F. 2d 54 (2d. Cir. 1978); NLRB v. Machinists Local 1327, 608 F.2d 1219 (9th Cir. 1979).

As we find state action pursuant to the above discussion, we must next consider a dissenting employee's constitutional rights in determining whether Section 1153 (c) permits compulsory payments to the CPD Fund through the mechanism of the union security provision.

B. The Constitutionality of Compulsory Payments

The courts have long upheld the constitutionality of union security provisions enacted pursuant to the federal labor acts, in the face of employee objections to payments to labor unions. See, e.g., Otten v. Baltimore & O. R. Co., 205 F.2d 58 (2d Cir. 1953); Wicks v. Southern Pacific Co., 231 F.2d 130 (9th Cir.), cert. denied, 351 U.S. 946 (1956). In Hanson, supra, the Court traced the rationale for the section to a congressional purpose of protecting the unions from "free riders" - those who benefit from union representation but do not pay for it. Finding that "the financial support required relates,...to the work of the union in the realm of collective bargaining," 351 U.S. at 235, the Hanson Court held that a requirement of payment from all who receive the benefits of the union's work is constitutionally permissible. In reaching this conclusion, the Court noted that on the record there was no infringement of political or ideological beliefs, and that if such infringement had in fact existed, or if dues, fees or assessments had been used to force ideological conformity in contravention of the First Amendment, a different result might ensue.

In Machinists v. Street, 367 U.S. 740 (1961), the

Court was faced with a case" where the money obtained through a union security provision subject to the RLA was used to support candidates for political office and to advance political programs. By interpreting the statute to prohibit such uses for mandatorily-collected funds, the Court found a violation of the statute, and avoided the constitutional issue. The Court found that the monies were not used to help defray expenses of the negotiation or administration of contracts, or of expenses of grievances and disputes. "In other words, it is a use which falls clearly outside the reasons advanced by the unions and accepted by Congress why authority to make union-shop agreements was justified." 367 U.S. at 768. The Court refrained from expressing any view as to the legality of other types of union expenditures which might be objected, to by employees, and which were not made for purposes contemplated by Congress.

The most recent statement from the Supreme Court on the issue of mandatory fees collected for purposes not directly related to collective bargaining is found in Abood v. Detroit Board of Education, 431 U.S. 209 (1977). The plaintiffs in Abood alleged that money they were required to contribute under an agency shop agreement was spent for economic, political, professional, scientific and religious activities unrelated to collective bargaining. The state law specifically permitted the union to make expenditures for lobbying and supporting candidates for office.

The Court found that Hanson and Street were

controlling, and that the Michigan statute constitutionally permitted an agency shop agreement in public employment. The Court reasoned that while compulsory support of unions has an impact on First Amendment interests by creating some interference with the individual employee's freedom of association or non-association, such interference is justified by the legislature's assessment of the significance of the agency shop to the regulation of labor relations.

The Court found that the Michigan law embodied the same governmental interests as the federal laws, and Hanson and Street were therefore deemed controlling. All of these labor laws adopted the central principle of exclusive representation by a selected labor organization. See, e.g., Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50, 88 LRRM 2660 (1975); NLRB v. Allis-Chalmers Mfg. Co., supra. The result of this majoritarian principle has been to invest the representative with great responsibilities, including negotiation and administration of collective agreements, representation of employees in the resolution of disputes and grievances, and the duty fairly to represent all of the employees in the bargaining unit. 431 U.S. at 221. Both the Michigan and the federal statutes were designed to distribute the costs of such representation fairly, and to counteract the incentive among employees to become "free riders," i.e., to receive the benefits of union representation without paying for its expense. 431 U.S. at 222.

The Abood Court rejected the plaintiffs' argument that because public employee unions are necessarily involved in the political process, public employees require greater constitutional protection. The Court found that many union activities, even those most closely related to collective bargaining, involve matters protected by the First Amendment, stating:

> ...our cases have never suggested that expression about philosophical, social, artistic, economic, literary, or ethical matters--to take a nonexhaustive list of labels--is not entitled to full First Amendment protection. 431 U.S. at 231.

Thus, the Court stated, "the question whether the adjective 'political' can properly be attached to those beliefs" is not "the critical constitutional inquiry." 431 U.S. at 232.

The Court held in Abood that funds spent by unions for the financial support of political candidates, or for political or other ideological causes not germane to collective bargaining, may be financed only by employees who do not object to such expenditures.

Compulsory Payments Under the ALRA

Membership in a. labor organization is defined in ALRA Section 1153(c) as, "the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing." From the stipulated record, it appears that CPD requirements are uniformly applied, and there is no allegation otherwise. Assuming for the moment the constitutionality of the requirement, we find that payment of wages for one day a year, in order to support a union-related

cause, is a reasonable requirement.

The statute also provides that membership requirements shall comply with "a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership." Section 1153(c). We find no violation of this part. We find on this record no infringement of due process in the procedural aspects of the CPD requirement, since the evidence before us describes review procedures which appear to be fair. We make no finding, of course, as to the application of those procedures, for we have before us no evidence thereof.

In analyzing ALRA Section 1153(c), in light of the Supreme Court's decision in Abood, we conclude that compulsory contributions to the CPD Fund, as a condition of employment, would be unlawful to the extent that some of the money is spent for contributions to candidates and to political or ideological activities not germane to collective bargaining. The Abood Court did not attempt to decide which activities are germane to collective bargaining and which are not. In this area, we are left on largely uncharted ground.[7/]

[7/] While one court which has addressed the issue lists many activities generally engaged in by unions as unrelated to collective bargaining, Ellis v. Railway Clerks, 91 LRRM 2339 (S.D. Calif. 1976), its approach removed from the ambit of shared expenses the costs of many of the day-to-day functions of bargaining representatives which may be necessary to provide adequate representation.

In future determinations of what is germane to collective bargaining, we will bear in mind that the governmental interests expressed in the ALRA differ in some respects from those underlying the federal acts and the Michigan statute considered by the Abood Court. Under the federal and Michigan statutes, the balance in the relationship between the union selected by a majority of employees and the individual dissenter was struck by permitting, as a condition of employment, only financial support in the form of dues, fees or assessments. This limitation on union security agreements reflected the governmental interest in requiring all employees to share the expenses of collective bargaining and ridding the union of the "free rider" problem. Section 1153 (c) of the ALRA, however, permits a full union shop, and thus the discharge of employees who do not remain in good standing in the union. Thus, the California legislature struck the balance somewhat differently.

In reviewing the UFW's CPD Fund,[8/] we are presented with only brief and vague descriptions of the activities of CAP and PAC and the optional charities. Payments toward support of political candidates by PAC clearly may not be

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[8/] We consider here only the right of individuals to refrain from paying union dues or assessments which the union spends for ideological or political purposes, and not the right of the union to spend money for such purposes. See, Gabauer v. Woodcock, 594 F.2d 662 (8th Cir. 1979). "If minorities 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." Douglas, dissenting, United States v. Auto Workers, 352 U.S. 567/597 (1957); see, also, DeMille v. American Federation of Radio Artists, 31 Cal. 2d 139 (1947).

compelled. But lobbying efforts or other political activities may or may not be related to collective bargaining, depending on their subject matter, and if so related may be supported through compulsory contributions.

Under the UFW's CPD program, a dissenting employee has the option of directing his or her funds to one of three designated charities. The brief description of these charities in this record indicates that they may be related to collective bargaining, but there is insufficient detail to permit firm conclusions. The services provided to farm workers by the Health Group, the King Fund and the Service Center are broadly described as including educational, charitable, medical and welfare benefits. Without more, we cannot conclude that mandatory contributions for these purposes would infringe on First Amendment rights.

Remedies

Noting that some CPD funds are contributed to political candidates, and assuming that some of the expenditures made by 'the UFW from its CPD Fund may not be germane to collective bargaining, we turn to consideration of possible remedies for dissenting employees. The UFW has implemented a voluntary charitable option as an alternative to political expenditures, but we find that in some respects this option is not consistent with the guidelines set forth by the Supreme Court.

In Street, the Court stated that since the union shop agreement standing alone was not unlawful, dissenters

remain obliged to pay the amount called for by the agreement. Even *as* an interim measure, an injunction against the union shop agreement or against all expenditures for political purposes would be too broad, as it would restrain all political activities and infringe on First Amendment rights of the majority. Instead, the Court suggested two possible remedies, which "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." 367 U.S. at 774. One possible remedy would be an injunction against expenditure for political causes opposed by the dissenting employee of a sum proportionate to the money he *or* she contributed; another remedy would be restitution to each employee of the portion of his or her money spent for political purposes over objection. In any event, the dissent "must affirmatively be made known to the union by the dissenting employee." Ibid.

In Railway Clerks v. Allen, 373 U.S. 113 (1963), the Court expanded on the remedial issues. There the Court reversed the action of a lower court in granting an injunction which restrained forced collection of any money by the union, and provided for modification of the order upon a showing of the proportion reasonably necessary for and related to collective bargaining. The Supreme Court stated that while it does not require the dissenting employee to allege and prove each expenditure to which he or she objects, permitting instead objection to any political expenditures, an injunction

may not relieve employees of all duty to contribute to the union. The lower court was required on remand to determine which expenditures were political, and the percent of total expenditures which was political, with the union bearing the burden of proving the proportion. Again the Court suggested possible remedies: a refund to dissenters of the proportion of exacted fees used for political purposes, and a reduction of future exactions by the same proportion. The Court also encouraged unions to adopt voluntary plans to afford an internal union remedy. The Court in Abood approved the Allen approach.

The UFW's rules appear to require that an employee, to be eligible for the option, must object to the use of a portion of his or her CPD assessment for political candidates or programs unrelated to collective bargaining. In both Allen and Abood, the Court made clear that a dissenter need only object generally to the use of funds for political or ideological uses. In Abood, the Court stated:

> Allen can be viewed as a relaxation of the conditions established in Street governing eligibility for relief. Street seemed to imply that an employee would be required to identify the particular causes which he opposed. Any such implication was clearly disapproved in Allen, and,...there are strong reasons for preferring the approach of Allen. 431 U.S. at 239, n. 39 (citations omitted).

To the extent that the UFW rules require the dissenter to object to specific expenditures, rather than objecting generally to political or other expenditures unrelated to collective bargaining, the rules would not appear to meet the Court's standards.

A further aspect *of* the UFW program which troubles this Board is the possibility that the charitable option may be of no more than "bookkeeping significance." The Court in Abood noted, at n. 35:

> It is plainly not an adequate remedy to limit the use of the actual dollars collected from dissenting employees to collective-bargaining purposes. Such a limitation "is of bookkeeping significance only rather than a matter of real substance. It must be remembered that the service fee is admittedly the exact equal of membership initiation fees and monthly dues...and that...dues collected from members may be used for a 'variety of purposes, in addition to meeting the union's costs of collective bargaining.' Unions 'rather typically" use their membership dues 'to do those things which the members authorize the union to do in their interest and on their behalf.' If the union's total budget is divided between collective bargaining and institutional expenses and if nonmember payments, equal to those of a member, go entirely for collective bargaining costs, the nonmember will pay more of these expenses than his pro rata share. The member-will pay less and to that extent a portion of his fees and dues is available to pay institutional expenses. The union's budget is balanced. By paying a larger share of collective bargaining costs the nonmember subsidizes the union's institutional activities." Retail Clerks Local 1625 v. Schermerhorm, 373 U.S. 746, 753-754, 53 LRRM 2318.

While much of the work of the charities, of CAP, and of PAC may be sufficiently related to collective bargaining to permit compulsory payments, the Supreme Court's rulings do not permit an employee who objects to non-collective bargaining expenditures to be required to pay a disproportionate share of collective bargaining costs. Thus, a program which does not provide any possibility of a proportionate rebate for expenditures not germane to collective bargaining,

would appear to conflict with the Supreme Court's requirements,

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and it hereby is, dismissed in its entirety.

Dated: March 19, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

RALPH FAUST, Member

CASE SUMMARY

UFW (J. Jesus R. Conchola)

6 ALRB No. 16
Case No. 78-CL-14-M

ALO DECISION

The ALO concluded that Respondent did not violate Labor Code Sections 1154(a)(l) and (b) or 1155.5 by entering into a union shop agreement with the agricultural employer of the Charging Party, whereby employees were required to contribute to Respondent's civic action and political fund, or to a charitable alternative.

BOARD DECISION

The Board affirmed the ALO's conclusion, finding that no violation had occurred since the Charging Party had not been forced to contribute to the fund, nor threatened with discharge. The Board noted that there was governmental action in the enforcement of union shop arguments pursuant to the Act, and that employees cannot be compelled, as a condition of employment, to contribute to political or ideological union expenditures unrelated to collective bargaining. Where an employee wishes to object to such contributions, he or she must affirmatively make such objection to the union, although the objection need not be made to specific expenditures. Where an employee makes such objection, the proportion of his or her contribution going to such purposes may not be spent for other collective bargaining purposes, since that would result in dissenters bearing a disproportionate burden of the collective bargaining costs.

* * *

This case summary is furnished for information only and is not an official statement of the case or of the ALRB.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: UNITED FARM WORKERS OF AMERICA, AFL-CIO, Respondent, and J. JESUS R. CONCHOLA, Charging Party.	)	CASE NO. 78-CL-14-M

Maurice Jourdane, Esq.
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Salinas, CA 93907,
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for the Respondent.

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DECISION

KENNETH CLOKE, Administrative Law Officer:

Statement of the Case

This case was submitted to me for decision or a stipulated set of facts in Salinas on November 27, 1978. The original charge was duly served and filed on September 22, 1978, and the complaint, alleging violations of the California Agricultural Labor Relations Act (hereinafter referred to as "the Act"), under Sections 1154 (a) (1), 1153 (c), and 1154 (b), was issued on October 16, 1978. During the hearing, counsel for the General Counsel moved orally to amend the complaint by interlineating an allegation of violation under Section 1155.5 of the Act. The motion, opposed by Respondent, was granted by the Administrative Law Officer for reasons which appear in the transcript of record.

Respondent filed an Answer, admitting fully the jurisdiction of the Agricultural Labor Relations Board

(hereinafter referred to as "the Board"), but denying all other allegations. Respondent raised two affirmative defenses: first, that the allegation in the complaint did not state facts sufficient to constitute an unfair labor practice; second, that the conduct set forth as the basis for allegations that Respondent violated the Act was itself protected by Section 1153 (c). These defenses were deemed applicable to the amendment made orally by General Counsel in paragraph 7, and reserved for decision herein.

Because of the complexity and importance of the legal issues, ample time was allowed for briefing, and by January 5, 1979, briefs from both parties were received. After an initial reading, the parties were contacted to determine whether they were interested in filing reply briefs, which they declined. Subsequently, the Administrative Law Officer directed that the parties file supplemental briefs. Only General Counsel did so, however.

All parties were given full opportunity to conduct a hearing, call and examine witnesses, examine and present documentary evidence, and orally argue their positions, which they declined. Instead, they submitted a stipulated set of facts, subsequently including a copy of Respondent's Constitution, which, together with the brief, moving papers and transcript, constitute the entire record in this case. Upon this record, including judicial notice and independent

research and reflection, I base the following findings of fact and conclusions of law.

FINDINGS OF FACT

The facts, as stipulated, are as follows. On January 23, 1976, the United Farm Workers of America, AFL-CIO, (hereinafter referred to as "the UFW") was certified by the ALRB as exclusive bargaining representative for agricultural employees at Mann Packing Company. On April 12, 1976, the UFW and Mann Packing Company entered into a collective bargaining agreement which is currently in effect. Article 2 of that agreement provides that union membership in good standing is a condition of employment, and that:

> Union shall be the sole judge of the good standing of its members. Any worker who fails to become a member of Union within the time limit set forth herein, or who fails to pay the required initiation fee, periodic dues or regularly authorized assessments as prescribed by Union, or who has been determined to be in bad standing by Union pursuant to the provisions of the Union's constitution, shall be immediately discharged upon written notice from Union to Company, and shall not be reemployed until written notice from Union to Company of the worker's good standing status.

Article 2 of that agreement provides that the Company "agrees to deduct from each worker's pay initiation fees, all periodic dues, and assessments as required by Union, upon presentation by the Union of individual authorization signed by workers, directing Company to make such

deductions."

Article 24 covers holidays, and provides, in Section D3, that "Citizen's Participation Day" (hereinafter referred to as "C.P.D.") shall be a paid holiday, with all such pay going to the UFW's C.P.D. Committee:

> Citizen Participation Day shall be designated as the first Sunday of June. All workers qualifying shall receive holiday pay as provided herein. Upon receipt of proper written authorization from the worker, the Company shall deduct from such workers wages the pay for Citizenship Participation Committee of the United Farm Workers, AFL-CIO, for allocation as designated by the worker.

While not every worker qualifies for C.P.D. pay, every union member does, since both union membership and the C.P.D. fund require 5 days work experience under the contract before they become mandatory.

The UFW provides, in Article VI of its Constitution, that its purposes are "...to engage in political activity which will advance the welfare of farmworkers", and that its objects are:

> (k) To engage in legislative activity to promote, protect and advance the physical, economic and social welfare of the workers;
>
> (l) To promote registration, voting, political education and other citizenship activities, involving the Membership and their families and communities, which will secure the election of candidates and the passage of improved legislation in the interest of all labor and the defeat or repeal of those laws which are unjust to labor and detrimental to the Membership;

In August, 1977, Resolution 45 was passed by delegates elected to the UFW's Third Constitutional Convention,

providing:

> WHEREAS, farm workers face abuse and discrimination every day, both on the job and in the community, and
>
> WHEREAS, through good union contracts farm workers can stop the abuses and discrimination on the job, and
>
> WHEREAS, the fight for justice and dignity does not stop at the end .of the work day, but extends into the community, and
>
> WHEREAS, farm workers must build active political power to protect the gains won on the job through contracts and fight the problems of the community, and
>
> WHEREAS, active political power means that farm workers can lobby to pass good laws, that will benefit farm workers, and fight to block the passage of bad laws, which are sponsored by the rich lobby of growers, and
>
> WHEREAS, active political power means voter registration and campaigns to elect good public officials, who know and understand the problems of farm workers, and
>
> WHEREAS, active political power means civic action in the community to stop discrimination, bad housing, police brutality, and other problems that must be changed, and
>
> WHEREAS, a crucial element to building active political power is financial support,
>
> THEREFORE BE IT RESOLVED that the Third Constitutional Convention of the United Farm Workers of America, AFL-CIO, in an effort to provide the financial support that is crucial to building active political power to better the lives of all farm workers, does hereby vote to provide that contributions to the Citizen Participation Day Fund shall be mandatory.

On September 18, 1978, the UFW's National Executive Board voted to establish a Board to administer C.P.D. funds, composed of members of the National Executive Board, and in Resolution 2 provided:

> ...[A]ny member shall have the right to object to the expenditure of a portion of his Citizenship Participation Day contribution for political candidates or specific programs. The member may perfect his objection by individually notifying the National Secretary-Treasurer of his objection by registered or certified mail; provided, however, that such objection shall be timely only during the first fourteen (14) days of Union membership and during the fourteen (14) days following each anniversary of Union membership. An objection may be continued from year to year by individual notifications given during each annual fourteen (14) day period. The approximate proportion of the member's total Citizenship Participation Day contribution spent for each political candidates or specific programs to which he objects shall be determined by a committee of the National Executive Board, which shall be appointed by the President, subject to the approval of said Board. The member shall have the option of contributing said portion of his C.P.D. contribution to one of three charitable funds designated by the National Executive Board. If an objecting member is dissatisfied with the approximate proportional allocation made by the committee of the National Executive Board or the disposition of his objection by the National Secretary-Treasurer, he may appeal directly to the full National Executive Board, and the decision of the National Executive Board shall be appealable to the Public Review Board or to the Convention, at the option of said member. National Executive Board, Resolution 2, September 18, 1978.

The C.P.D. Board met on the same day, and established a "National United Farm Workers Civic Action Program" (hereinafter referred to as "C.A.P.") together with a separate and segregated fund, with the sole proviso that it could not be used for "activities, causes, or persons which would subject it to any state or federal law regulating elections, including laws requiring the reporting of campaign contributions? except that monies may be expended on non-partisam (sic) voter registration and get-out-the-vote activities." C.P.D. Board, Resolution 2, September 18, 1979.

The C.P.D. Board further resolved not to expend these monies in connection with any federal election, and to vest all C.P.D. funds with the union's C.A.P., so that it could make "political expenditures and contributions to influence the nomination and election of individuals to state, local, and/or party office, and ... influence the passage or defeat of ballot questions..." C.P.D. Board, Resolution 2, September 18, 1978.

The purpose of C.P.D. expenditures was described be Cesar Chavez, President of the UFW, in an article appearing in the "President's Newsletter, " a publication for members. The parties stipulated that if called as a witness, Mr. Chavez would have testified as follows:

> Improving your lives and your community requires much more than on the job benefits. You need the improvements on the job that a union contract provides, but you also need fair and equal treatment in all areas of your lives. This is where the civic action program of the Union becomes extremely important, and where your help to build the Citizenship Participation Day Fund (which helps us to deal with the political power of growers and their friends) is so critical. Without C.P.D. there would be no Agricultural Labor Relations Act in California. Without the ALRA there would be no contracts. And without contract's there would be no justice for farm workers.
>
> C.P.D. is designed to finance the civic activities of the Union's members. If we are going to compete with the growers and their rich, powerful and influential lobby, we need a strong legislative program for the Union--with no government strings attached to strangle the farm workers' efforts to improve their lives through better programs and better laws.
>
> If we are going to have power, we have to build a fund to finance it. Other unions have strong legislative programs, and we need the same... "President's Newsletter". Stipulation of Facts, Exhibit C.

Chavez would have testified further, that C.P.D. funds, prior to becoming mandatory, were expended on the following projects:

1. It helped to pass the ALRA in California, guaranteeing your right to a secret ballot election to choose your own union.

2. It made the Florida legislature aware of the critical need for a secret ballot elections law for farm workers there.

3. It's helped us win unemployment insurance benefits for farm workers.

4. Has improved Workman's Compensation benefits for farm workers.

5. Has worked for consumer protection.

6. Has worked for better immigration laws.

7. Has worked for legislation to provide health and safety protections on the job, such as pesticide controls and other safety protections.

8. Has worked for better education of our children.

9. Fought for a ban on the short-handled hoe.

10. Fought for better housing for farm workers.

11. Fought for an end to child labor.

12. Is fighting bad legislation which would take away farm worker's rights under the law.

13. Is pushing the state of California to help farm workers who are being displaced by mechanization.

14. Is educating the public on all of the above mentioned areas and other problems farm workers face. Ibid.

Future objectives for the use of C.P.D. funds Chavez declared to be to:

1. Help win secret ballot procedures for farm workers in other states.

2. Help educate and lobby legislators to respond to the needs of our communities.

3. Develop a strong advocacy program to protect the gains farm workers have already made, and to make more and faster progress.

4. To continue the struggle for improvements in all areas of our lives. Ibid.

It was agreed by stipulation that Dolores Huerta, First Vice-President of the UFW and a member of its National Executive Board, if called as a witness, would have testified the UFW's decision to establish the C.P.D. Board and C.A.P. originated in the experience of the United Auto Workers, which:

> collects funds from which expenditures for political and civic purpose are made by imposing a mandatory tax amounting to a percentage of each member's monthly dues and that the money so collected is allocated in part to a political action committee and in part to a community action program. I am also informed that the United Auto Workers has a procedure whereby members may object to expenditure of this dues money for activities or causes to which he is politically or ideologically opposed which is similar to the procedure adopted by the National Executive Board of the UFW.... Declaration of Dolores Huerta, Stipulation of Facts, Exhibit D.

Huerta would have testified that the charitable funds designated by the National Executive Board, into which a member has the option of contributing, are the National Farm Workers Service Center, the National Farm Workers Health Group, and the Martin Luther King Farm Workers Fund. These funds, it was agreed, are established as follows:

> The Martin Luther King Farm Workers Fund provides educational and charitable benefits and services to farm workers and their families. The National Farm Workers Health Group provides service to farm workers and their families including but not limited to providing medical care and treatment, health maintenance, improvement, education and training, and the undertaking on behalf of such persons of clinical studies and medical-scientific reasearch

> into the causes, characteristics, and means of preventing and cure of the ailments and injuries afflicting farm workers and the rural poor. The National Farm Workers Service Center, Inc. provides medical, educational, and welfare services to farm workers.
>
> Agricultural employers with collective bargaining agreements with the UFW contribute to the Martin Luther King Farm Workers Fund. The National Farm Workers Health Group and the National Farm Workers Service Center, Inc. are independent organizations, separate from the UFW and from the contractual relationship between the United Farm Workers and any agricultural employer. Ibid.

The charging party is an employee of Mann Packing Co. and a member of the UFW in good standing. He does not desire to contribute money for union expenditure, political purpose, or UFW-selected charity, nor has he given any indication of interest in any other charity, or any reasons for his refusal. He has not signed an authorization card to deduct C.P.D. funds from his pay or agreed to remit these to the UFW, and believes that if he fails to do so, he will cease to be a member in good standing and will lose his job. No disciplinary action has been brought against him under the UFW Constitution. To date, none of the monies derived from the charging party or others by compulsory contribution have been expended, and there has been no decision as to how these monies will be spent.

On these facts, I reach the following conclusions of law:

CONCLUSIONS OF LAW:

This case presents issues of first impression, great complexity and enormous importance. In balance, hang the rights of unions to engage in political and social action, and the

rights of members of compulsory associations to individual liberty. Simply put, the position of the General Counsel in this case is that political activity may not be made compulsory because individual union members possess a freedom not to associate. The position of the union is that it has a right to engage in political action under the democratic principle of majority rule, and will be made less effective, even in collective bargaining, if it is denied permission to exact mandatory contributions for political and legislative activity favoring farmworkers. A decision for one places the other in apparent jeopardy, yet both have value and a colorable claim to legal protection under the law. Furthermore, it is plain that any absolute prohibition, whomever it might favor, would frustrate the policies of the act, and deny rights of the highest order. Where such fundamental rights conflict, rulemaking must proceed with caution.

At the same time, it must be recognized that there is no legal authority precisely on point. While several cases of signal importance cover one or another aspect of the legal problems presented here for decision, the precise facts have never before been adjudicated.

Under these circumstances, it is necessary to pay greater attention than is ordinarily necessary to the policies of the Act, the history of regulation, social science studies, and analogous determinations in related fields. (See Appendix).

Public Policy

The broad social policy of the Act, as declared by the California Legislature, is:

> to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations...to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state. Section 1.

The Act further declares that it is the policy of the State of California to:

> encourage and protect the right of agricultural employees to full freedom of association, self-organization and designation of representatives of their own choosing, and to be free from the interference, restraint and coercion of employers of labor, or their agents, in...self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Section 1140.2. Emphasis added.

Section 1152 of the Act declares the rights of employees to include:

> the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities...Id. Emphasis added.

In addition, Section 1153(c) of the Act provides that union membership:

> shall not be denied or terminated except in compliance with a constitution and by-laws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members... Id.

The Act mandates not only protection for the rights of agricultural employees, as does the NLRA in 29 USC Section 151, but directs the Board to "encourage and protect" Section 1140.2, emphasis added, employees in the enjoyment of these rights. This addition cannot have been devoid of meaning.

In addition, the act provides expanded scope for union security clauses, Section 1153 (c), and for secondary activity, in implicit recognition of the superior economic and political power of agricultural employers, and an expanded concept of the need for strong self-organization among employees whose migrant and seasonal labor increases the harmful effects of fragmentation, isolation, and powerlessness.

These statements of fundamental policy are not precisely paralleled in the NLRA, so that the injunction of Section 1148 of the Act to follow applicable precedents under the NLRA will require more care, to make certain that applicability is within the policy limits set forth by the California Legislature.

The Constitutional Right of Association

General Counsel has alleged not only violations of the Agricultural Labor Relations Act, but of the federal, and, by implication, state constitutions as well. Since these arguments raise the greatest difficulty, while also possessing the greatest authority, they will be considered first.

While never precisely ruling on the facts presented here, Congress and the Courts have on several occasions addressed themselves to the problem of compulsory contribution for political purposes and the constitutional right of association, holding on several occasions, that individuals acting in concert as union members possess First and Fifth Amendment rights. Hague v. CIO, 307 US 496 (1939); Furniture Workers v. Gates, 75 F. Supp. 620 (N.D. Ind., 1948), These rights, however, evolved over a period of centuries into a common law of association, and all that was recognized in the Tudor Industrial Code was a freedom not to associate. Association in general was treated as an illegal combination, or criminal conspiracy. See e.g., The Philadelphia Cordwainer's Case, text in Commons and Gilmore, A Documentary History of American Industrial Society (Cleveland III, 61-385 (1910); see also, Nelles, "The First American Labor Case", Yale Law Journal, XLI (December, 1931), 165-200; Dulles, supra, p. 30; Gregory, Labor and the Law, chap. 1, (1959); Rayback, supra, p. 12; People v. Melvin, Wheller Cr. Cas. 262 (N.Y. 1810); Pittsburg Cordwainers' Case (1815), in Commons and Gilmore, supra, IV, 15-87; People v. Fisher, 14 Wend. 10 (N.Y. 1835); State v. Donaldson, 32 N.J.L.

151 (1867), at least until 1842. Commonwealth v. Hunt, 45 Mass. (4 Mete.) III (1842). See, also, e.g., Nelles, "Commonwealth v. Hunt", Columbia Law Review, XXXII (November, 1932), 1128-69.

At common law, a union member possessed only rights common to members of private non-profit associations, see, e.g., Chaffee, "The Internal`´ Affairs of Associations Not for Profit", 43 Harv. L. Rev. 993 (1930), but these generally included a right of fair treatment under the rules of the association, see, e.g., International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958); Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931), and a right to restrain "ultra vires" activities and expenditures. Amalgamated Soc'y of Ry. Servants v. Osborne, [1901] A.C. 87; Yorkshire Miners' Ass'n v. Howden, [1905] A.C. 256; cf. Local 720 v. Bednaseir, 119 Colo. 586, 205 P. 2d 796 (1949); De Mille v. American Fed'n of Radio Artists, 31 Cal. 2d 139, 187 P. 2d 769, cert. denied, 333 U.S. 876 (1947); Eads v. Soyen, 45 LRRM 2553 (N.D. 111. 1959). This latter theory was of no consequence, of course, where the union constitution contained a broad "purpose" clause authorizing any action which might benefit the membership, Id.; see also, e.g., Bromwich, Union Constitutions; A Report To The Fund For The Republic (1959), or a specific authorization clause, Id., as is the case e

Except for constitutional prohibition or statutory regulation, it is clear that labor unions have the same right to engage in political activities as do other groups. U.S. v. Construction & General Laborers Local Union, supra. o

to legislation which, in the opinion of members of a labor union, would be inimical to their welfare, is a legitimate object of association,nd a permissible subject for union constitutions. De Milie v. American Federation of Radio Artists, 31 C. 2d 139, 187 P. 2d 769, (1947), cert. denied, 333 US 876 (1948), Anno. 175 ALR 397. A union has been recognized in California as having a legal right to impose an assessment on its members for the defeat of legislation regarded as detrimental to its interests, or take other measures for its protection and preservation, whether a minority of members agree or not. Ibid.

On the other hand, any effort to coerce members through fines, threats, suspensions or boycotts, to vote for certain candidates for public office, or to coerce public officials with respect to future appointments, is unlawful. Schneider v. Local Union U.A.J.P., 116 La. 270, 40 So. 700 (1905); Anno. 14 ALR 1446, 49. See also, Mitchell v. I.A.M., 196 Cal. App. 2d 796, 16 Cal. Rptr. 813 (1961). Similarly, a union rule which forbids union members to petition the legislature, is void as violative of their rights under a state constitution to petition for redress of grievances. Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 A. 70 (1921).

In Thomas v. Collins, 323 US 516 (1945), the Supreme Court held the organizing activities of a union and its president were entitled to First Amendment protection, although these activities were aimed at economic gains, rather than the political process, and ruled that a state may not require labor organizers to register, without violating constitutionally pro-

tected rights of speech and assembly. This reasoning in principle, requires that political activities by labor unions receive equal protection.

The constitutional guarantee of freedom of association was first fully enunciated in NAACP v. Alabama ex rel. Patterson, 357 US 449 (1958), see also, De Jonge v. Oregon, 299 US 353, at 364-6 (1937); and has included the right of union members to associate for political purposes, and support their political ideas financially. See, e.g., Brotherhood of RR Trainmen v. Virginia ex rel. Va. State Bar, 377 US 1 (1964); United Transportation Union v. State Bar of Michigan, 401 US 576 (1971); UMW v. Illinois State Bar Assn., 389 US 217 (1967); De Mille v. American Federation of Radio Artists, supra.

Since passage of the NLRA, courts have recognized an associational right in connection with union activities, also as a part of common and statutory law. American Federation of Labor v. Reilly, 113 Colo. 90, 155 P. 2d 145, 160 ALR 873 (1944). Police have been enjoined from attending union meetings on this basis, and in Local 309, United Furniture Workers v. Gates, 75 F. Supp. 620 (N.D. Ind. 1948), the court upheld "the freedom and liberty to express ourselves privately and to hold private assemblies for lawful purposes and in a lawful manner without governmental interference or hindrance..." Id. at 624.

It has been held on several occasions that the freedom to associate for political purposes is clearly and specifically protected by the First Amendment. Elrod v. Burns, 427 U.S. 347,

355-357 (1976) S. (plurality opinion); Cousins v. Wigoda, U.S. 477, 487 (1974); Kusper v. Pontikes, 414 U.S. 51, 56-57, (1973); NAAGP v. Alabama ex rel. Patterson, supra.

Recently corporations have been recognized as having a constitutional right to make political contributions and expenditures, and influence the votes of elected representatives, First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978). Moreover, one of the principles underlying the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), was that contributing to an organization for the purpose of spreading a political message is protected by the First Amendment, because making "a contribution ... enables likeminded persons to pool their resources in furtherance of common political goals", Id. at 22. The Court reasoned that limitations upon the freedom to contribute "implicate fundamental First Amendment interests". Id. at 23. See also Shelton v. Tucker, 364 U.S. 479 (1960). This right to act in common in furtherance of political ends was recognized by Justice Rutledge, who has commented: "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it." United States v. CIO, 335 US 106 (1948), concurring opinion. Moreover, Title I of the Landrum-Griffin Act, 73 Stat. 519 (1959), 29 U.S.C.A. 401 et seq. (I960), guarantees, among other rights, that:

> every member of any labor organization shall have the right to meet and assembles freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or

> upon any business properly before the meeting, subject to the organization's established and reasonable rules ...

If members may engage in political actions singly, they may also do so in common, and nothing in labor law precludes a union from voting to establish a political fund, negotiating a paid holiday, or transferring those funds to political candidates or other political ends.

It has been persuasively argued that any ban on union political contributions and expenditures "conflicts with the associational rights of union members by preventing them from supporting candidates collectively through the union." David A. Grosberg, in "The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures", 42 U. of Chi. L. Rev. 148, 154-5 (1974). See also, David Ewing, Freedom Inside the Organization (1977).

Grosberg argues that restricting a union to receipt *of* voluntary contributions:

> creates a free rider situation by preventing union members from spreading campaign contributions among the members who benefit from it. A union member may rationally decline to contribute even if he agrees that the election of a particular candidate is in his interest, because he may be convinced that others will contribute an amount sufficient to assure both the candidate's election and appropriate behavior by the candidate once in office. This disincentive inhibits the ability of union members to associate in the expression of their political preferences through financial support. Id. at 155. Footnotes omitted.

It has been held, in other contexts, that mandatory membership and financial contribution are permisable under the Constitution. Thus, workers may receive legal assistance

rendered by union-paid or recommended attorneys in asserting legal rights derived from employment, without infringing on associational rights. Brotherhood of R. Trainmen v. Virginia 377 US 1 (1964), reh den. 377 US 960; United Mine Workers v. Illinois State Bar Asso. 389 US 217, (1967); United Transp. Union v. State Bar of Michigan 401 US 576, (1971). See also, Anno., "The Supreme Court and the First Amendment Right of Association", 33 L. Ed. 2d 865.

In short, there is a right on the part of a union's majority membership to associate for political purposes, and establish a fund to that effect. The more difficult problem, is that of reconciling this right with that of a dissident minority not to associate.

The Constitutional Right of Non-Association

Protection for the right of minority union members to refuse association with the majority has historically been a consequence of the agency shop and the principal of exclusive representation. See, e.g., Hanson, supra; NLRB v. General Motors, 373 U.S. 734 (1963); Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50 (1975). Compulsory membership, dues and fees were originally permitted, both at common law and under the Wagner Act, see, e.g., discussion in Rosenfarb, The National Labor Policy, (1940), "Common law" countries have generally allowed even compulsory political contributions. Thus,

> British trade unions were supporting members of the House of Commons as early as 1867. The Canadian Trades Congress in 1894 debated whether political action should be the main objective of the labor force. And in a recent Australian case, the High Court upheld the right of a union to expel a member who refused to pay a political levy. And in relation to our immediate concern, the British Commonwealth experience establishes the pertinence of political means for realizing basic trade union interests. Frankfurter, J. dissenting in Street, supra at 813, citations ommitted.

Congress recognized that unions needed compulsory dues and fees when it enacted the Taft-Hartley Act, in 1947. S. Rep. No. 105, 80th Cong., 1st Sess. 6 (1947). see also, Appendix. Without union security provisions, many employees who shared in the benefits of contract negotiation and administration would unfairly refuse to share the costs. See S. Rep. No. 105, 80th Cong., 1st Sess. 607(1947); H.R. Conf. Rep. No.

105, 80th Gong., 1st Sess. 41(1947). Congress concluded , for this reason, that union shop agreements were an acceptable method of eliminating "free riders", and at the same time, securing financial assistance for a union's bargaining efforts. S. Rep. No. 105, 80th Cong., 1st Sess. 7 (1947). Thus:

> "[T]hese amendments remedy the most serious abuses of compulsory union membership and yet ... [promote] stability by eliminating [free riders]. Free riders are nonunion employees who pay none of the union's collective bargaining expenses but still receive any benefits resulting from union negotiations." Id. See also comment of Representative Madden, 93 Cong. Rec. 3441 (1947).

Agency shop provisions were also believed effective in promoting labor stability, by eliminating conflicting employee demands, and decreasing the role of militant minorities. S. Rep. No. 105, 80th Cong., 1st Sess. 7 (1947). See generally, 93 Cong. Rec. 4194 (1947). Thus:

> "[T]he pending bill retains ... the power of collective bargaining ... and if [the employees] can get a majority [to select their representative] all the other employees have to keep quiet and permit the representatives of the majority to bargain for all of them." Id.

The first case to come before the U.S. Supreme Court on this issue made it clear that unions could constitutionally compel contributions from every member of a bargaining unit to finance expenditures for collective bargaining, contract administration and grievance handling. In 1956, a unanimous United States Supreme Court decided the landmark case of Railway Employees Department v. Hanson, 351 U.S. 225 (1956). In Hanson, an employee challenged agency shop provisions in the Railway

Labor Act, 64 Stat. 1238 (1951), 45 U.S.C. §152 sub. 2, Eleven, which had been amended in 1951 to authorize contracts requiring union membership as a condition of employment, state law to the contrary notwithstanding. Congress' objective had been to eliminate "free riders" -- employees who enjoyed the benefits of collective bargaining without contributing to their cost, and whose existence fomented discontent and strife among other union members. The Supreme Court held that requiring such monetary support for benefits received by all was consistent with Congressional intent. See also Hostetler v. Brotherhood of Railroad Trainmen, 294 F. 2d 666 (4th Cir. 1961), decided on the authority of Hanson. Yet the Court expressly reserved judgement in cases where union funds were used "as a cover to force ideological conformity", Id. at 238.

Deciding the issue on statutory construction rather than constitutional grounds, the Court in Hanson declared:

> It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record ... [I]f the exaction of dues, initiation of fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgement will not prejudice the decision in that case. For we pass narrowly on §2, Eleventh of the Railway Labor Act. We only hold that the requirement 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 violate either the First or the Fifth Amendments. Id., at 230.

Nothing in Hanson prevented a union from compelling contributions for political expenditures, so long as employees were aware of these expenditures, and did not object.

Hanson has been criticized for effectively ignoring the question of freedom of association, Note, 19 Ga. B.J. 550 (1957), for sidestepping the issue of basic individual freedom, Note, 6 J. Pub. L. 263 (1957), and by Justice Powell for deciding First Amendment issues summarily and viewing them as inconsequential. 431 U.S. at 248 (Powell, J., concurring). And as Justice Frankfurter later wrote in dissent in Street, supra,:

> The record before the Court in Hanson clearly indicated that dues would be used to further what are normally described as political and legislative ends. And it surely can be said that the Court was not ignorant of a fact that everyone else knew. Union constitutions were in evidence which authorized the use of union funds for political magazines, for support of lobbying groups, and for urging union members to vote for union approved candidates. The contention now raised by [Street] was succinctly stated by the Hanson plaintiffs in their brief. We indicated that we were deciding the merits of the complaint on all the allegations and proofs before us. "On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."
>
> One would suppose that Hanson's reasoning disposed of the present suit. 367 U.S. at 804-5. For narrower interpretations of Hanson, see Note, 24 Ga. B.J. 432 (1962); Note, 36 St. John's L. Rev. 164(1962); Note, 11 S.W.L.J. 88 (1957).

In I.A.M. v. Street, 367 U.S. 740 (1961), see also, e.g., Note, 32 Tul. L. Rev. 508, 511-12(1958); Note, 42 Minn. L. Rev. 1179 (1958); Note, 32 Tul. L. Rev. 508 (1958); Note, 3 Vill. L. Rev. 230 (1958); Note, 45 Va. L. Rev. 441(1950); Review, 75 Harv. L. Rev. 40, 234(1961); Comment, 56 Nw. U.L. Rev. 777 (1962);

Note, 30 Geo. Wash. L. Rev. 541 (1961); Note, 61 Col. L. Rev. 1513(1961), Justice Brennan, speaking for four other members of the Court, again avoided the constitutional issue, and held the statute could be construed on the basis of legislative history and the history of the union to deny use of employees' dues for political expenditures the employee opposes. The Court stated:

> The history of union security in the railway industry is marked first, by a strong and longstanding tradition of voluntary unionism on the part of the standard rail unions; second, by the declaration in 1934 of a congressional policy of complete freedom of choice of employees to join or not to join a union; third, by the modification of the firm legislative policy against compulsion, but only as a specific response to the recognition of the expenses and burdens incurred by the unions in the administration of the complex scheme of the Railway Labor Act. Id. at 780-1. emphasis omitted.

It has been pointed out, however, that there is ample legislative history to support the opposite contention, since the amendment was passed over management objections that it did "not even limit the number, kind or amount of dues, fees and assessments that may be required by the particular union" and following an alarmed suggestion in the House that unions would,

> by levying political assessments or assessments for the benefit of some union officials and, through the use of this legislation now before us, force their members to meet those assessments—especially those for political purposes—as a condition of an opportunity to earn a livelihood." Note, 75 Harv. L. Rev., supra at 235, citations omitted. See also, Note 28 Brooklyn L. Rev. 170(1961).

According to the majority in Street, where a union spends agency shop dues money for political purposes, a court may:

(1) enjoin the union from spending on political causes, a sum which reflects the proportion of total expenditures for such activities to the union's total budget; or (2) order restitution to the employee of that portion of his or her dues spent for political causes the union had been advised the employee opposed. Suggested remedies of enjoining enforcement of union shop agreements, restraining collection of funds from dissenters, or enjoining any expenditure of funds for disputed purposes were rejected as inappropriate. Id.

The court's majority noted many of the unions' expenditures had been for disseminating information on political candidates and programs, or publicizing the positions of the union, and pointed out that as to such expenditures, an injunction would restrain the expression of political ideas guaranteed by the First Amendment, since the majority had an interest in stating its views without being silenced by dissenters. To obtain an appropriate reconciliation between majority and minority interests, courts were directed to select remedies which protected both to a maximum extent. The problem was thus one of defining limits. Indeed, in their brief to the U.S. Supreme Court, the appellants admitted:

> There is at least as much interference with a man's freedom of association, freedom of thought, and freedom of speech in requiring him to pay dues to a union which strikes to secure a collective bargaining agreement for a 35 hour week or compulsory retirement at age 70 or strict seniority, as in the union activities considered below. Compelling financial support of a union involves just as much as if not more infringement on freedom in the sphere of supporting different policies in negotiating agreements

> and processing grievances as occurs in the legislative or political sphere; in the negotiating field the impact of the union's activities on the individual is direct and binding. Groups of employees within the same bargaining unit have opposing interests in seniority, hours of work, piece work as against straight hourly rates of pay, etc. Brief for Appellants at 48-49. Citations omitted.

The United States agreed in its Brief, recognizing that:

> Numerous union activities and expenditures of different kinds [were] drawn in question. They range from testimony by union officials before legislative committees, and solicitation at union meetings of voluntary contributions to political organizations, to the use of union funds for political campaigns; from the endorsement of political candidates by unions and their periodicals, to "interpretive" and "non-objective" news articles by such journals; from union support of legislation concerning wages, hours, and working conditions to support of legislation pertaining to housing, farm programs and foreign aid; and from legislative activities and expenditures by the local lodge, to legislative and political activities and expenditures by the AFL-CIO ... These different kinds of expenditures and activities ... may well involve differing considerations. For instance, support of legislation concerning wages and hours might be considered more "germane" to collective bargaining than support of legislation involving farm programs; and the majority of the union members may have an interest in associating together to publish their views in *a* newspaper, which interest may be entitled to greater protection than their interest in having the union render financial support to the campaign of a particular political candidate. Brief for U.S. at 18.

There is danger, in short, in prohibiting use of money for purposes which raise insubstantial First Amendment issues. A case in point, is political expenditure concerning collective bargaining legislation, as Justice Frankfurter recognized, dissenting in Street,

> the individual [union] member may express his views in any public or private forum as freely as he could before the union collected his dues. Federal taxes also may diminish the vigor with which a citizen can give partisan support to a political belief, but as yet no one would place such an impediment to making one's views effective within the reach of constitutionally protected "free speech." 367 U.S. at 806.

Thus, expenditures on national health insurance legislation could make it unnecessary for a union to bargain for health benefits. Against these points of confusion, the Court did not make it clear that substantial First and Fifth Amendment problems would be avoided, but instead declared:

> We have before us only the question whether the power is restricted to the extent of denying the unions the right, over the employee's objection to use his money to support political causes which he opposes. Its use to support candidates for public office, and advance political programs, is not a use which helps defray the expenses of the negotiation or administration of collective agreements, or the expenses entailed in the adjustment of grievances and disputes. In other words, it is a use which falls clearly outside the reasons advanced by the unions and accepted by Congress why authority to make union-shop agreements was justified. Id. at 768.

It is clear, however, that the expenditure of union funds in support of certain legislation, such as full crew laws, might be more appropriately considered part of the collective bargaining function, and the Court nowhere effectively distinguished between the two. Street thus limited expenditures by Railway Unions for general social or political purposes, even where these were connected with collective bargaining activities, and by rendering irrelevant internal debate over such issues, helped de-politicize the union, isolating it to economic concerns where

dissenting members were subject to principles of majority rule.

Four members of the Court reached the constitutional question in Street, and split evenly. Thus,

> Mr. Justice Douglas [concurring] evidently balanced individual freedom with the collective interests of union members, finding a strong group interest in negotiating and administering collective bargaining contracts and only a slight affront to an individual's autonomy in making him pay for such activity, and concluded that operating expenditures were constitutionally permissible. But partisan politics seemed much less necessary for the group's well being, and more clearly to involve matters basic to first amendment guarantees; the union could not compel unwilling support of politcial ideas and purposes ...
>
> 75 Harv. L. Rev., supra, at 236. Footnotes omitted.

Justice Black dissented, agreeing with Douglas that forced politcial support violated first amendment liberties, and indicated:

> the Government could compel all employees to contribute to the contractual expenses of their bargaining representative; but, since the 1951 amendment authorized union-shop political expenditures and such expenditures had been made, the law itself was unconstitutional because it had been stressed in Hanson as the factor that established a sufficient Government-union nexus to bring the Constitution to bear upon the union. But holding the law itself unconstitutional would allow state right-to-work laws to operate, and seems unnecessary, as Mr. Justice Douglas' opinion suggests; if the union is a "governmental actor", only those specific acts that violate the Constitution need be remedied ... it would be quite disruptive if unconstitutional acts by semi-public persons caused the invalidation of the legal arrangements that had established the requisite governmental nexus. Ibid.

Douglas argued that membership could not be conditioned on financial support for political programs a worker opposed:

> It may be said that the election of a Franklin D. Roosevelt rather than a Calvin Coolidge might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. I do not see how that can be done, even though the objector retains his right to campaign, to speak, to vote as he chooses. For when union funds are used for that purpose, the individual is required to finance political projects against which he may be in rebellion. 367 U.S. at 788..

Both Black and Douglas cited Thomas Jefferson, who in his 1779 Bill for Religious Liberty, declared that: "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." Ibid. Douglas wrote eloquently of the right of association, arguing:

> Once an association with others is compelled by the facts of life, special safeguards are necessary lest the spirit of the First, Fourth, and Fifth Amendments be lost and we all succumb to regimentation. I expressed this concern in Public Utilities Comm'n v. Pollak, 343 U.S. 451, 467(dissenting opinion), where a "captive audience" was forced to listen to special radio broadcasts. If an association is compelled, the individual should not be forced to surrender any matters of conscience, belief, or expression. He should be allowed to enter the group with his own flag flying, whether it be religious, political, or philosophical; nothing that the group does should deprive him of the priviledge of preserving and expressing his agreement, disagreement, or dissent, whether it coincides with the view of the group, or conflicts with it in minor or major ways; and he should be required to finance the promotion of causes with which it disagrees. Ibid.

Black protested that the Court was simply re-writing Congressional legislation:

> Neither §2, Eleventh, nor any other part of the Act contains any implication or even a hint that Congress wanted to limit the purposes for which a contracting union's dues should or could be spent. All the parties to this litigation have agreed from its beginning, and still agree, that there is no such limitation in the Act. The Court nevertheless, in order to avoid constitutional questions, interprets the Act itself as barring use of dues for political purposes ... The very legislative history relied on by the Court appears to me to prove that its interpretation of §2, Eleventh is without justification. For that history shows that Congress with its eyes wide open passed that section, knowing that its broad language would permit the use of union dues to advocate causes, doctrines, laws, candidates and parties, whether individual members objected or not. Id. at 784-5, citing Hearings on S.3295, Subcommittee of the Senate Committee on Labor and Public Welfare, 81st Congress, 2d Sess., pp. 316-317; Hearings on H.R. 7789, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., p. 160; 96 Cong. Rec. 17049-17050.

In a footnote, he cited subsequent legislative history to support this proposition, indicating that in 1958,

> when Senator Potter introduced his amendment to limit the use of compelled dues to collective bargaining and related purposes, he pointed out on the floor of the Senate that "the fact is that under current practices in some of our labor organizations, dissenters are being denied the freedom not to support financially political or ideological or other activities which they may oppose." 104 Cong. Rec. 11214. It could hardly be contended that the debate on his proposal, which was defeated, indicated any federally held belief that such use of compelled dues was already proscribed under §2, Eleventh or any other existing statute. Ibid. See 104 Cong. Rec. 11214-11224, 11330 n347. Id. Cf., p. 770, n. 19.

Justice Frankfurter, joined by Harlan in dissent, found no infringement of free speech in the unions' activities and em-

phasized that there had been no restriction of individual expression because the dissenting members had always been free to express their views in any private or public place:

> Alternatively, he argues that since the statute merely permitted voluntary private agreements, their execution and enforcement was not governmental action; the Government had only removed a previous federal restraint upon the contractual freedom of unions and employers. He also took issue with the Court's suggestion that political action was not legitimately related to collective bargaining, reviewing the improvements in working conditions and union status that had been won in Congress and examining the close relationship of organized labor to the operations of the executive and legislative branches of the federal government. 75. Harv. L. Rev., supra, at 237. Footnotes omitted.

Frankfurter also addressed himself to the legislative history of the statute, finding that:

> Nothing was further from congressional purpose than to be concerned with restrictions upon the right to speak. Its purpose was to eliminate "free riders" in the bargaining unit. Inroads on free speech were not remotely involved in the legislative process. They were in nobody's mind. Congress legislated to correct what it found to be abuses in the domain of promoting industrial peace. This Court would stray beyond its powers were it to erect a far-fetched claim, derived from some ultimate relation between an obviously valid aim of legislation and an abstract conception of freedom into a constitutional right.
>
> For us to hold that these defendant unions may not expend their moneys for political and legislative purposes would be completely to ignore the long history of union conduct and its pervasive acceptance in our political life. American labor's initial role in shaping legislation dates back 130 years. With the coming of the AFL in 1886, labor on a national scale was committed not to act as a class party but to maintain a program of

> political action in furtherance of its industrial standards. Id. at 812-3, footnotes omitted.

Frankfurter argued there was no basis in legislative history for the majority's construction of the act; and that:

> The hearings and debates lend not the slightest support to a construction of the amendment which would restrict the uses to which union funds had, at the time of the union-shop amendment, been conventionally put. To be sure, the legislative record does not - spell out the obvious. The absence of any showing of concern about unions' expenditures in "political" areas--especially when the issue was briefly raised--only buttresses the conclusion that Congress intended to leave unions free to do that which unions had been and were doing. It is surely fanciful to conclude that this verbal vacuity implies that Congress meant its amendment to be read as providing that members of the union may restrict their dues solely for financing the technical process of collective bargaining. Id. at 802, citing 96 Cong. Rec. 17049-17050; Hearings, Subcommittee of the Senate Committee on Labor and Public Welfare on S. 3295, 81st Cong., 2d Sess., pp. 173-174,

Moreover, labor had achieved a new prominence in politics; it had appeared before Congressional Committees, Presidents, and judicial bodies, in support of a wide range of propositions which were not techinally encompassed in a narrow set of contract negotiations, and Frankfurter argued:

> When one runs down the detailed list of national and international problems on which the AFL-CIO speaks, it seems rather naive for a court to conclude-as did the trial court-that the union expenditures were "not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents."

> The notion that economic and political concerns are separable is pre-Victorian. Presidents of the United States and Committees of Congress invite views of labor on matters not immediately concerned with wages, hours, and conditions of employment. And this Court accepts briefs as amici from the AFL-CIO on issues that cannot be called industrial, in any circumscribed sense. It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance. Neither is it true for labor. It disrespects the wise, hardheaded men who were the authors of our Constitution and our 'Bill of Rights to conclude that their scheme of government requires what the facts of life reject. Id. at 814-5. Footnote omitted.

Criticizing the Street decision. Professor Wellington has written of its failure to adequately distinguish between politics and collective bargaining:

> the Court's language is ambiguous. Nowhere did it undertake the task-perhaps because it is impossible except in an arbitrary way-of distinguishing between political and collective bargaining activities. Nor has it since attempted to do so. Thus, while it seems probable that the Court meant by "political" anything that has a political element in it, it is not absolutely clear that the Court went this far. Notice, however, that if the Court did not go so far, it has assumed the task of deciding whether the expenditure of money by a union is for political or collective bargaining purposes. It has in the language of Hanson, undertaken to determine whether dues money is used for purposes "germane to collective bargaining." As I suggested earlier, this is likely to lead to distinctions that rest on fiat alone. Wellington, supra, at 263.

Wellington concluded that if the same issue were to be raised under Taft-Hartley, it would be:

> difficult for the Court to read that statute in the way in which it has read the Railway Labor Act. As we have seen, it cannot be said that in 1947 Congress was cutting back on a freedom it had earlier granted dissenting

> employees. Nor can it be asserted that unions regulated by the Labor-Management Relations Act had traditionally been uninterested in union security. These propositions were made by the Street majority about congressional performance in 1951 and about unions regulated by the Railway Labor Act. They were advanced by that majority as weighty reasons for its readings of section 2, eleventh. They are not available as bases for reaching a like conclusion in a section 8(a)(3) case. Id. at 264.

Other authors commenting on the Street decision have agreed with Wellington, and one has suggested that:

> Reconciling the public interest in the union shop as an instrument of industrial stability and the union's right as a collective bargaining agent to further legislation in which it has a legitimate interest with the union member's right not to be compelled to support political views that he opposes is a complex and highly political problem. It necessarily requires investigation and regulation more appropriately conducted by the legislature than by the courts. A holding that political expenditures of union dues is constitutional, which is certainly supportable, would have withdrawn the Court from much of its involvement in this area and might have encouraged Congress to determine whether remedial legislation is warranted. Comment, 61 Col. L. Rev. 1513, 1518 (1961). Footnotes omitted.

In Lathrop v. Donohue, 367 U.S. 820 (1961), reh. den. 368 U.S. 871, decided on' the same day as Street, the Court upheld a state requirement of compulsory membership in an integrated bar, notwithstanding the expenditure of membership funds on legislative activities which bar members opposed. Cf., Good v. Associated Students of the University of Washington, 86 Wash. 2d 94, 542 p. 2d. 762 (1975). The Supreme Court split on this constitutional issue, with Justices Brennan, Clark, Stewart and Warren, holding in plurality, that since the compulsory membership requirement inposed only a duty to pay "reasonable" annual dues, there was no violation of the

freedom not to associate. It should be noted that this same wording appears in the Agricultural Labor Relations Act. The constitutional issue of compulsory contribution for political activities opposed by members was rejected as not ripe for adjudication, since the record did not show any of the plaintiffs specific objections. The Court declared:

> ... the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity. Given the character of the integrated bar shown on this record, in the light of the limitation of the membership requirement to the compulsory payment of reasonable annual dues, we are unable to find any impingement upon pro tected rights of association. Id. at 843.

Yet, as the Court had declared earlier in Hanson with regard to labor unions, "there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U.S., at 238. In Lathrop, the Court again recognized: "In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in Railway Employee's Department v. Hanson".

Justice Harlan, joined by Frankfurter, concurred, and thought use of dissident members' dues for political purposes did not violate the First Amendment. Justice Whittaker also concurred, but more narrowly. Black and Douglas, on the other

hand, believed the constitutional question was properly before the Court, and that the members, rights had been violated.

Refusing to comment on the Wisconsin Supreme Court's holding that the appelant could be compelled constitutionally to contribute financial support to political activities with which he disagreed, the Court stated:

> Nowhere are we clearly apprised as to the views of the appellant on any particular legislative issues on which the State Bar has taken a position, or as to the way in which and the degree to which funds compulsorily exacted from its members are used to support the organization's political activities. There is an allegation in the complaint that the State Bar had "used its employees, property and funds in active, unsolicited opposition to the adoption of legislation by the Legislature of the State of Wisconsin, which was favored by the plaintiff, all contrary to the plaintiff's convictions and beliefs," but there is no indication of the nature of this legislation, nor of appellant's views on particular proposals, nor of whether any of his dues were used to support the State Bar's positions... The Supreme Court assumed, as apparently the trial court did in passing on the demurrer, that the appellant was personally opposed to some of the legislation supported by the State Bar. But its opinion still gave no description of any specific measures he opposed, or the extent to which the State Bar actually utilized dues funds for specific purposes to which he had objected. Id. at 846-7. Cf. Id. at 848, 870 (dissent).

One author has concluded from this analysis, that with regard to the basic problem of free speech and mandatory association, "the Court in Lathrop, as in Street, decided little or nothing." 56 N.W.U.L. Rev., supra, at 788.

In Brotherhood of Railway & Steamship Clerks v. Allen, 373 U.S. 113 (1963), employees who refused to pay union dues enjoined enforcement of a union-shop agreement, objecting to union political expenditures. The Supreme Court reaffirmed its holding in Street, reversed the judgment affirming issuance of the injunction, remanded the case to determine which expenditures were political and the percentage of total union expenditures they constituted, holding that any remedy must provide a dissenter with: (1) *a* refund of a portion of exacted funds, in the proportion that political expenditures bore to total expenditures, and;(2) a reduction of future exactions by the same amount. Id. at 122.

The Court strenuously urged adoption of an internal procedure to accomodate dissenters and computation of the amount spent over expressed objection of individual members, so that courts would not be burdened with such complex determinations.

Justice Harlan, concurring and dissenting, felt the requirements of Street and Lathrop had not been met:

> At best all that has been alleged or proved is that the union will expend a part of each respondent's still-unpaid membership dues for so-called political or other purposes not connected with collective bargaining, and that each respondent would object to the use of any part of his dues for matters other than those relating to collective bargaining. None of the respondents who testified could specify any particular expenditure, or even class of expenditure, to which he objected.
>
> I do not understand how, consistently with Street, the Court can now hold that "it is enough that ... [a union member] manifests his opposition to any political expenditures

> by the union" (ante, p. 1162), or how it can say that in so holding "we are not inconsistent with" what the plurality was at such pains to point out in Lathrop (albeit in a constitutional context), Id., note 5. The truth of the matter is that the Court has departed from the strict substantive limitations of Street and has given them (and, as I see it, also that case's remedial limitations, compare 367 U.S., at 772-775, 778-778, 779-780, 796-797, 81 S. Ct., at 1801-1803, 1805, 1813-1814, 6 L. Ed. 2d 1141, with ante, p. 1164 and Appendix) an expansive thrust which can hardly fail to increase the volume of this sort of litigation in the future. Id. at 130-1.

In short, the central problem in Allen was seen by the Court as one of exhaustion. Resolution of these difficulties came finally in cases involving public employees, where the legislative history of the Railway Labor Act became irrelevant.

In 1972, the Hawaii Public Employee Relations Board upheld a factfinder's decision and recommendation that a public sector union's political activity was directed at legislative bodies for the purpose of securing desired results in bargaining efforts, and had to be considered part of the contract negotiating process. In re Hawaii State Teacher's Ass'n, 440 Gov't Empl. Rel. Rep. (3NA) E-1, E-5 to 6 (1972). The Board concluded that the usual sanctions against private sector unions using service fees to defray the costs of political activity should have no significant impact in the public sector, finding:

> The public sector union is much more politically oriented in makeup and activity than the private sector union and our Legislature has so recognized. Thus, the problem again imposes the difficulty and burdens of proper allocation, and it will become incumbent upon the union to characterize and distinguish its legislative efforts toward securing contract ratification as against ordinary

> political expenditures of contributing to political parties, parties, candidates or of general political activity. Id. at p. E-6. Cf., Jensen v. Yonamine, 437 F. Supp. 368 (1977).

In Abood v. Detroit Board of Education, 4-31 U.S. 209 (1977); see also, Daniel R. Levinson, "After Abood: Public Sector Union Security and the Protection of Individual Public Employee Rights", 27 Amer. U.L. Rev. 1 (1977); Note, 14 Wake Forest L. Rev. 633 (1978); Note, 27 Cath. U.L. Rev. 132 (1977); Note, 38 La. L. Rev. 850 (1978); Note, 1977 Utah L. Rev. 487; the Supreme Court reached the Constitutional question, and held that use of agency shop fees for political purposes violated members rights not to associate. The Court declared:

> The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State. Id. at 234-5. Citations omitted.

The Court expressly refused to invalidate the union's political fund, however, stating:

> We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment. Id. at 235-6.

The Court had long held that government employment could not be conditioned on the surrender of important employee rights. See, e.g., City of Madison, Joint School Dist. No. 8 v. Wisconsin Employment Relations Comm'n, 429 U.S. 167, 175 (1976); Elrod v. Burns, 427 U.S. 347 Keyishian v. Board of Regents, 385 U.S. 589, 605-07 (1967). Nonetheless, as one article has pointed out,

> The associational interests of public employees are not more worthy of protection than those of their private counterparts simply because the demands of public unions are debated in the political arena. The centrality of an idea to an individual's belief system is not necessarily dependent upon the level of attention accorded that idea by the general public." 91 Harv. L. Rev. 70, 195 (1977) Footnote omitted.

The same article, however, recognized, that:

> [A]lmost any expenditure made by a union is connected in some ways to its duties as collective bargaining representative. Disbursements for union social activities improve the morale of employees and thus strengthen union solidarity; contributions to political candidates or the financing of lobbying programs may be essential to obtain new laws favorable to the union; expenditures for general ideological, professional, and scientific purposes may sway the public to side with the union in its demands against the government." Id. at 196.

Indeed, the Court in Abood admitted that simple distinctions could not be made between collective bargaining and political expenditure, even from the point of view of dissenting members. In an extraordinary passage, the majority recognized:

> To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests. An employee may very well have ideological objections to a wide variety of activities undertaken by the union

> in its role as exclusive representive. His moral or religious views about the desiribility of abortion may not square with the union's policy in negotiating a medical benefits plan. One individual might disagree with a union policy of negotiating limits on the right to strike, believing that to be the road to serfdom for the working class, while another might have economic or political objections to unionism itself. An employee might object to the union's wage policy because it violates guidelines designed to limit inflation, or might object to the union's seeking a clause in the collective-bargaining agreement proscribing racial discrimination. The examples could be multiplied. To be required to help finance the union as a collective-bargaining agent might well be thought, therefore, to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit. But the judgment clearly made in Hanson and Street is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress. The furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. If that were allowed, we would be reversing the Hanson case, sub-silentio. Id. at 223, citation omitted.

By way of amplification, the Court cited its holding in Street, and pointed out that an injunction against expending dues for political purposes:

> would be inappropriate, not only because of the basic policy reflected in the Norris-La Guardia Act against enjoining labor unions, but also because those union members who do wish part of their dues to be used for political purposes have a right to associate to that end "without being silenced by

> the dissenters. Id. at 238, citations omitted. See also, discussion at 239.

The Court then adopted the approach taken earlier in its Allen decision, ordering a refund of exacted funds in the proportion that union political expenditures bore to total union expenditures, and reduction of future exactions by the same proportion. Finally, the Court gave approval to an internal union remedy established after litigation had commenced, and held:

> In view of the newly adopted Union internal remedy, it may be appropriate under Michigan law, even if not strictly required by any doctrine of exhaustion of remedies, to defer further judicial proceedings pending the voluntary utilization by the parties of that internal remedy as a possible means of settling the dispute. Ibid.

In a footnote to this passage, the Court added:

> We express no view as to the constitutional sufficiency of the internal remedy described by the appellees. If the appellants initially resort to that remedy and ultimately conclude that it is constitutionally deficient in some respect, they would of course be entitled to judicial consideration of the adequacy of the remedy. Ibid.

As must be clear from this summary, and as at least one writer has pointed out, Hanson, Street, Lathrop, and Abood are far from uniform in their treatment of dues or fees used for other than collective bargaining purposes:

> The Hanson decision had been based on the premise that exacted funds were to be used only for purposes germane to collective bargaining. The holding of Street involved a statutory construction which denied unions the power to use such funds for political purposes. In Abood the Court found that the interests advanced by union shops do not justify compelling contributions to ideological causes unrelated to a union's collective bargaining duties... [T]he adoption of the test of relation to collective bargaining

> as a constitutional rule undermined the implication of Street that exacted funds could constitutionally be used only for non-political purposes. The Court's application of the test first used in Hanson of relation to collective bargaining means that political uses can be justified if they are so related. Paul S. Hughes, "Constitutional Limits on the Use of Contributions Compelled Under Agency Shop Agreements", 38 La. L. Rev. 850, 854 (1978), citations omitted.

Moreover, it is clear that Abood relied on a balancing test derived in part from Hanson and Street, and not on "strict scrutiny", or a showing that no other alternative was available:

> The Court in Abood was divided on the kind of impact on first amendment rights that could be justified by the government interests of labor peace and the distribution of the costs of union activities. A minority of three justices maintained that the interests advanced would not justify compelled political support as a condition of public employment. The plurality, on the other hand, recognized that the Constitution protects all types of thought and speech, not merely political interests. Thus, in balancing individual and state interests, the Court should consider the extent and not the nature of the first amendment abridgement. Id. at 855, footnotes omitted.

The decision raised an issue as to the sufficiency of the "free rider" rationale under First Amendment standards. Some support for this proposition may be derived from Elrod v. Burns, 427 U.S. 347 (1975), where a plurality of the Court held that discharge from employment for refusing to join a political party contravened the First Amendment. Elrod, however, refered to interference with political exercise, as opposed to compulsory contribution, where interference is, at best, indirect. In Elrod, the Court held surrender of one's constitutional right of freedom of association could not be made a valid prerequisite for receipt of a public

benefit. See Abood, supra at 242 (Rehnquist, J., concurring), and at 244 (Powell, J., concurring). See also, e.g., Keyishian v. Board of Regents, 385 U.S. 589 (1967); Cousins v. Wigoda, 419 U.S. 477 (1975); Kusper v. Pontikes, 414 U.S. 51 (1973); NAACP v. Alabama, 357 U.S. 449 (1958); West Virginia State Bd. of Ed. v. Barnette, 319 U.S. 624 (1942). Compulsory political contributions may thus infringe on an individual interest in being free from majority expression, yet a problem in such cases, is that they create a double standard, since such generalized "forced expression" is commonplace, both in government and private life.

Application to the NLRA

A few cases have considered the issue of compulsory political perspective in relation to the Taft-Hartley Act, where neither the legislative history of the Railway Labor Act, nor public employees are involved, and reached different results.

In Seay v. MacDonell Douglas Corp., 427 F. 2d 997 (CA 9, 1970), the 9th. Circuit held union expenditure of fees collected under an agency shop agreement for political purposes was unlawful, and with reference to the Taft-Hartley Act, stated:

> The Supreme Court has said as clearly as possible that agency fees exacted from employees under the terms of the bargaining agreement must be limited to use in sharing the costs with other dues of "negotiating and administering collective agreements, and the costs of the adjudgment [sic] and settlement of disputes." This limitation is read into the statute under the terms of which the collective bargaining agreement, with its agency fee provision, was entered into in this case. We find that the limitation asserted here does in fact constitute an implied term of the contract. A provision in the collective bargaining agreement authorizing the espenditure of agency fees for political uses would immediately run afoul of the congressional

intent delineated in Street and the express holding in both Street and Allen. Id. at 1003.

The Court then found:

> The diversion of the employees' money from use for the purposes for which it was exacted damages them doubly. Its utilization to support candidates and causes the plaintiffs oppose renders them captive to the ideas, associations and acuses espoused by others. At the same time it depletes their own funds and resources to the extent of the expropriation and renders them unable by these amounts to express their own convictions and their own ideas and to support their own causes. Id. at 1004.

Seay, however, was a Section 301 action, and the Court never considered the state action question with reference to the NLRB.

In Reid v. McDonnell Douglas Corp., 443 F. 2d 408 (CA 10, 1971), on the other hand, it was held that use of compulsory dues for political purposes under a union security agreement raised no direct constitutional issues under Taft-Hartley. There, the claim was one of breach of the UAW's "fiduciary duty ... to use [the plaintiff's dues] for purposes reasonably necessary and germane to collective bargaining only", and that expenditures for political "doctrines and candidates" opposed by plaintiffs constituted a violation of that duty.

The Court first contrasted the Railway Act with the NLRA, finding that:

> the NLRA is more neutral and permissive than the policy of the RLA. In NLRA matters, the federal government does not appear to us to have so far insinuated itself into the decision of a union and employer to agree to a union security clause so as to make that choice governmental action for purposes of the first and fifth amendments. Id. at 410-11. Citation and footnote omitted.

The Court then distinguished the Seay decision, stating:

> In Seay v. McDonnell Douglas Corp., the ninth Circuit relied on Hanson and Street as demonstrating the existence in the federal courts of jurisdiction to hear the type of constitutional claim raised here. However, the Seay court did not consider the question of governmental action, and for the reasons stated above, we cannot agree that the rationale of the Railway Labor Act cases applied to the present controversy. Id. at 411, citation omitted.

The Court then indicated, that although the Supreme Court had not examined the NLRA in the context of the constitutionality of union political expenditures, "it may be contended that the Court's reasoning in Street is applicable by analogy." Ibid. After suit had been filed, the UAW amended its Constitution to provide an internal remedy for dissenters, guaranteeing that:

> Any member shall have the right to object to the expenditure of a portion of his dues money for activities or causes primarily political in nature. The approximate proportion of dues spent for such political purposes shall be determined by a committee of the International Executive Board, which shall be appointed by the President, subject to the approval of said Board. The member may perfect his objection by individually notifying the International Secretary-Treasurer of his objection by registered or certified mail; provided, however, that such objection shall be timely only during the first fourteen (14) days of Union membership and during the fourteen (14) days following each anniversary of Union membership. An objection may be continued from year-to-year by individual notifications given during each annual fourteen (14) day period. If an objecting member is dissatisfied with the approximate proportional allocation made by the committee of the International Executive Board, or the disposition of his objection by the International Secretary-Treasurer,

> he may appeal directly to the full-International Executive Board and the decision of the International Executive Board shall be appealable to the Public Review Board or the Convention at the option of said member. Article 16, §7; cited in UAW Constitution, Reid II, 479 F. 2d 17 (CA 10, 1973) at 518-19 n.

The Court then held the case was moot, citing, Allen. In Seay, a similar result was reached. On remand, 371 F. Supp. 754 (1973), the District Court found, in light of the Reid decision, supra, that an agreement by the union to follow the decision of the UAW in Reid and provide a pro rata rebate of that portion of objecting members fees, on request, which had been used for political purposes, resulted in a reduction of the case to minor problems of accounting. The Court held that breach of the union's duty of fair representation had been negated, and granted summary judgement for the defendants. The Court of Appeals reversed, however, citing Allen, and remanded for a factual hearing on whether the union would administer its intra-union remedy fairly. Absent an allegation that they would not, the Court gave no indication that it disapproved of dismissal for mootness. Seay, after all, was a case under the Railway Labor Act, and the union had been on notice at least since Street that it could not use dues for political purposes.

In Linscott v. Millers Falls Co., 440 F. 2d 14 (CA 1 1971), a Seventh Day Adventist refused to pay initiation fees or dues under a collective bargaining agreement requiring a union shop, and was discharged. The Court found state action, then proceeded to the "more difficult" question of whether a governmental interest justified the interference, stating:

> A strong governmental interest in the union shop was found in Hanson. Some employees claimed that being obliged to join the union deprived them of freedom of association as guaranteed by the First Amendment, and that compelling the payment of dues violated Fifth Amendment due process. As against these contentions the Court held that "[I]ndustrial peace along the arteries of commerce [as] a legitimate objective," 351 U.S. at 233, 76 S. Ct. at 719, justified the legislation. Undoubtedly the Court recognized the validity and importance of the congressional purpose to achieve uniform union membership, both to further peaceful labor relations, and as desirable for its won sake, to require a fair sharing of the costs of collective bargaining. Id. at 17.
>
> Accordingly, the Court denied the claim, holding:
>
> Her alternative is not absolute destitution. The cost to her is being forced to take employment in a nonunion ship - here, less remunerative employment. We conclude that in weighing the burden which falls upon the plaintiff if she would avoid offering her religious convictions, as against the affront which sustaining her position would offer to the congressionally supported principle of the union shop, it is plaintiff who must suffer. Id. at 18,
> citing Gray v. Gulf, Mobile and Ohio R.R.,(CA 5, 1970), 429 F. 2d 1064, cert. denied 400 U.S. 1001, cf. Cap Santa Vue, Inc. v. N.L.R.B., D.C. Cir.;970, 424 F. 2d 883.

The first California decision to consider this question was De Mille v. American Federation of Radio Artists, 31 Cal. 2d 139, 187 P. 2d 769 (1947), where a special assessment of $1.00 per member was voted by union members to defeat a ballot measure designed to prohibit the union shop in California, and the plaintiff refused to pay. The California Supreme Court upheld the assessment against a First Amendment challenge, reasoning that the member and the association were distinct, and the union represented the common or group interests of its members, as distinguished from their personal or

private interest:

> Structurally and functionally, a labor union is an institution which involves more than the private or personal interests *of* its members. It represents organized, institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual members of the union. Id. at 391-2, citing United States v. White, 372 U.S. 694, at page 701, 64 S Ct 1248, at page 1252, 88 L ed 1542, 152 ALR 1202.

The California Court also found the dues and assessments had been validly passed by a majority vote, and stated:

> In no wise may it be said that it necessarily represented the opinion of every individual member thereof, and consequently that of the plaintiff. Mere disagreement with the majority does not absolve the dissenting minority from compliance with action of the association taken through authorized union methods. And compliance - here payment by the plaintiff of the assessment - would not stamp his act as a personal endorsement of the declared view of the majority. Majority rule necessarily prevails in all constitutional government including our federal, state, county and municipal bodies, else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles the benefit as perceived by the majority prevails. And the individual citizen would raise but a faint cry of invasion of his constitutional rights should he seek to avoid his obligation because of a difference in personal views. Ibid.

In conclusion, the Court cited other examples of this principle:

> The plaintiff states that this is a case of first impression. But the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives

> to be inimival to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference. Id. at 393.

In Mitchell v. IAM, 196 C. 2d 796, 16 Cal. Rptr. 813 (1961), a union expelled two members for campaigning for a right-to-work law, and the California District Court of Appeal held they were entitled to reinstatement, since they did not purport to represent the union. The Court there distinguished De Mille, supra, stating:

> It was pointed out by the court that it was not contended by the plaintiff that he was prevented in any way from publicly or privately expressing his personal views on the subject, and it was also made clear that the defendants did not declare that acts or expressions of individual members favorable to the proposition would constitute grounds for charges of disloyalty. (Pp. 147-148.) Although the opinion makes this distinction in answer to a constitutional argument, it is clear that the union action involved herein was not involved in the De Mille case, and furthermore, that the policy question here presented - the extent to which a union should be permitted, in its own interest, to use the threat of expulsion to exhibit the expression of political views by its members -was also not involved in that case. Id. at 801. Footnote omitted. See also, Spayd v. Ringing Rock Lodge No. 655, 270 Pa 67, 113 A. 70 (1921). Cf., Tjoh v. Whitney, 62 N.E. 2d 744 (Ohio App. (1945)); Harrison v. Bro. of Ry. and S.S. Clerks, 271 S.W. 2d 852 (Ky., 1954).

Yet Mitchell was an "interference" case, while De Mille concerned opposing beliefs. As to the former, the interest in being free from coerced expression clearly outweighs the state's interest in labor stability, whereas in the latter, it has been recognized that the Legislature has a strong interest in achieving uniformly in

union membership, "both to further peaceful labor relations and, as desireable for its own sake, to require a fair sharing of the costs of collective bargaining." Linscott v. Millers Falls Co., supra, 440 F. 2d at 17.

Ultimately, therefore, application of these principles to cases arising under the NLRA must depend on further analysis, both as to the issue of state action, and the relation between political expenditures and collective bargaining.

State Action:

Neither Abood nor Hanson, Street, or any similar decisions provide direct guidance in cases which arise under the NLRA, or therefore under the ALRA, see, e.g., Comment, "The Regulation of Union Political Activity: Majority and Minority Rights and Remedies", 126 U. of Pa. L. Rev. 386 (1977), since constitutional limitations have not generally been held applicable to labor unions in the absence of significant government involvement, or "state action". As the Supreme Court early remarked: "We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become Government agencies or may be regulated as such." American Communications Associate v. Douds, 339 U.S. 382, 402 (1950).

Joseph Rauh argued that cases which have suggested that unions are subject to constitutional standards fit into the following categories:

> 1. The private body was exercising a basic state function, typically with the affirmative cooperation of the state. For example, it may have been running a primary political election, or running a company town.
>
> 2. The private body was invoking affirmative state action by seeking judicial enforcement or recognition of a private contract.
>
> 3. The private body had derived its power to act in a particular capacity or engage in a specific activity, usually monopolistic or exclusive, by virtue of a statute, and was regulated in the exercise of this power by governmental authority. Rauh, Supra at 138-9. Footnotes omitted.

The first case to suggest that private associations might be held to constitutional standards was Marsh v. Alabama, 326 U.S. 501 (1946), where a woman was convicted under state law for trepassing in a "company town" while handing out Jehovah's Witness tracts without permission. On the strength of Marsh, some have argued that the powers of unions are similar to those of a legislature, and that state action is therefore present in any union certified as an exclusive collective bargaining agent. See Note, Individual Rights in Industrial Self-Government - A "State Action" Analysis, 63 N.W.U.L. Rev. 4 (1968); cf. Blumrosen, Group Interests in Labor Law, 13 Rutgers L. Rev. 432, 482-483 (1959). Professor Wellington, for example, has written:

> Most private activity is infused with the governmental in much the way that the union shop is .... Enacted and decisional law everywhere conditions and shapes the nature of private arrangements in our society. This is true with the commercial contract-regulated as it is by comprehensive uniform statutes - no less than with the collective bargaining agreement .... H. Wellington, Labor and the Legal Process 243 (1968).

The Supreme Court, however, has never adopted this view. See, e.g., Emporium Capwell Co. v. Community Organization, supra, at 62-65; NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180-181 (1967).

Two lines of reasoning emerge from Marsh, where the Court found sufficient state action to hold a private association to First Amendment standards. First, where a private association significantly inhibits or coerces the exercise of First Amendment rights, it is constitutionally appropriate that a court intervene, as

a public policy favoring protection of individual rights may be found to predominate over an association's interest in protection from governmental regulation. A second rationale for finding state action, is that the association has become, in effect, an agency of the state, exercising a "public function." This theory has two ingredients: first, that the private association performs functions which otherwise would have to be performed by government; and second, that the function of restricting private rights is delegated by the government. This was evidenced in Marsh by the fact that the local ordinance was subject to enforcement by the Alabama criminal courts.

In Smith v. Allwright, 321 U.S. 619 (1944); see also Terry v. Adams, 345 U.S. 461 (1953); A. Pekelis, Law & Social Action (1950), the Supreme Court again found state action in the case of a private association, under criteria resembling those found in Marsh. There, petitioners, who were black, were denied opportunity to vote in a Texas primary because they were not members of the Texas Democratic Party which restricted its membership to whites. The Supreme Court held the Texas Democratic Party had a "strange-hold" on the electoral process. Furthermore, Texas statutes directed that party officers were to conduct primary elections, operate as election officials, and certify candidates over for the official primary ballot. The Court said: "The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed

by a political party." 321 U.S. at 663. See also Black, "State Action", Equal Protection and California's Proposition 14, 81 Harv. L. Rev. 69 (1967); Henkin, "Shelly v. Kramer: Notes for a Revised Opinion", 110 U. Pa. L. Rev. 473 (1962); Horowitz, "The Misleading Search for State Action - Under the Fourteenth Amendment", 30 S. Cal. L. Rev. 208 (1957).

One can argue that a union is "exercising a public function" where it is recognized as. the exclusive certified bargaining agent, since it derives power from federal legislation to be the exclusive representative of all employees in a unit, fix their rights under a collective bargaining agreement, and represent them in the prosecution of their grievances. As was recognized in Douds, supra, a union in this capacity is the delegate of government, whose function it is to help preserve "labor peace." Cf. Malick, "Toward a New Constitutional Status for Labor Unions: A Proposal", 21 Rocky Mt. L. Rev. 260 (1949); Rauh, "Civil Rights and Liberties and Labor Unions", 8 Lab. L.J. 874 (1957); Arthur S. Miller, "Private Governments and the Constitution", occasional paper, Center for the Study of Democratic Institutions (1959). Yet Courts have found that exclusinity alone is inadequate for a finding of state action.

Some Courts have held that a union, by analogy to a legislature, may be found to have certain duties to its membership under the Fourteenth Amendment. In Steele v. Louisville and N.R. Co., supra, for example, petitioners were employed in the bargaining unit, but had been excluded from the union because they were black, and the union negotiated a contract with

the company in which they were deprived of seniority. Justice Stone disposed of the case by reading into the Railway Labor Act a duty of fair representation on the part of the bargaining agent, but indicated that if this construction were not possible, he would reach the constitutional question. Stone argued, that:

> Congress has seen fit to clothe the bargaining representative with power comparable to those possessed by a legislative- body both to create and restrict the rights of those whom it represents, ... but it has also imposed on the representative a corresponding duty. We hold that the language of the Act to which we have referred, read in the light of the purposes of the Act, expresses the aim of Congress to impose on the bargaining representative of a craft or class of employees the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them. Id. at 202.

Yet the imposition of this duty falls short of a finding of governmental involvement.

In Hanson, the Supreme Court found state action in the Railway Labor Acts' requirement of an agency shop without respect to state law, supra, at 232, yet in a similar case, Judge Learned Hand found no state action, since the statute only permitted, rather than required, union shop agreements. Otten v. Baltimore & Ohio R.R., 205 P. 2d 58 (1953). See also, e.g., Hudson v. Atlantic Coast Line R.R., 242 N.C. 650, 89, S.E.. 2d 441 (1955); International Ass'n of Machinists v. Sandberry, 277 S.W. 2d 777 (Tex. Civ. App. 1974). Justice Douglas, in Hanson, supra, had argued:

> If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that

> state law is superceded .... In other words, the federal statute is the source of power and authority by which any private rights are lost or sacrificed .... The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction. Id. at 232.

Concurring in Street, supra, Douglas added, that:

> Since neither Congress nor the State legislatures can abridge [First Amendment] rights, they cannot grant the power to private groups to abridge them. As I read the First Amendment, it forbids any abridgement by government whether directly or indirectly. Id., at 777.

At least one writer has agreed, and argued:

> When a union, pursuant to the NLRA, enjoys a union shop agreement or is the exclusive bargaining representative for the employees, the requisite state action is present to trigger a similar analysis for dissident union members who are represented by that union and who have made their objections known to it. Comment, supra, 126 U. of Pa. L. Rev. at 424.

This argument, however, rests entirely on the degree of government involvement, which, in political contribution cases where minority rights are to some extent guaranteed by internal union procedures, is minimal. The Harvard Law Review has suggested, in connection with the Street decision:

> A threshhold question was whether governmental action was involved in the execution or enforcement of a union-shop contract in a state with no right-to-work law, an issue not resolved in Hanson. Compare Railway Employee's Department v. Hanson, 351 U.S. 225 (1956), with Otten v. Staten Island Rapid Transit Ry. Co., 229 F. 2d 919 (2d Cir.), cert. denied, 351 U.S. 983 (1956), and Wellington, supra note 925, at 354-56. Resolution of this issue would have been complicated by the fact that the trial court had found union shops to be contrary to the

> constitution, law, and public policy of Georgia although its right-to-work statute expressly excepted railway union shops. See Ga. Code Ann. §54-901(a) (1961). If no governmental action were found, no further constitutional issues need have been faced. The Court seems to have assumed that governmental action was present. 367 U.S. at 749-50; this would have required it to decide, among other things, whether the dissenters' freedoms of association and speech were violated by unions' political activities which, although they did not directly restrict the dissenters' expressions of political support, did derive some force from their unwilling monetary contributions, resulting in a perhaps negligible decrease in the net effectiveness of the dissenters' political strength. 75 Harv. L. Rev., supra, at 237. For views favoring application of all or most provisions of the Constitution to the activities of all or most private groups see, e.g., Miller, the Constitutional Law of the Security State, 10 Stan. L. Rev. 620, 655-56 (1958); Malick, Toward a New Constitutional Status for Labor Unions: A Proposal, 21 Rocky Mt. L. Rev. 260 (1949).

Spending funds to promote political or legislative interests is not, however, a state function, nor is it derived from go vernmental authority. The fact that a labor union exercises a monopoly under legislative authority has been held insufficient for a finding of state action, Public Utilities Commission v. Pollak, 343 U.S. 451 (1952), and numerous decisions have found that individuals may not invoke constitutional protection against unions, since unions are essentially private. See, e.g., Oliphant v. Brotherhood of Locomotive Fireman, 262 F. 2d 359 (6th Cir. 1958), cert. denied, 359 U.S. 935 (1959), rehearing denied, 359 U.S. 962 (1959); Otten v. Baltimore and O.R.R. Co., 205 F. 2d 58 (2nd Cir. 1953); Williams v. Yellow Cab Co., 200 F. 2d 302 (3rd Cir. 1952), cert. denied, 246 U.S.

840 (1953); Courant v. International Photographers, 176 F. 2d 1000 (9th Cir. 1949), cert. denied, 338 U.S. 943 (1950); Wicks v. Southern Pacific Co., 121 F. Supp. 454 (S.D. Cal. 1954), aff'd, 231 F. 2d 130 (9th Cir. 1956), cert. denied, 351 U.S. 946 (1956).

Unlike the Railway Labor Act, the authorization for union shops contained in section 8(a)(3) of the National Labor Relations Act, does not override contrary state law. Retail Clerks International Association v. Schermerhorn, 373 U.S. 746 (1963). Given the permissive nature of the statute, Courts of Appeal have divided on the state action issue. Compare Linscott v. Millers Falls Co., 440 F. 2d 14, 16-17 (1st Cir.), cert. denied, 404 U.S. 872 (1971), and Seay v. McDonnell Douglas Corp., 427 F. 2d 996, 1002-03 (9th Cir. 1970), with Buckley v. American Federation of Television and Radio Artists, 496 F. 2d 305, 309 (2nd Cir.), cert. denied, 419 U.S. 1093 (1974), and Reid v. McDonnell Douglas Corp., 443 F. 2d 408, 410-11 (10th Cir. 1971).

In Abood, supra, the Court indicated in a footnote that it viewed state action under the Railway Labor Act as altogether different under the Taft-Hartley Act:

> Unlike §14(b) of the National Labor Relations Act, 29 U.S.C. §164(b), the Railway Labor Act preempts any attempt by a State to prohibit a union-shop agreement. Had it not been for that federal statute, the union-shop provision at issue in Hanson would have been invalidated under Nebraska law. The Hanson court accordingly reasoned that government action was present: "[T]he federal statute is the source of the power and authority by which

> any private rights are lost or sacrificed .... The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates ...." 351 U.S., at 232. See also Id., at 232 n. 4 ("Once courts enforce the agreement the sanction of government is, of course, put behind them. See Shelley v. Kraemer, 334, U.S. 1; Hurd v. Dodge, 33"4 U.S. 24; Barrows v. Jackson, 346 U.S. 249"). Abood, supra, n. 12 at 218-19.

The Court further stated "Nothing in our opinion embraces the premise ... that private collective bargaining agreements are, without more, subject to constitutional constraints." Id., n. 23 at 226.

The plaintiffs in Abood argued that Hanson and Street were distinguishable because they involved private sector collective bargaining, whereas Abood involved the public sector. Justice Powell in his concurring opinion agreed, 97 S. Ct. at 1807-9. Powell argued that private and public sector cases may also be distinguished on the basis of government authorization, and that the requisite state action was not present in Hanson and Street, because the government had merely authorized the agency shop. "In Abood, however, the government has agreed to compel payment of fees to the union as a condition of employment". Id. at 1809. Unfortunately, both interpretations find support in the Hanson and Street cases. Justice Douglas, who wrote the opinion in Hanson and concurred in Street, stated that "since neither Congress nor the state legislatures can abridge First Amendment rights, they cannot grant the power to private groups to abridge them". 367 U.S. at 777; 351 U.S. at 232. Justice Frankfurter, who concurred in Hanson and dissented

in Street, took the position that Congress had acted in a "noncoercive way" and thus no first amendment guarantees had been implicated. 367 U.S. at 807. The Abood Court adopted both the holding in Hanson and the reasoning of Douglas, while Justice Powell advanced the Frankfurter position, distinguishing between authorization and compulsion. See cases cited at 97 S. Ct. 1807-8. Powell argued:

> An analogy is often drawn between the collective-bargaining agreement in labor relations and a legislative code. This Court has said, for example, that the powers of a union under the Railway Labor Act are "comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents...." Steele v. Louisville & N.R. Co., 323 U.S. 192, 202 (1944). Some have argued that this analogy requires, each provision of a private collective-bargaining agreement to meet the same limitations that the Constitution imposes on congressional enactments. But this Court has wisely refrained from adopting this view and generally has measured the rights and duties embodied in a collective-bargaining agreement only against the limitations imposed by Congress. See Emporium Capwell Co. v. Western Addition Community Org., 420 U.S. 50, 62-65 (1975); NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180-181 (1967). Id. at 252, citing Note, "Individual Rights in Industrial Self-Government—A State Action Analysis", 63 Nw. U.L. Rev. 4 (1968); cf. Blumrosen, "Group Interests in Labor Law", 13 Rutgers L. Rev. 432, 482-483 (1959).

In a footnote immediately following this passage, Powell amplified on this reasoning:

> If collective-bargaining agreements were subjected to the same constitutional constraints as federal rules and regulations,

> it would be difficult to find any stopping place in the constitutionalization of regulated private conduct. Most private activity is infused with the governmental in much the way that the union shop is.... Enacted and decisional law everywhere conditions and shapes the nature of private arrangements in our society. This is true with the commercial contract—regulated as it is by comprehensive uniform statutes— no less than with the collective bargaining agreement.... Id., n.7, p. 252, citing H. Wellington, supra, 244-245 (1968).

The Court also quoted Professor Summers, to the effect that: "The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer." Summers, "Public Sector Bargaining: Problems of Governmental Decision-making", 44 Cin. L. Rev. 669, 670 (1975). Id. at 230.

Powell sought to distinguish "permissive" state action, found in contracts allowed by the Railway Labor Act, from "direct" state action, involved in Abood. Id. at 250-54. The Court in Hanson found that the federal statute was the "source of the power and authority by which any rights are lost or sacrificed Hanson, supra, at 232. See also, Board" of R.R. Trainmen v. Howard, 343 U.S. 768 (1952); Public Utilities Comm'n v. Pollak, 343 U.S. 451 (1952); Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944), cf., Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), which may suggest that a contract under the Railway Labor Act is not state action.

In Linscott v. Millers Falls Co., supra, the First Circuit held "[i]f federal support attaches to the union shop

if and when two parties agree, to it, it is the same support, once it attaches, even though the consent of a third party, the state is a precondition" Id. at 16.

The Court in Linscott, quoting Hanson, supra at 232, ascribed little significance to distinctions between the two labor statutes, and found that a union shop agreement under the NLRA constituted government action because "the federal statute is the source of the power and authority by which any private rights are lost or sacrificed." 440 F. 2d at 16.

Judge Coffin, however, pointed out in a concerning footnote, that of the four cases cited by the Court in Hanson for the proposition that Congressional involvement was the "but for" cause of the union shop provisions,

> all concerned situations in which the governmental involvement was much greater and different than it is here. In Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944), and Public Utilities Comm'n of District of Columbia v. Pollak, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952), there was either direct statutory authorization for or close governmental supervision of the activities challenged as unconstitutional. The government was so involved in the challenged activity that the private party was viewed as performing a governmental function. Steele v. Louisville & N.R. Co., 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173" (1944), and Brotherhood of Railroad Trainmen v. Howard 343 U.S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283 (1952), concerned statutory interpretation as opposed to the applicability of Constitutional limitations to private parties. In both opinions, the challenged activity was specifically authorized by Congress. Id. at 19.

Coffin also commented, that

> Section 14 (b) is not only incapable by its terms of overriding any inconsistent state legislation but, unlike the Railway Labor Act provision, represents a weakening rather than *a* strengthening of federal policy toward the union shop. Since it cannot be realistically claimed that the net effect of

> § 14 (b) was to increase federal support for the union shop, it would follow logic ally from a ruling that § 14(b) constitutes federal support and authority for union shops that the pre-1947 Congressional silence also constituted federal support and authority. From the logical point it is but a short step to the conclusion that all Congressional silence constitutes endoresement or, put another way, that all federal inaction is really federal action. Id. at 19-20.

In conclusion, he stated:

> It strikes me oddly to think of every term in a bargaining agreement as bearing the imprimatur of the federal government simply because of the fact that a federal agency is charged with supervision of the processes of reaching agreements, the end results of which are for the parties to determine. Moreover, I see no necessity for such a concept. Should a party seek to enforce any agreement discriminating against the exercise of a person's constitutional rights, courts would, under Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948), simply not enforce it. Id. at 20.

The Tenth Circuit, has agreed, and held that 8 (a) (3) did not render union shop agreements "government action", since the state's role was merely "neutral and permissive". Reid v. McDonnell Douglas Corp., 443 F.2d 408, 409-11 (CA 10, 1971). In Buckley v. AFTRA, 496 F.2d 305 (CA 2, 1974), the Second Circuit assumed state action for purposes of argument, but never reached the question, since it decided there was no violation. The Court recognized, that:

> When private action becomes imbued with *a.* governmental character, or when the Government significantly insinuates itself into the operative activities of private parties, then action by private parties may be regarded as "state action" and, if so, will be subject to

> all the constitutional limitations on governmental action. Evans v. Newton, 382 U.S. 296, 299, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966); Burton v. Wilmington Parking Authority, 365 U.S. 715, 772, 81 S. Ct. 856, 6 L.ED.2d 45 (1961).

The furtherest point, so far as "state action: is concerned, has been reached in cases involving racial discrimination. In Oliphant v. Brotherhood of Locomotive Firemen and Engineers, 262 F.2d 359 (6th Cir. 1958), for example, the Sixth Circuit was faced with a challenge to a provision in a union constitution which restricted membership to whites. Petitioners, who were black, claimed the provision denied them equal protection of the laws. The court denied relief, ultimately, because there was no agency of the federal government responsible for appellants' plight. In Oliphant, petitioners were employed in the bargaining unit, but were denied membership in the union, and the union was a certified bargaining agent under the Railway Labor Act. Nonetheless, there was no discussion in Oliphant of the state action question.

In Ethridge v. Rhodes, 268 F.Supp. 83 (S.D. Ohio 1967), a black construction worker sought to enjoin the state from awarding a contract for construction of a public building to a contractor who had used unions working out of a racially discriminatory hiring hall with a valid union security clause. The Court held the contractor was under an affirmative duty to employ a racially mixed work force because he was aiding the state in performing an essential government function. The

presence of a union security clause in Ethridge makes it distinguishable from a case like Oliphant in which there was none. Nonetheless, a constitutional duty in this case was fixed on a contractor who had no "strangle-hold" on the industry, and was only a single employer.

Recently, the Supreme Court has narrowed its interpretation of state action in relation to private associations. Thus, in Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972); see also, Evans v. Abney, 396 U.S. 435 (1970), the Court held the granting of a liquor license insufficiently "significant" for the Fourteenth Amendment, and held the licensing relationship did not approach the "symbiotic relationship" between public and private activity relied on in Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). In Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1973), Cf. Lucas v. Wisconsin Elec. Power, 466 F.2d 638 (7th Cir. 1972), cert. denied, 409 U.S. 1114 (1973); Jackson v. Metropolitan Edison Co., 483 F.2d 754 (3d Cir. 1973), cert. granted, 415 U.S. 912 (1974), the Court split over state action in the granting of broadcasting licenses, and in Hudgens v. NLRB, 424 U.S. 507 (1976), the Supreme Court held there was insufficient state action in shopping center picketing cases to warrant application of the First Amendment.

In the present case, General Counsel's sole argument with respect to state action is that without the Act, an employer would have no duty to discharge employees who

did not make CPD contributions. Respondent's Supplementary Brief, p. 1. Yet as Respondent also points out, without the Act an employer might terminate an employee "at will", which has been held to include "a good reason, a bad reason, or no reason at all." See, e.g., Associated Press v. NLRB, 301 U.S. 103, 132 (1937); R.J. Lison Co. v. NLRB, 379 F.2d 814, 817 (CA 7, 1967); Lawrence Stressin, Employee Discipline, 2-3 (1960). Moreover, employers are permitted by the Act to enter into agreements which contain union security clauses, and the state by no means "writes the contract" for the parties, or exercises a "strangle-hold" on the exercise of collective bargaining rights sufficient for a finding of state action. This form of involvement is more akin to the "permissive" action of government, that the "direct" action in Marsh and Steele.

In addition, the ALRA is significantly different from either the Railway Labor Act or the NLRA, in that the former cut union security at dues, fees, and assessments, that is, at the financial core of membership, whereas the ALRA permits greater latitude, interfering only when conditions of membership are "unreasonable", or not uniformly applied.

For these reasons, and those which flow from the cases cited, I conclude that there is insufficient state action to warrant application of the First Amendment in this case. The principles of free association are, however, recognized under the ALRA, which calls for "full freedom of association". It is therefore necessary to apply First

Amendment case law, not in the sense of "strict scrutiny", as under the Fourteenth Amendment, but in the sense of legislative policy.

Political Expenditure and Collective Bargaining

Assuming the application of First Amendment principles as policy, it is necessary to consider the legal standard by which CPD funds are to be judged. In order to do so, it is necessary to consider the distinction drawn in Abood, supra, between politics and collective bargaining. Respondent argues in her Brief that legislative policy rejects use of this distinction as the basis for a decision-making standard:

> The Legislature acknowledged that farm work is not merely another occupation; it is a way of life. And it enacted the ALRA expressly as one of perhaps many stepping stones to the goal of eliminating the social injustice and economic dislocation of farmworker life. Because farmworker life, for example, is characterized by migrancy, union political activities surrounding many of the factors which cause and perpetuate migrancy (e.g., immigration problems and policies) and many of the consequences of migrancy (e.g., poor education of farmworker children) are all unquestionably related to the union's ability to act effectively as a bargaining representative ... Lobbying and legislative activities, as well as election of candidates, which will further such activities are of vital importance to the survival of the UFW and any union of farmworkers. Indeed, such political activities, which greatly influenced the formative years of the labor movement in the fight for child labor laws, the eight-hour day, etc., have only relatively recently begun for farmworkers. Respondent's Brief, pp. 21-22.

Collective bargaining is defined in the Taft-Hartley Act as:

> the performance of the mutual obligation of the employer and the representative of

> the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party ..." 29 U.S.C. §158(d). See also, e.g., R. Smith. L. Merrifield & D. Rothschild, Collective Bargaining and Labor Arbitration 3, 8(1970); P. Harrlson & J. Coleman,Goals and Stragegy in Collective Bargaining 16(1951);J. Van Sickle, Industry Wide Collective Bargaining and the Public Interest 6(1947); H. Davey, Contemporary Collective Bargaining 6 (1951); Id. at 9; C. Randle, Collective Bargaining Principles and Practices 86-87 (1951); Chamberlain, supra, n. 122 at 121, 125, 130. M. Trotta, Collective Bargaining, vii (1961); A. Sloan & F. Whitney, Labor Relations 181 (2d ed. 1972).

Yet this narrow definition excludes a number of factors which directly affect the bargaining process. Professor Wellington for example, has written:

> The economic position of both labor and management - their power at the bargaining table -is dependent upon many variables, not the least of which (at least in the short run) is ever changing federal and state law. The impact upon economic power of federal legislation which makes certain employer and union practices illegal is obvious. A union, for example, may not apply secondary pressures to bring its adversary to terms. And its freedom to engage in organizational picketing is limited. Less obvious, but also important to the power of a union at the bargaining table, are minimum wage legislation, social security legislation, legislation dealing with unemployment and workmen's compensation, and the many other forms of welfare legislation which provide a foundation upon which unions may build in bargaining with management. Another factor that may be equally important to the union's economic position at the bargaining table is tariff legislation or other types of industry protecting or subsidizing enactments. More

> attenuated perhaps, but still important, are the general economical policies of an administration. (Is it then any wonder that business-minded unions are interested in politics and politicians?) Wellington, supra at 247.

In Retail Clerks Local 1625 v. Schermerhorn, 373 U.S. 746 (1963), the Court recognized that union funds are often spent for non-bargaining purposes:

> Rather typically, unions use their members' dues to promote legislation which they regard as desirable and to defeat legislation which they regard as undesirable, to publish newspapers and magazines, to promote free labor institutions in other nations, to finance low cost housing, to aid victims of natural disaster, to support charities, to finance litigation, to provide scholarships, and to do those things which the members authorize the union to do in their interest and on their behalf. Union brief, quoted in Id. at 753, n.6.

The Court further recognized:

> If the union's total budget is divided between collective bargaining and institutional expenses and if nonmember payments, equal to those of a member, go entirely for collective bargaining costs, the nonmember will pay more of these expenses than his pro rata share. The member will pay less and to that extent a portion of his fees and dues is available to pay institutional expenses. The union's budget is balanced. By paying a large share of collective bargaining costs the nonmember subsidizes the union's institutional activities. Id. at 754.

Yet the court concluded that union dues "may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining." Id. at 753-4. It further recognized that limiting union expenditures to collective bargaining purposes is meaningless:

> It is plainly not an adequate remedy to limit the use of the actual dollars collected from dissenting employees to collective bargaining purposes. Such a limitation "is of bookkeeping significance only rather than a matter of real substance." It must be remembered that the' service fee is admittedly the exact equal of membership initiation fees and monthly dues .... and that .... dues collected from members may be used for a" variety of purposes", in addition to meeting the union's costs of collective bargaining. Ibid. Archibald Cox has similarly written, concluding that:
>
> It is difficult, if not impossible to separate the economic and political functions of labor unions. Right-to-work law affects union organization and collective bargaining. Legislation subjecting unions to the antitrust laws or confining their scope to the employees of a single company would greatly weaken their bargaining power, if it did not destroy them altogether. Although it seems unlikely that the LMRDA will seriously impair the strength of labor organizations, many union leaders hold an opposite view which time may prove correct. Political action in these spheres of union interest is hardly more than incidental to the union's economic activities. A similar link exists even when a union takes political action upon a broader front. The basic philosophy of a President and his party affects appointments to agencies like the National Labor Relations Board, which in turn exerts tremendous influence upon the course of labor relations. Even the tariff impinges on labor negotiations. The bargaining power of the Hatters Union, for example, is affected by the competition of low-cost foreign goods. Cox, Law and the National Labor Policy, 107 (1960).

As the UAW's General Counsel argued to the Supreme Court in U.S. v. UAW, supra,

> For a hundred years, if Your Honors, please, we have been engaged in political activity. Our own union Constitution, from its first day, urges it. One cannot draw a line between bargaining and politics. Bargaining is supplemented by legislation and legis-

> lation is supplemented by bargaining. Now, you cannot split legislation from bargaining. At the bargaining table we get Blue Cross and Blue Shield and at the Congress we ask for national health insurance to supplement it. In Congress we get unemployment compensation, and at the bargaining table we supplement it with supplementary unemployment payment. This is as one, what you have here, the bargaining and the legislative process. Official Transcript of proceedings before the Supreme Court of the United States on December 4, 1956, pp. 82&S4, cited in John F. Lane, "Analysis of the Federal Law Governing Political Expenditures by Labor - Unions", 9 Labor Law J. 725 (1958).

It should therefore be obvious that any effort to distinguish between collective bargaining and politics will lead to absurd results.

> Who is to say where the line is to be drawn between collective bargaining and political action? If a union official comes out of a negotiating session and complains about the attitude of representatives of the Federal Mediation and Conciliation Service who have been in attendance, has he expressed a political view? Supposing unions were barred from political utterance, what would this mean in the concrete to their leaders either in an official or personal capacity? For example, would the AFL-CIO have to stop paying the salary of President George Meany when he is requested to appear before a House committee to state his views on pending labor or social legislation? It can safely be assumed that not all Americans agree even with the political pronouncements of the President of the United States when he appears before his party's nominating convention. Yet no one suggests that the taxpayers' First Amendment rights are somehow being violated thereby. Similarly, every official action and utterance of the United States Government, from the submission by the President of his proposed budget to Congress to the views expressed by our Ambassador to the United Nations, must run counter to the political beliefs of some Americans. Free speech

> obviously has to be squared with majority rule in a democracy. It is this principle which is ignored by those who seek to restrain union political activity on the basis of the First Amendment. Wohl, "Unions in Politics", 34 U.S.C. L. Rev. 142 (1961).

Justice Frankfurter, dissenting in Street, supra, similarly recognized:

> It is a commonplace of all organizations that a minority of a legally recognized group may at times see an organization's funds used for promotion of ideas opposed by the minority. The analogies are numerous. On the largest scale, the Federal Government expends revenue collected from individual taxpayers to propagandize ideas which many taxpayers oppose. Street, supra, at 808.

If we assume, as did the Court in Abood, that as part of a collective bargaining agreement, a union negotiates a medical plan which includes payments for elective abortion, it cannot be maintained that funds spent for these purposes are not political, or that expenditure of union dues on their behalf will not violate individual conscience. If we assume a collective bargaining bill is before the Legislature, it is plain that lobbying efforts will be "germane" to collective bargaining. Yet to prohibit such activity because it is political would be to deny in practice rights the Act was designed to protect. Other categories of "political" expenditure cover the gamut, from testimony by union officials before legislative committees or executive departments, to solicitation of political contributions at union meetings, use of union halls for political events, mailing list for political fliers, union duplicators for political literature, supporting litigation with political goals in mind, visits with foreign political leaders, direct foreign aid or assistance, etc.

Thus, the distinction between politics and "collective bargaining and other mutual aid and protection", is artificial, and cannot provide a guide by which the parties may pattern their behavior with any degree of forseeability. Moreover, it is unrealistic to expect labor unions not to engage in political action, or to fund such activity. Unions are not merely legal, but also political organizations, and rely on their members for expenditures to safeguard their future, interests, both as to workers within a single bargaining unit and as to labor in general. To act otherwise, would be to undermine their very existence, and return to the conditions of labor instability which provided the very reason for passage of the ALRA. Labor's motto has been from the beginning" "an injury to one is an injury to all", and even such political legislation as that directed at inflation, unemployment, energy crisis, and nuclear proliferation, directly affect collective bargaining, and the well-being of labor as a whole.

It cannot be expected that the ALRB will be able to make, in every case, delicate distinctions between politics and collective bargaining, or decide what is "germane" to each. Nor is it qualified to do so, since the judicial function does not naturally lend itself to categorizations which involve value judgements varying with historical circumstance and political climate .

At the outset, two points are clear. First, the union membership has a right to decide, by democratic process and majority rule, that they will engage in legislative action and create a political fund for that purpose, into which members shall contribute.

Second, individual members have a collaterial right to be notified that they may refuse to contribute to political causes with which they disagree, and may not be disciplined or fired from their jobs if they fail to authorize such deductions. It is imperative that dissenters jobs be insulated from their political beliefs, whether favoring the employer or the union. There is nothing, however, in the record here to indicate that the union in any way attempted to "coerce" its members into "ideological conformity", or prevented them from expressing their political views, or from supporting candidates or their choice, either inside or outside union meetings. The argument that union expenditure on political or social causes with which a member disagrees per se deprives :that-member of free speech, or constitutes an interference or restraint, is unsound and unrealistic.

The simple exercise of majority rule, without direct abridgement, cannot be held a per se violation of minority rights, or the basis for all collective action will be vitiated. The principle of majority rule requires protection for the right of the minority to seek adoption of its point of view, through democratic decision-making, but it cannot be held to deny the right of the majority to act at all. Nor is it pretended that any other institution in our society permits such scope to dissent, including state and federal governments themselves.

Professor Wellington has suggested that courts have vacillated between two possible tests to determine whether money spent in support of legislation, or a political candidate is germane to the unions' role as bargaining agent, but that neither

test is adequate. These include:

> a "reasonable" test, which will probable come close to giving the unions carte blanche; or a test which translates into constitutional law the same sorts of arbitrary distinctions between legal and illegal union objectives that were inserted into the common law of labor by judges in the conspiracy and injunction cases. The former is hurtful for it surrounds conduct which would be regulated by Congress with a halo of constitutionality - with the quality of legitimacy, which may make subsequent congressional action difficult - while the latter, as the history of labor and the law reveals, is intolerable. Wellington, supra, p. 246. Footnotes omitted.

Wellington suggests that courts, assessing the validity of political expenditures under the First Amendment, should consider the following factors:

> ... on the one hand are to be weighed the uses and purposes to which the money is to be put, the importance of the objectives in question to the labor organization, and the extent to which they are supported by the majority within the organization; and on the other hand there is to be assessed the effect of the union's action on the dissenting employee. This requires immersion in the history, structure, and aspirations of the union movement, and of the particular union; it requires immersion in collective bargaining, and an understanding of the relationship between economic power and political action. Ibid.

Applied here, Wellington's test would require that C.P.D. funds be sustained, particularly in light of a history of farm worker powerlessness, or when compared with the vast economic and political resources available to growers.

I therefore reach the following prelimenary conclusions.

1) the union membership has a right to decide by democratic process and majority rule to engage in political action

and create a political fund for that purpose into which all members shall contribute, except that; 2) individual members must be notified that they have a right to refuse to contribute to political causes which with they disagree; 3) those members who dissent may not be disciplined or fired from their jobs if they fail to authorize deductions for political contributions to which they object, and dissenters' job must be insulated from their political beliefs, whether opposed by the employer or by the union.

Yet the C.P.D. Fund questioned here itself provides that dissenters need not contribute to political causes to which they object. Nor has General Counsel raised an issue concerning the adequacy of notice to the membership, or cited efforts by the UFW to discipline Mr. Conchola for his refusal. Dissenting employees are given the option of diverting their C.P.D. contribution to one of three charities. It is therefore necessary to consider the issue of charitable contributions, in relation to the freedom of non-association.

Mandatory Charitable Contribution;

Thus, in spite of arguments to the contrary contained in the parties briefs, we are not here presented with an issue of mandatory political contribution as it appeared in the Hanson, Street and Abood line of cases. Rather, we face a unique question, and one of initial impression: may a union under an agency shop agreement mandate charitable contributions? It is on this ussue that the legislative policy of freedom of non-association finally turns; yet here, we find ourselves entirely on uncharted ground. Not a single case has been decided in this area, and we face the difficult problem of arguing by analogy to similar areas. The General Counsel has opposed mandatory contributions for charity for the following reason:

> To require employees to contribute money to charities may avoid First Amendment problems and be noble but it does not help cover union expenditures for collective bargaining, contract administration or grievance adjustment. As a result the union cannot mandate the money be contributed. General Counsel's Brief, p. 11.

Respondent, on the other hand, argues charitable donations may come from compulsory funds, making three primary arguments. First,

> Under the Federal Election Campaign Act, 2 U.S.C. Section 431, et seq., Congress authorizes the use of dues and other union funds which are not composed of wholly voluntary contributions in non-partisan registration and get-out-the-vote campaigns aimed at members and their families. (Section 441 (b)(2)(B). By contrast, partisan contributions out of dues are subject to strict prohibitions unless the contribution is voluntarily authorized in the manner set out in the Act. (Section 441(b)(3).) Respondent's Brief, p. 24.

Second, Respondent maintains no constitutional rights are infringed by charitable spending, arguing by analogy that union security clauses may be enforced over even the religious objections of employees, since there is a

> compelling governmental interest behind security and collective bargaining as a menas (sic) of preserving industrial peace and stability which overrides an individual employees's claim of exemption on religious grounds from contributing under the union security clause. Id., at p. 25, citing Hanson, supra; Otten v. Baltimore & Ohio R.R. (2nd Cir., 1953) 205 F.2d 58; Linscott v. Millers Falls Co., supra; Gray v. Gulf, Mobile and Ohio R.R. (5th Cir., 1970) 429 F.2d 1064; Wicks v. Southern Pacific Co., (9th Cir., 1956) 231 F.2d 130, cert. denied. (1956) 351 U.S. 946, 76 S.Ct. 845, 100 L.Ed. 1471; Yott v. North American Rockwell Corp. (9th Cir., 1974) 5151 F.2d 398.

Third, Respondent argues:

> the term "free rider" may not be so narrowly read as to encompass only payment for those benefits an employee directly and tangibly receives from the collective bargaining agreement between the union and his employer. An employee is a free rider not only if he does not pay for the direct benefits he receives under a collective bargaining agreement, such as the ability to file a grievance or pension benefits; but he is also a free rider if he is allowed to keep money which other employees have decided will further their collective bargaining interests in less direct ways. In fact, the compelling and constitutionally based interest in union security as a means of ensuring labor relations stability must sanction a union policy that an employee who does not wish to contribute to causes he opposes politically or ideologically may be required to contribute the same amount to causes to which he has no objection. Id. at p. 26. Footnote omitted. See also, pp. 27-8.

The problem, initially, is one of interpreting case law in other areas, since the Hanson, Street and Abood line of

cases left open the question of whether compulsory dues or fees could be used to finance activities which, although not political, are nonetheless indirectly involved in collective bargaining or grievance handling. The resolution of this issue ultimately turns on which of two competing rationales advanced in Hanson, Street and Abood is deemed the controlling one. The first presumes that only political expenditures are unconstitutional, and suggests dividing union expenses into two categories: those that are political and invoke the protection of the First Amendment, and all others, which may be made compulsory. Under this view, a dissenter may object only to the union's use of compulsory monies for "political" purposes. The second rationale asserts that Congress permitted compulsory extraction of dues only for collective bargaining purposes, to offset the union's costs in discharging its statutory duties. Under this view, a dissenter could object to any use of compulsory monies for non-collective bargaining purposes. The Supreme Court, in Abood, seemed to adopt the former interpretation, holding:

> indeed, Street embraced an interpretation of the Railway Labor Act not without its difficulties, ...precisely to avoid facing the constitutional issues presented by the use of union-shop dues for political and ideological purposes unrelated to collective bargaining. At 4479.

The Court, however, expressly refused to decide this point, stating:

> The appellants' complaints also alleged that the union carries on various "social activities" which are not open to nonmembers. It is unclear

> to what extent such activities fall outside the Union's duties as exclusive representative or involve constitutionally protected rights of association. Without greater specificity in the description of such activities and the benefit of adversary argument, we leave those questions in the first instance to the Michigan courts. Id., at 4480, N.33. See also, discussion in Haggard, Compulsory Unionism, The NLRB & the Courts (1977); Ellis v. BRAC, supra.

The Supreme Court's earlier decision in Radio Officers Union (A.H. Bull Steamship Co.) v. N.L.R.B., 347 U.S. 17, (1954), had not clarified this problem, but held simply:

> legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment for union dues and fees. Thus Congress recognized the validity of unions' concern about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason. Id., at 47.

The furthest any court has gone in support of the second rationale is Ellis v. Brotherhood of Railway, Airline Steamship Clerks, 91 LRRM 2339 (1976), where, in an extraordinary decision unsupported by logic or rationale, the following activities were held to be non-collective bargaining in nature:

> (1) Recreational, social and entertainment expenses for activities not attended by management personnel of Western Airlines.
>
> (2) Operation of a death benefit program.
>
> (3) Organizing and recruiting new members for BRAC among Western Airlines bargaining unit employees.
>
> (4) Organizing and recruiting new members for BRAC, and/or seeking collective bargaining authority or recognition for:

(a) employees not employed by Western Airlines;

(b) employees not employed in the air transportation industry.

(c) employees not employed in other transportation industries.

(5) Publications in which substantial coverage is devoted to general news, recreational, and social activities, political and legislative matters, and cartoons.

(6) Contributions to charities and individuals.

(7) Programs to provide insurance, and medical and legal services to the BRAG membership, or portions thereof, other than such program secured for its salaried -officers and employees.

(8) Conducting and attending conventions of BRAC.

(9) Conducting and attending conventions of other organizations and/or labor unions.

(10) Defense or prosecution of litigation not having as its subject matter the negotiation or administrative of collective bargaining agreements or settlement or adjustment of grievances or disputes of employees represented by BRAC.

(11) Support for or opposition to proposed, pending, or existing legislative measures.

(12) Support for or opposition to proposed, pending, or existing governmental executive orders, policies, or decisions. Id. at 2342.

See diccussion in Michael E. Merrill, "Limitations Upon the Use of Compulsory Union Dues", 42 J. of Air L. & Com. 711 (1976); cf. Bus. Week, Feb. 16, 1976, at 26.

Ellis involved an allegation that the union had spent compulsory dues and fees for "political and various other non-collective bargaining purposes", in violation of the union's duty of fair representation. The Court found it had, citing

Street, but did not set forth its' rationale. Ellis, however, involved the Railway Labor Act, in which considerable legislative history and the Hanson, Street and Allen decisions had given the union ample notice that political expenditures were not to be made from compulsory funds over the objections of dissident members.

In reality, however, workers join unions not simply as agents of collective bargaining, but for a wide range of social reasons. To maintain that members must be refunded the portion of their dues spent for picnics, member death benefits, recruitment of new members, publishing national news or cartoons, or attending their own conventions, is to seek the destruction of collective bargaining and the agency shop by the back door.

No such simple mechanism can prevail here, without frustrating the purpose and policy of the Act, which recognize not only the validity of collective bargaining, but also "labor disputes", "conditions of work", see Section 1140.4 (j) & (h), and "other mutual aid" and, "protection". See section 1152, as within the legitimate purposes of employee associations The fraternal functions of labor unions, even when compulsory among members of a craft or trade, have predated legal regulation by over a century, and, since the medieval guilds» formed an essential ingredient in labor associations. See, e.g., Thompson, The Making of the English Working Class (1974); Commons, supra; Perlman, supra.

The principal reason for prohibiting the assignment of members funds to charity over their objection is the right of non-association. Against this rationale, Respondent's counsel raises several arguments: first, the right not to associate for political purposes deserves greater recognition than the same right exercised for charitable purposes, citing by example registration and "get-out-the-vote" campaign; second, the governments' interest in preserving industrial peace and security, as paramount here, and third; the fact that charitable contributions affect collective bargaining, turning dissenters into "free-riders", within the meaning of Street.

First, I see no meaningful or logical distinction between voter education or "get-out-the-vote" campaign conducted in the community, and the specific charities cited here. Both have as their purpose the improvement of the labor conditions and performance of public functions far removed from the political or religious purposes associated with the First Amendment. Second, the governments' interest in preserving labor peace and security is aided by permitting mandatory charitable contributions, and is far from overbalanced by a disserting member's interest in avoiding such contributions. See, e.g., Linscott, supra. In the absence of a more specific showing by General Counsel, it may be assumed that the reasons for dissent here are primarily selfish, rather than political, and an interest in promoting "other mutual aid or protection" will clearly prevail over such motives. Third, charities which assist farmworkers affect collective bargaining dierctly, since these include obligations which might other-

wise be assumed under a collective bargaining agreement. Given the law of supply and demand in wages, the existence of a large group of destitute laborers will lower both wages and working conditions, and affect contract negotiations directly. Indeed, a large part of the history of agricultural labor in this state gives testimony to the need for such charities. See, e.g., Stuart Jamieson, Labor Unionism in American Agriculture (1945); National Advisor Committee on Farm Labor, Farm Labor Organizing, 1905-1967 (1967); Weber, "The Organizing of Mexicano Agricultural Workers: Imperial Valley and Los Angeles, 1928-34, an Oral History Approach" (1973).

Moreover, one of the three charities selected here is a direct product of collective bargaining, serves the union's membership, and is legitimately funded from compulsory sources. As to it, there is no question of a connection with collective bargaining. As to the others, while their relation to collective bargaining is less clear, it is certain that they aid its progress and are within the scope of constitutional authority.

It has been held that freedom of assembly under the First Amendment does not extend to a right to remain unorganized, Senn v. Tile Layers Protective Union, 301 U.S. 468 (1937), nor is there here a right, under principles of free assembly, free of contribution to the general advancement. The Supreme Court declared in Hanson, supra, at p. 238, that the union shop was no more an infringement on First Amendment rights then state laws compelling membership in an integrated bar, and

Lathrop, supra, clearly held that compulsory membership in an integrated bar which took positions on legislation opposed by some of its members did not violate bar members First Amendment rights. The problem, in these cases, is thus one of avoiding a double standard.

It has also been argued, in connection with the issue of compulsory contribution to an integrated bar, that "[t]he injury to the dissenters is so minor,...when compared with the benefits to the majority, that the promotion of a minor indignancy to a constitutional wrong would be injudicious." Comment, The Compelled Contribution in the Integrated Bar and the All Union Shop, 1962 Wis. L. Rev. 138, 149 (1962). See also, Street, supra, at 808 {Frankfurter, J., dissenting); United States v. CIO, supra, at 148 (Rutledge, J., concurring). The same rationale may be advanced here.

The automatic charitable alternative, was designed to prevent individual employees from receiving a windfall through dissent. As Respondent argues,

> the issue is whether by attempting to build the strongest possible union political base, yet to accomodate individual members' objections to participate in certain political support, the dissenting member somehow acquires an entitlement, just by virtue of the workings of the system the union has created, to money he or she would not otherwise receive. The answer must be no. The cases, while requiring accomodation of objections, have not thereby mandated that unions must benefit dissenting members in the amount of their objection... Respondent's Brief, p. 28. Original Emphasis.

The charitable contribution avoids this problem, by making contributions uniform, as required by the Act. The point of the "free rider" argument is not the specific purpose to which compulsory funds are directed, i.e., collective bargaining, charity or grievance handling, but the idea of mutual contribution for mutual benefit. Charitable expenditures do not violate, but enhance this idea.

I therefore hold the C.P.D. requirement of mandatory contribution to one of three charities, as an alternative to objectionable political expenditures, meets constitutional requirements, as embodied in the policy of the Act. If the dissenter objects to a particular charity, or suggests an alternative for use of the unions' C.P.D. funds, this option may be urged through the unions' internal appeals process, and at any rate, is not presented for decision here. To fully meet contitutional objections, however, the dissenting member must here specify the precise charitable programs with which he or she disagrees, the reasons for the disagreement.

The Scope of Permissible Relief:

The Supreme Court has placed considerable limits on the scope of remedial relief, indicating a concern both for the rights of the minority and the majority, and supporting Professor Wellington's observation that it would be improper for a court to restrain union activity to any significant extent, under circumstances where it is unclear what the legislature really meant. The wisdom of restraints on

unions,as seen by the courts, thus "involves considerations plainly fundamental to the working of the political process yet basically unsusceptible to intelligent testing by the abstract constitutional propositions available to the Court." Wellington, supra at 232. In Street, supra, the Court similarly recognized:

> 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." 367 U. S. at 773.

A first principle in selecting a remedy, is clearly avoidance of overbreadth. Thus, in Street, the Court held "dissent is not be be presumed - it must affirmatively be made known to the union by the dissenting employee," Id., and in Allen, the Court added: "No respondent who does not in the course of the further proceedings in this case prove that he objects to such use will be entitled to relief. This is not and cannot be a class action." 373 U.S. at 119. As the Court recognized in Street;

> The union receiving money exacted from an employee under a union-shop agreement should not in fairness be subjected to sanctions in favor of an employee who makes no complaint of the use of his money for such activities. 376 U.S., at 774.

From this it follows that "Any remedies...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." Ibid.

The Supreme Court has further indicated that injunctive relief is not a proper remedy:

> Restraining the collection of all funds from the appellees sweeps too broadly, since their objection is only to the uses to which some of their money is put. Moreover, restraining collection of the funds as the Georgia courts have done might well interfere with the appellant unions' performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry. Id. at 776.

For these reasons also, class relief has been found inappropriate:

> From these considerations, it follows that the present action is not a true class action, for there is no attempt to prove the existence of a class of workers who had specifically objected to the exaction of dues for political purposes." Id. at 774.

Two general remedial suggestions have been made by courts: (a) prohibition of expenditures of funds for political causes opposed by a complaining employee "of a sum, from those moneys...which is so much of the moneys 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 (b) restitution to dissenting employees of that portion of their money the union expended for political causes it had been advised the employees opposed. Street, supra, at 774-5.

The return of a percentage of exacted funds used for political purposes has been characterized as of little practical value. Note, 61 Col; L. Rev. 1513 (1961). It

has been suggested, however, that the insignificance of the remedy may be fully commensurate with the small amount of financial harm done. Note, 75 Harv. L. Rev. 233 (1961). Street has for this reason, been commended as a useful stopgap. Note, 3 Geo. Wash. L. Rev. 541 (1962).

Opposition has also been expressed to the remedy of injunction, which is disfavored in labor law, in the absence of proof that any other remedy would be inadequate or harm irreparable. See, e.g., Allen, supra. In Marker v. Shutlz, 485 F.2d 1003 (CA DC, 1973), an action to enjoin Treasury officials from conferring tax exempt status on a labor organization which spent dues monies on political campaigns, the Court of Appeals held remedies for such violations were limited to restitution, and injunction was reserved for exceptional cases. The Court recognized that:

> the precedents do establish that to some extent, at least, a union's claim of a constitutional right to engage in political activity could not be terminated without raising "the gravest doubt" as to constitutionality, see United States v. CIO, 335 U.S. 106, 121, 68 S.Ct. 1349, 92 L. Ed. 1849 (1948), and "issues not less than basic to a democratic society," United States v. International Union, U.A.W., 352 U.S. 567, 570, and see 589 ff., 77 S. Ct. 529, 531, 1 L. Ed. 2d 563 (1957). Id. at 1005.

For this reason, courts have, without exception, refused to order "class-based" relief, or invalidate an -entire fund. In Allen, supra, the Court suggested an "opting out" approach, modeled on the British experience of "contracting out", at the same time recognizing 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. Id. at 118.

See also, Abood, supra at 1782; Trade Union Act of 1913, 2 and 3 Geo. V, c. 30, reenacted by Trade Disputes and Trade Union Acts, 1946, 9 and 10 Geo. VI, c. 52; Comment, 19 U. of Chi. L. Rev. 371, 381 – 388 (1952); Rothschild, Government Regulation of Trade Unions in Great Britain: II, 38 Col. L. Rev. 1335, 1360 - 1366 (1938). See generally, Rothschild, Government Regulation of Trade Unions in Great Britain: II, 38 Col. L. Rev. 1335, 1356 - 66, 1379 -80, (1938); address by Otto Kahn - Freund, ABA Labor Relations Law Section, 1960, summarized in 46 L.R.R.M. 49-50; Comment, 19 v. Chi. L. Rev. 371, 381 - 4 (1952); Comment, 75 Harv. L. Rev. 40, 238 and jt. 947; McAlister, Labor, Liberalism and Majoritarian Democracy, 31 Ford, L. Rev. 661, 687 - 693(1963). Cf. Dudra, Approaches to Union Security in Switzerland, Canada, and Columbia, 86 Monthly Lab. Rev. 136 (1963). Cf. Lenhoff, The Problem of Compulsory Unionism in Europe, 5 AM. J. Comp. L. 18 42 (1956). The "check-off" system has also been advocated as a method which preserves constitutional rights of dissenting members. See, e.g., Kelley Michael Gale, "Abood v. Detroit Board of Education: Association as a First Amendment Right", 3 Utah L. Rev. 487 (1977).

Justice Frankfurter, dissenting in Street, supra, commented on the history of this remedy in England.

> The course of legislation in Great Britain illustrates the various methods open to Congress for exempting union members from political levies. As a consequence of a restrictive interpretation of the Trade Union Act of 1876, 39 & 40 Vict., c. 22, by the

> House of Lords in Amalgamated Society of Ry. Servants v. Osborne, [1910] A. C. 87, Parliament in 1913 passed legislation which allowed a union member to exempt himself from political contributions by giving specific notice. " Trade Union Act of 1913, 2 & 3 Geo. V, c. 30. The fear instilled by the general strike in 1926 caused the Conservative Parliament to amend the "contracting out" procedure by a "contracting in" scheme, the net effect of which was to require that each individual give notice of his consent to contribute before his dues could be used for political purposes. Trade Disputes and Trade Unions Act of 1927, 17 & 18 Geo. V, c. 22. When the Labor Party came to power, Parliament returned to the 1913 method. Trade Disputes and Trade Unions Act of 1946, 9 & 10 Geo. VI, c. 52. The Conservative Party, when it came back, retained the legislation of its opponents. Street, supra, at p. 817, n. 31.

The UAW's Constitution includes an "opting out" rebate procedure, somewhat more restrictive than the UFW's, and in Article 16, Section 7, provides:

> (a) Any member shall have the right to object to the expenditure of a portion of his dues money for activities or causes primarily political in nature. The approximate proportion of dues spent for such political purposes shall be determined by a committee of the International Executive Board, which shall be appointed by the President, subject to the approval of said Board. The member may perfect his objection by individually notifying the International Secretary-Treasurer of his objection by registered or certified mail; provided, however, that such objection shall be timely only during the first fourteen (14) days of Union membership and during the fourteen (14) days following

> each anniversary of Union membership. An objection may be continued from year-to-year by individual notifications given during each annual fourteen (14) day period.
>
> (b) If an objecting member is dissatisfied with the approximate proportional allocation made by the committee of the International Executive Board, or the disposition of his objection by the International Secretary-Treasurer, he may appeal directly to the full International Executive Board and the decision of the International Executive Board shall be appealable to the Public Review Board or the Convention Appeals Committee at the option of said member.

The problem of remedy here, however, is a product of the unusual nature of the fund. The fact that CPD is a paid holiday, bargained for and agreed upon with the employer, means that funds which a dissenting member refuses to allocate, either for political or charitable purposes, can only return to the employer. The particular holiday chosen here is the first Sunday in June, which is otherwise, we must assume, not a work day, and it would violate the legal prohibition against featherbedding to require payment for work which is not to be done. As an alternative to such forfeiture, the union could constitutionally vote to allocate these funds for collective bargaining purposes, or permit their assignment to causes designated by the employee.

In sum, the charging party has the alternative -of refusing to contribute to a political cause with which he disagrees, and selecting one of three charities he most agrees with, or appealing an adverse decision. He may also suggest

alternative for use of C.P.D. funds to the union's National Executive Board or Public Review Board, or take the matter to the Union's national convention.

There is another alternative as well. While the parties have made no mention of this fact, the C.P.D. provision in the UFW's agreement with Mann Packing Co. specifically provides that C.P.D. funds shall go to the UFW, "for allocation as designated by the worker. "Emphasis added. This language implies that where dissenting members object to UFW political choices for the receipt of C.P.D. funds, they may individually designate their own recipients. This interpretation avoids the constitutional and remedial difficulties which have troubled courts, and provides maximun support both for the principle of majority rule and that of minority right. Employees are certainly not required to specify an alternative beneficiary for their funds, or to specifically object to each political expenditure, as the Court recognized in Allen, supra. Yet should an employee chose to exercise this option, the express language of the contract would appear to support a right to do so in lieu of transferring designated funds to one of three-UFW-selected charities. Denial of this right would appear to be arbitrable under the contract, as well as being appealable within the union, and the constitutional objections raised by General Counsel will have been completely satisfied.

Exhaustion

Counsel for the UFW also argues the Charging Party has failed to exhaust his internal union remedies. The stipulated facts recite that Conchola "fears" discharge, and while there is authority in the agreement and union constitution to seek his discharge, no disciplinary action has yet been taken against him. There is no evidence of any threat of disciplinary action, nor has Conchola made any effort to use the unions' internal procedures as a means of resolving this dispute.

In the relationship between a union and its members, it is clear that, in general, there must be a good faith effort to exhaust internal union remedies. Thus,

> Violation of other laws and wrongs done within an organization are intended to be conciliated and corrected by the appellate machinery provided therein if properly invoked by an aggrieved party and applied by the organization, and if recourse to such appellate machinery is not sought an aggrieved party foregoes his right to a judicial review regardless of the breach of its own rules by the organization in causing the grievance in the first instance. Holderby v. International Union, etc., Engineers (1955) 45 Cal. 2d 843, 291 P. 2d 463, cited in Respondent's Brief, p. 12.

Indeed, the UFW's Constitution provides:

> No member shall bring or cause to be brought in any court any action against the Union, its officers, agents, or employees, in any matter arising out of or related to his membership, which is remediable within the framework of the Union, without having first exhausted all of the remedies available under the Constitution. (Article XVII, Section 5.)

The UFW Constitution also provides, in Article XX Section 4, that members possess a right to challenge "any action or decision...of any [Ranch] official or representative" for 30 days after becoming aware of the action or decision. The challenge must then be brought before the next general membership meeting for consideration, with a right to appeal an adverse decision to the National Executive Board. Challenges to actions or decisions by a national officer, official, representative or agent, are brought to the National Executive Board. In the event of an adverse decision, notice must be given of a right under Article XXI to appeal to the union's Public Review Board, composed of "impartial persons, dedicated to the welfare and advancement of farm workers, and not working under the jurisdiction of the Union or full-time for the Union." The Public Review Board has "final and binding authority" over all cases appealed to it, except that "in no event shall the Board have the jurisdiction to review an official collective bargaining policy of the Union. Id., Section 6.

The U.S. Supreme Court has held that where a complaint involves "internal union matters", exhaustion is necessary before resort can be made to the NLRB, NLRB v. Industrial Union of Marine and Shipbuilding Workers, 391 U.S. 418 (1968), and in NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, (1967) the Court recognized a right of labor organizations to prescribe their own rules with respect to retention of membership.

The Ninth Circuit, in Seay, supra, also considered the exhaustion question in political contribution cases, finding that:

> an employee, at minimum, must attempt to exhaust exclusive grievance and arbitration procedures established by a bargaining agreement before bringing an action in the courts. Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-653, 85 S.Ct. 614, 13 L. Ed. 2d 580 (1965); Vaca v. Sipes, supra, 386 U.S. at 184-185, 87 S.Ct. 903.
>
> Here, there is evidence that several appellants attempted to exhaust these procedures. Contained in the record are the verified answers to interrogatories of a number of the appellants in which they state under oath that they did make objection both orally and in writing. Their objections went unheeded. An employee is not required to do more than that. 427 F.2d at 1001.

Here, there is no such evidence. In Glover v. St. Louis-S.F. Rv.Co., 383 U.S. 324 (1969), the U.S. Supreme Court held that where a union was required

> to pass on claims by the very employees whose rights they have been charged with neglecting and betraying * * * the attempt to exhaust contractual remedies, required under Maddox, is easily satisfied by petitioners' repeated complaints to company and union officials, and no time-consuming formalities should be demanded of them. Id. at 330-1. See also Brady v. Trans World Airlines, Inc., 167 F.Supp. 467, 472(D.Del. 1958).

Yet here, there is no such allegation or effort by the Charging Party. Respondent notes in her Brief, that after Abood, supra, had been filed, the union adopted a procedure for accomodating members' objections similar to that used here by the UFW, and states:

> Although the Court noted that it was expressing no opinion as to the Constitutional sufficiency of the union's internal remedy (Id., at 1803, n. 45), by deciding the case on the doctrine of exhaustion, the Court implicitly acknowledged that the union's internal objection procedure presented no problem on its face. Respondent's Brief, p. 19, ft. 4.

In determining whether a remedy is appropriate,

> the objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the union's ability to require every employee to contribute to the cost of collective-bargaining activities. Abood, supra, at 1800.

The Court's purpose here, is essentially to counteract the incentive that employees might otherwise have to become "free-riders". Yet in doing so, they have extended considerable support for the principle of exhaustion. The Court in Allen, for example, suggested that unions adopt an internal remedy for dissenters, and suggested a broad policy of liberal approval for such programs:

> 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 averted. 373 U.S. at 123.

In Reid, supra, a union rebate program was established, although its requirement of internal exhaustion of remedies has been criticized as imposing an "intolerable burden" on members, Seay v. McDonnell Douglas Corp., supra, at 1130 n. 6 (CA 9, 1976). Nonetheless, the court left it up to the trial

judge to determine whether union procedures were fair and adequate, Id., with the implicit assuption that if they were, no further court ordered relief would be necessary.

The Supreme Court has never reviewed the constitutional sufficiency of such internal remedies, and in Abood, while the Court expressed: No view as to the constitutional sufficiency of the internal remedy, the appellees were none the less held entitled to judicial consideration of it's adequacy. Abood, supra, at n. 45, 1803.

As Respondent points out, the UFW's procedure for objecting to political contributions is modeled after similar procedures utilized by other unions to accomodate members' objections to political or ideological uses of funds compulsorily collected under union security provisions. Respondent's Brief, at 15. See, also, e.g., Reid, supra; Seay II, supra; Gabauer, supra; Abood, supra; McNamara, supra. Moreover, the Charging Party need not wait for expulsion to raise the issues he complains of, since the union's Constitution refers to "any action or decision" as providing a basis for challenge. However, it is not necessary to reach that question here, since it is clear from the foregoing that exhaustion is both required in a case of this sort, and that the Charging Party has failed to exhaust his internal remedies. I therefore order that the complaint, insofar as it depends on constitutional claims, be dismissed.

Unfair Labor Practices

It is alleged that Respondent, by requiring contributions to a political fund, has violated Sections 1152, 1153(c), 1154(a)(l), 1154 (b) and 1155.5 of the Act.

Section 1152 of the Act appears on p. 12 of this Decision, and Section 1153 (c) has been set forth, in pertinent part, also on p. 12. Section 1154(a)(l) provides that it shall

be an unfair labor practice for a labor organization to:

> restrain or coerce...[a]gricultural employees in the exercise of rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Section 1152 does not itself provide the basis for a charge, except insofar as it is necessary to Section 1154 (a) (1). Section 1153(c) consists of a right to set "reasonable "terms and conditions" of membership together with a guarantee of "full and fair rights to...assembly." As has already been stated, the C.P.D. Fund meets these conditions, by providing that dissenters need not contribute to a political fund, and by providing internal appeals for those who object to specific charities, which have yet to be exhausted.

Moreover, under the NLRA's Section 8(a)(3), 29 USC 158(a) (3), the counterpart of Section 1153 (c) under the Act, it is provided that:

> no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he

> has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Section 1153(c) of the ALRA, on the other hand, provides:

> For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

The distinction between these sections becomes apparent when considered with NLRB v. General Motors, 373 U.S. 734 (1963) , where the Supreme Court held:

> Under the second provision to §8 (a) (3) the burdens of membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues. It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues. "Membership" as a condition of employment is whittled down to its financial core. Id. at 738.

Yet as counsel for the UFW correctly points out in her Brief, the significance of the difference in wording between these two sections is that under the NLRA, a union may secure the

> discharge of an employee only for failure to pay uniformly required dues and fees. Under the ALRA, a union may secure the discharge of an employee for the additional grounds of failure to satisfy reasonable terms and conditions of membership uniformly applicable to other members in good standing. Id. at p. 10. Emphasis in original.

Thus, it is clear that the union has not violated Section 1153 (c) where employees have received adequate notice of their right not to contribute to political causes to which they object, and where, as here, the requirements are uniform and reasonable. Unfortunately, the stipulated facts do not directly address the issue of notice. In the event that General Counsel, after investigation, discovers the UFW gave inadequate notice to members of their right not to associate in political spending, it may petition for rehearing on that issue. Since this point was not raised earlier, however, I must assume notice was adequate under the statute.

It is unclear from the legislative history of the Taft-Hartley Act, that Congress intended, such political expenditures to be covered under the Sections cited by General Counsel. Indeed, as Senator Taft declared at the time of enactment, certain political expenditures would not be covered. Thus, "unions can ... organize something like the PAC, a political organization, and received direct contribution, just so long as members of the union know that they are contributing to, and the dues which they pay into the union treasury are not used for such purposes." Quoted in U.S. v. CIO, supra, at 119.

The NLRB has indirectly considered this question, but only with respect to non-political compulsory funds. In Teamsters Local 959, 167 NLRB 1042 (1967), for example, an unfair labor practice was charged based on union imposition of a "working assessment" on non-members to finance a credit union and building fund. The NLRB held these sums were not "periodic dues" which could lawfully be required of non-members, holding:

> [I]t is manifest that dues that do not contribute, and that are not intended to contribute, to the cost of operation of a union in its capacity as a collective-bargaining agent cannot be justified as necessary for the elimination of "free riders."
>
> Here neither the "dues" for the credit union nor those for the building fund were for the purpose of supporting the Respondent as a collective-bargaining agent, and they therefore do not fall within the proviso to Section 8 (a) (3) of the Act...Monies collected for a credit union or building fund even if regularly recurring, as here, are obviously not "for the maintenance" of the Respondent as an organization, but are for a "special purpose" and could be terminated without affecting the continued existence of Respondent as the bargaining representative. Id. at 1045.

Here, real questions may be raised regarding "maintenance" as an organization. In Food Fair Stores, Inc. v. NLRB, 307 F.2d 3 (CA 3, 1962), there was a special "assessment" to aid striking employees at another food chain, and the Court of Appeals for the Third Circuit said:

> It is clear that the term "periodic dues" in the usual and ordinary sense means

> the regular payments imposed for the benefits to be derived from membership to be made at fixed intervals for the maintenance of the organization. An assessment, on the other hand, is a charge levied on each member in the nature of a tax or some other burden for a special purpose, not having the character of being susceptible of anticipation as a regularly recurring obligation as in the case of "periodic dues." Id. at 5.

Regardless of formal distinctions, the NLRB in 1971 severly limited its Teamsters Local 959 decision, and in Detroit Mailers Union No. 40, 192 NLRB 951 (1971), a union's use of compulsory fees to establish a mortuary fund, pension fund and retirement home fund were found not to constitute an unfair labor practice under Sections 8(b) CD (A) and (2). There the Board found the proviso in Section 8(a)(3) permitting "periodic dues" included such assessments:

> Neither on its face nor in the congress ional purpose behind this provision can any warrant be found for making a dis tinction here between dues which may be allocated for collective-bargaining purposes and those earmarked for institu tional expenses of the union. Id. at 952.

The Board relied on the Supreme Court's decision in Schermerhorn, supra, where it declared:

> dues collected from members may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining. Unions' rather typically use their membership dues to do those things which the members authorized the union to do in their interest and on their behalf. Id. at 753 - 4.

The Board concluded, "By virtue of Section 8(a)(3), such dues may be required from an employee under a union-

security contract so long as they are periodic and uniformly required and are not devoted to a purpose which would make their mandatory extraction otherwise inimical to public policy." Id. at 952, citing Street, supra. Assuming their use in a charitable program, it is clear that Respondent's fund meets these criteria. Moreover, in Detroit Mailers, the Board distinguished Local 959, Teamsters, supra, saying:

> In that case the union membership had recently voted upon itself a "temporary assessment" of 10 cents an hour per member, which was later incorporated into the regular dues structure as "working dues," and still later enforced under the union-security clause contained in the collective-bargaining agreement with the employer of its members. The assessment was designed for the financing of a union building program and a credit union and more than half of each member's added assessment was deposited to his account in the credit union, subject to withdrawal. Another portion of the assessment was contributed to the building fund, but was subject to redemption by the members, if they remained in good standing. In short, the union treasury might never have received 90 percent of the funds collected under the assessment. In these circumstances, and where the union itself regarded the levy as an "assessment," the Board concluded that it did not constitute "periodic dues" within the meaning of the union-security proviso to Section 8(a)(3) of the Act. Id. at 952.

Here, there are similar problems, with what amounts to an assessment for charity. Although charities are not "institutional" expenditures, they do serve collective

bargaining purposes, and were authorized by the membership "in their interest and on their behalf." Id. at 754.

Moreover, the term "dues" has been held to include "service fees," Grajczyk v. Douglas Aircraft Co., supra, "assessments", International Union of Mine, Mill & Smelter Workers, Local 515 v. American Zinc, Lead Smelting Co., 311 F.2d 656 (CA 9, 1963), "taxes", Schwartz v. Assoc. Musician of Greater New York, Local 902, 340 F.2d 228 (CA 2, 1964), and "levys," Id. See also, Carroll v. American Federation of Musicians of U.S. and Canada (2nd Cir., 1961) 295 F.2d 484. The funds here, however they may be styled, are similar to dues, fees, assessments, levys and taxes in that they are mandatory, a condition of membership in good standing, and equal among all members. Moreover, as the ALRA requires, they are "reasonable", given the UFW's charitable option. As Respondent points out in her Brief:

> CPD is a negotiated benefit. As a piece of the employer's financial pie, the workers negotiated a number of paid holidays, one of which they authorize donated to the UFW through the CPD procedure. CPD is not, therefore, an employer payment to the Union. All employees do not qualify for CPD; each employee must first fulfill the eligibility requirements for a paid holiday. Then, as a second step, the employee executes an authorization for employer deduction of the CPD from his pay and remittance to the UFW. The employer can make no payment to the Union without the employee's authorization in writing; thus, CPD involves a simple checkoff procedure for employers. Respondent's Brief, p. 30.

While all employees do not qualify for CPD, all union members do, since the requirement for enrollment in each is five days employment. Moreover, if the employee

objects, funds are automatically transfered to a charity, over which neither the union nor the employer have any control. Holiday pay, negotiated in good faith pursuant to a valid collective bargaining agreement, cannot therefore be said to be a payment "by" an employer to a union, as contemplated under the Act. To do so, would be to assume a Congressional purpose which is non-existent, and potentially make the statute vulnerable to constitutional attack.

It must be noted that there is nothing specific, either in the Taft-Hartley Act or the Agricultural Labor Relations Act, with respect to the use which may be put to dues obtained under a union security agreement, and no case has yet established legislative intent so broadly under either Act, or fixed its interpretation to any principles which would indicate a clear result in the present case. I therefore find the CPD fund not to be a violation of Section 1153 (c).

Section 1155.4 of the California Labor Code, while not specifically cited, is essential to an understanding of Section 1155.5, and provides:

> It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend or deliver, any money or other thing of value to any of the following:
>
> (A) any representative of any agricultural employees,

> (B) any agricultural labor organization or any officer or employee thereof, which represents seeks to represent, or would admit to membership, any of the agricultural employees of such employer...

Section 1155.5 of the California Labor Code provides:

> It shall be unlawful for any person to request, demand, receive or accept, or agree to receive or accept, any payment loan, or delivery of any money or other thing of value prohibited by Section 1155.4.

This language is identical to that used in the NLRA, 29 USC Section 186, also referred to as Section 302. The intent of both sections was to protect against possible corruption or bribery of union officials by providing a criminal sanction. The Supreme Court has recognized that, Congress was concerned in passing this section.

> ...with corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control. Arroyo v. United States (1959) 395 U.S. 419, 425-426.

U.S. v. Ryan, 350 U.S. 299 (1956), cited by General Counsel in its Brief, p. 13, also recognized that Section 186 was a criminal provision designed to block use of welfare funds to perpetuate control of a union by its officers. . Yet, in So. Louisiana Chapter, Inc. v. Local Union No. 10, 177 F. Supp. 432 (1959), the Court stated:

> The legislative History of Section 302 makes clear that Congress had in mind, in addition to the protection of welfare funds, outlawing payment of bribes by management to representatives of employees, and extortion of employers by such representatives. See 93 Cong. Rec. 3562-66, 4746-8. See also 10 Stanford L. Rev. 374 at pp. 436-7; Comment "Payments to Joint Labor Mangement Boards Under LMRA Section 302", 10 Stan. L. Rev. 374 (1958).

The Court critized the plaintiffs broad reading of the Ryan case, stating:

> Actually, the decisions in plaintiff's cases result, to some extent at least, from a misreading of the Supreme Court's opinion in United States v. Ryan, and a misinterpretation of the intent of Congress in barring payments by an employer to "any representatives of * * * his employees." In Ryan, the president of a union accepted a bribe from management. His defense to a prosecution under Section 302(a) was that the term "representative" in Section 302 was restricted to the exclusive bargaining representative of the Union. The Supreme Court rejected this narrow interpretation because to do so would frustrate the intent of Congress in passing Section 302. Id. at 436. Citations omitted.

In an article in the Stanford Law Review, the legislative intent of Congress in passing this legislation was shown to have been to accomplish four purposes:

> 1) To prevent the payment of bribes by an employer to representatives of his employees.
>
> 2) To prevent extortion or shakedowns of employers by such representatives.
>
> 3) To protect the interest of the beneficiaries of the welfare funds.

> 4) To prevent the welfare funds from being turned into "war chests" by the unions. Comment, supra, 10 Stan L. Rev. at 377, citing 93 Cong. Rev. 4678, 4746, 5015, A 2252, and S. Rep. No. 105, 80th Cong., 1st Sess. 52 (1947).

None of these purposes is at all apparent here. Yet General Counsel cites the following language from Arroyo in its Brief:

> Congress believed that if welfare funds were established which did not define with specificity the benefits payable thereunder, a substantial danger existed that such funds might be employed to perpetuate control of union officers, for political purposes, or even for personal gain.[Citations omitted] 359 U.S. at 426 (emphasis added) See also, Legislative History of LMRDA, pp. 2329-33.

It is clear, however, from the context, that the "political purposes" cited refer to internal union purposes, rather than legislative activity. In U.S. v. Annunziato, 293 F. 2d 373 (CA 2, 1961), cert. denied, 368 U.S. 919, it was suggested that the purpose of section 302 was dual: to prevent unions from exorting employees, and to encourage honest representation. See also, Grajczyk v. Douglas Aircraft Co., 210 F. Supp. 702 (SD Cal 1962); Paramount Plastering Inc. v. Local No. 2, Operative Plasterers and Cement Masons Assn., 195 F. Supp. 287 (ND Cal, 1961), aff.d, 310 F. 2d 179, cert. denied, 372 U.S. 944. As other cases cited by General Counsel suggest, section 302 was aimed at "welfare fraud" cases. This is not a criminal proceeding, however-Nor does the present case involve any reasonable risk of

bribery, extortion, or corruption in union leadership. As has been pointed out by Respondent, it is significant that this section has never been used in a case involving political contributions. Brief, at p. 29.

Moreover, application of Section 302 to this area would create absurd results, rendering union officals criminally liable even for receipt of voluntary contributions which have been recognized as legitimate. General Counsel's reliance on U.S. v. Pecora, 484 F.2d 1289 (CA 3, 1973), Brief at p. 14-5, is thus misplaced, since there, personal benefit provided the basis for the complaint. Similarly, Paramount Plastering, 310 F.2d 179 (CA 9, 1962), cited by General Counsel, Brief p. 15, while not involving bribery or corruption, nonetheless concerned direct payments from an employer to a union. Here, the employees have bargained to surrender a paid holiday they might otherwise have taken, or received some other benefit in lieu of, and have agreed to direct their pay, through the employer, to the union. There is no "sweetheart agreement" here, or "direct" payment from the company to the union, but rather, a mandatory assessment by the membership.

General Counsel cites U.S. v. Lamir, 466 F.2d 1102 (CA 3, 1972) to support its position, but in Lamir, there was a fraudulent channeling of employer payments through an employee who performed no work for the employer, and was the defendent's girlfriend. No such fraudulent

or criminal activity has been alleged here. General Counsel argues the employee "has no choice", regarding the funds, Brief at p. 18, but this ignores the fact that employees may choose to place all CPD funds in the hands of a charity, and misapplies the Lamir doctrine, which has no application outside of fraud or abuse of judiciary trust. See, e.g., Gabauer v. Woodcock, supra, McNamara v. Johnston, supra.

I therefore find the CPD fund not to present an issue for determination here under Sections 1155.4 and 1155.5 of the Act.

Conclusion:

This is not to suggest that union members are without a remedy for violation of free speech rights or misuse of union funds for political or other purposes. In addition to state common-law obligations, union officials are under a fidiciary duty to hold a unions' funds "solely for the benefit of the organization and its members", who are empowered to sue in federal district court to enforce this duty and recover any misused funds. See, e.g., 29 USC 501; John M. McEmany, "The Fiduciary Duty Under §501 of the LMRDA". 75 Col. L. Rev. 1189 (1975); G. Brian Spears at al, "The LMRDA §501: A Tool for Developing Internal Union Democracy", 5 Gold. Gate L. Rev. 367 (1974), although it has recently been held that §501 will not reach political expenditures authorized by a union constitution, Gabauer v. Woodcock, 85 LC 11,147 (1979). See, generally, Bright v. Taylor, 554 F.2d 854 (8th Cir. 1977); Pignotti v. Local

No. 3 Sheet Metal Workers' Int. Ass'n, 477 F. 2d 825 (8th Cir.}, cert. denied, 414 U.S. 1067 (1973); Johnson v. Nelson, 325 F. 2d 646 (8th Cir. 1963); Highway Truck Drivers & Helpers, etc, v. Cohen, 284 F. 2d 162 (3rd Cir. 1960), cert. denied, 365 U.S. 833 (1961); Clark, "The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA", 52 Minn. L. Rev. 437 (1967); Katz, "Fiduciary Obligations of Union Officers Under Section 501 of the Labor-Management Reporting and Disclosure Act of 1959", Lab. L.J. 542 (June, 1963); Note, "The Fiduciary Duty of Union Officers Under the LMRDA: The Guide to the Interpretation of Section 501," 37 N.Y.U.L. Rev. 486 (1962); Cox, "Internal Affairs of Labor Unions Under the Labor Reform Act of 1959," 59 Mich. L. Rev. 819 (1960); Smith, "The Labor-Management Reporting and Disclosure Act of 1959," 46 Va. L. Rev. 195 (1960). See also, other sections of Landrum-Griffin, such as §202 (a) conflicts, of interest; §401 (g), using union funds to promote the candidacy of persons; and §503 (a), making a loan to an officer in excess of $2,000.

Union members may also sue for violation of a union's duty of fair representation, in some cases without exhausting internal remedies. See, Goldman v. Coca Cola Bottling Co. of Chicago, 85 LC PP 10, 950 (1978). See also, Ellis, supra. Since Steele v. Louisville & N.R. Co., supra, with respect to the railroad industry, and Ford Motor Co. v. Huffman, supra; see also

Syres v. Oil Workers, 350 U.S. 892 (1955), with respect to those industries reached by the National Labor Relations Act, the duty of fair representatives has served as a "bulwark to prevent arbitrary union conduct against individuals stripped of. traditional forms of redress by the provisions of federal labor law." Vaca v. Sipes, 386 U.S. at 182.

Similarly, the Landrum-Griffin Act protects the right of union members to participate in electoral and decision-making processes in their unions, Labor-Management Reporting and Disclosure Act Section 101 (a), 73 Stat. 522, 29 U.S.C. Section 411 (Supp. I, 1959), and requires union officials to report and disclose all official union expenditures. Id., Section 201(b)(6). Members have the power to effect union decisions in democratic unions by the ballot, and since unions are majoritarian institutions,

> Union officials are elected democratically, either by the direct vote of the members or by the vote of democratically elected delegates. These officials normally set the political tone of the union and its committees, although some unions may choose their political endorsements by a democratic convention system. One course open to dissidents, therefore, is to challenge the politics of their leaders within the structure of the union, because "the free speech rights of rank and file members ... include by definition a right of democratic insurgency, both at common law and under modern statutory standards." Comment, 126 U. of Penn. L. Rev. supra, at 411. footnotes omitted.

Although dissenters can be forced to contribute to bargaining activities which they find objectionable, they are not totally precluded from expressing their opposition to union demands. They may therefore vote in accordance

with their convictions to influence the actions of officials negotiating collective bargaining agreements, and speak out against union stands at public meetings, see City of Madison, Joint School Dist. No. 8 V.Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976).

Indeed, Article XVI of the UFW Consitution provides a "Bill of Rights" for members, which include the following:

> Section 1: All members of this Union shall have equal rights and privileges in nominating candidates for office, voting in elections, and attending and participating in membership meetings...
>
> Section 2: Every member of this Union shall have the right to meet other members, to express any views arguments, or opinions, and to express at meetings his views on candidates for office and any other business properly before any and all meetings of this Union.

As at least one writer has pointed out, the issue of political expenditures is inseparable from that of internal union democracy:

> The courts should direct their attention to such problems as freedom of members to vote and participate in union affairs, admission requirements and equality of treatment. If unions are prevented from using their disciplinary power to foreclose democratic procedures within the union, the right of determining the purposes of union expenditures can safely be left with union representatives. 42 Minn. L.Rev. 1179, 1184 (1958):

Other writers have recognized this fact as well,

> Much of the published reaction to the decision in Street has posited as a remedy to the dissenting workers' delemma the augmentation of union democracy; prerequisites to self-government such as equality of admission

> standards, freedom to vote, and the right to participate in group decision making are stressed. 56 Nw. U. L. Rev. 777, 783 (1962) See also, 30 Wis. B. Bull., Aug. 1957, pp. 41-44.

Indeed, Archibald Cox has stated:

> An individual worker gains no human rights by substituting an autocractic union officialdom for the tyranny of the boss. Only a democratic union, senitive to the rights of minorities, can help labor to achieve the ideals of individual responsibility, equality of opportunity and self-determination. Cox, the Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609 (1959).

Professor Wellington has similarly written of the importance of preserving internal dissent.

> Law cannot eliminate oligarchy, but it can protect dissent and encourage a leadership that is more responsive to the rank and file. And this is important both for the dissenter and for the long-term well-being of the union... [B]ottled-up dissent that is symptomatic of widespread displeasure may eventually explode and destroy an institution. Dissent that is heard and tolerated may lead to evolutionary change within the union, change that makes for long-run institutional stability. H. Wellington, supra, 188 (1968).

Under labor conditions in which employers and employees frequently find themselves at odds, and in a market economy in which, historically, wages have fluctuated with the willingness of workers to accept inferior conditions of employment, it cannot be said that political and charitable contributions have no relevance to collective bargaining or "other mutual aid or protection." Mandatory contribution for the general good has long been an essential principle of labor unions, and while the rights of minorities to non-association

with objectionable causes is essential to the preservation of democratic rights, nothing in the record here indicates that such rights are necessarily incompatable with the right of the majority to alter politically the economic conditions under which it works.

There is no allegation here that the union is undemocratic, or that internal appeals will prove inadequate, or that the Charging Party has any genuine objection to charitable contributions, or that there is any significant difference between compulsory support for a charity or other "mutual aid" activities which unions finance regularly out of dues, or that any other alternative would be less objectionable or preserve both the rights of the majority and the minority. For these reasons, I find that General Counsel has not met its burden of proof with respect to the use of CPD funds, and that these funds are consequently lawful under constitutional and statutory standards.

Summary of Conclusions

More specifically, and in summary, I reach the following conclusions of law:

1. Union majorities have a right to engage in collective political action, and may vote to extablish a fund for that purpose into which all non-dissenting members must contribute.

2. Union members must be informed of the political nature of a mandatory fund, and of their right not to contribute to it.

3. Dissenting members may not be discharged from their place of employment for refusing to contribute to a political fund.

4. Unions may require charitable contributions of their members under penalty of discharge, where the charity selected has a relationship to collective bargaining, or "other mutual aid or protection".

5. The First Amendment does not apply to private collective bargaining agreements where there is no direct state involvement, except as public policy.

6. There is no adequate evidence that the state's involvement in the creation or enforcement of the C.P.D. Fund is more than permissive.

7. The Charging Party has failed to exhaust his internal union remedies, which include appeal to the union's National Executive Board, Public Review Board, and National

Convention.

8. By the express terms of the collective bargaining agreement, the Charging Party may designate where CPD funds shall be spent, yet this remedy has not been exhausted, either by grievance or arbitration.

9. There is no basis for finding an unfair labor practice under Section 1152 of the Act.

10. The C.P.D. Fund, with its charitable and individual options, is a "reasonable" term and condition of membership, and is uniformly applicable to all UFW members in good standing, and does not, therefore, constitute an unfair labor practice under Section 1153 (c) of the Act.

11. There is no evidence of fraud or corruption in the establishment of C.P.D. as a paid holiday, as required for a finding that Respondent committed an unfair labor practice under Section 1155.4 or 1155.5 of the Act.

12. For these reasons I find Respondent's CPD program to be lawful under both constitutional and statutory law.

13. Assuming, however, a statutory or constitutional violation, remedies would not include class relief, injunctive relief, or such restitution as would constitute "featherbedding".

14. Relief, therefore, would be limited to ordering a reduction in the expenditure of CPD funds by the amount of the employees' individual contribution, ordering a similar reduction in future expenditures, ordering that the amount in question be used solely for collective bargaining purposes,

or ordering that the sum be directed by the employee to such political or charitable use as he or she may direct.

15. I therefore order that the Complaint herein be dismissed in its entirety.

DATED: June 5, 1979

KENNETH CLOKE
Administrative Law Officer

APPENDIX

History of Labor and Politics

The reasons for many of the conclusions reached in the preceding Decision are historical and sociological, and for this reason I have attempted to summarize in this Appendix some of the existing literature and opinion regarding the historical and sociological relationship between labor unions, minority members, and political or legislative activity.

Labor unions have engaged in political action since their inception. See, generally, Commons, History of Labor in the United States, 4 vol.s. (1918, 1935); Millis and Montgomery, Organized Labor (1945); Dulles, Labor in America(1955); Rayback, A History of American Labor (1959); Perlman, History of Trade Unionism in the United States, (1923), Foner, History of Labor in the United States (4 vol.s 1965); Bimba, History of the American Working Class (1927); Boyer & Morais, Labor's Untold Story (1973); Fried, Except to Walk Free (1974); Wohl, "Unions in Politics", 34 USC L. Rev. at 144 (1961).

On unions and politics in general, see, e.g., Karson, American Labor Unions and Politics, 1900 - 1918(1958); Hardman, "Unions and Political Activity", in The House of Labor at p. 85 (1951); Bakke, "Political and Social Power", in Unions, Management and the Public, at p. 215(1948) ; Woll, "Union Political Activity Spans 230 Years

of U. S. History", "The American Federationist", p. 6 (May, I960), reprinted as AFL-CIO Publication No. 106 (July, 1960)f Greenstone, Labor in American Politics (1969); McLaughlin, Labor and American Politics (1967); Levison, The Working-Class Majority (1974). On corporate campaign practices, see Thayer, Who Shakes the Money Tree? (1973). Indeed, it was partly for this reason that the country has been characterized as a "nation of joiners". Schlesinger, "Biography of a Nation of Joiners", 50 Am. Hist. Rev. 1, 5 (1944).

Labor's collective involvement in political action began at least by the 1730's, when "mechanics", artisans, and farmers formed an alliance and took political power in Massachussetts to create a land bank. Labor participated with great frequency and in large numbers in political action during the colonial period, advancing demands for civil liberty and political equality in New York, Philadelphia, Baltimore, and other towns. See, e.g., Rayback, supra, pp. 23-36. Labor organizations were extremely active during the period leading up to the American Revolution, see, e.g., Foner, Labor and the American Revolution (1976), and constituted a large portion of the troops which won it. See, e.g., Alfred F. Young, Ed., The American Revolution (1976). Subsequently, they helped secure ratification of the Constitution and Bill of Rights. Rayback, supra, p. 61.

The Philadelphia Shoemakers, organized in 1792, along with the New York Typographical Society and organizations of carpenters, cabinet makers, masons and coopers, participated actively in local elections, contributing heavily to

the election of Jefferson in 1800. Rayback, supra, pp. 55 ff. Yet limited voting rights, criminal conspiracy trials, and imprisonment for debt kept labor's political role to a minimum. Ibid.

Following the War of 1812, in which laborers were quick to enlist, and in some cases made up entire companies, workers organizations drew up the "Workingman's Platform", a political program to secure the ten hour day, universal male suffrage, abolition of imprisonment for debt, abolition of the militia system, a mechanics lien law, abolition of chartered monopolies, and equal, universal education. Ibid.

Professor Wohl has written of labor's political role in the early 19th century, and its efforts in securing these reforms:

> In the late 1820's and early 1830's workers' parties emerged briefly in Philadelphia, New York and New England. To these early political efforts by organized workingmen has been attributed a large share of the credit for the establishment of the public school system, the initiation of currency reforms, the abolition of imprisonment for debt, the passage of mechanics lien laws and the removal from unions of the stigma of criminal conspiracy. Wohl, supra at 145. Citation omitted.

In 1828, the first labor party appeared in Philadelphia, quickly spreading to New York City and across the East Coast, and nominating gubernatorial candidates, for the first time, in the elections of 1830. Rayback, supra, pp. 68-72. Labor organizations actively supported Jackson in his fight with the Bank in 1832, organized city federations for political action in New York City in 1833, and repeated the effort in Boston, Philadelphia, Baltimore, Washington, New Brunswick,

Newark, Albany, Troy, Schenectady, Pittsburgh, Cincinatti and Louisville, all within the next three years. At least 200 trade associations were founded from 1835-6 with a membership estimated at 100-300,000. They established newspapers which endorsed and supported political candidates, raised money for political causes, and elected "workies" or "loco-foco's" in many cities. Id., pp. 76 ff.

As Professor Rayback has commented: "The working-men's program, translated into Locofoco principles, dominated the Democratic Party until the Civil War, [and] also made a deep impression on the Whigs." Id. at 88. Labor became deeply involved in the election of Abraham Lincoln, the episode known as "bleeding Kansas", and the Civil War which followed. See, e.g., Eric Foner, Free Soil, Free Labor, Free Men (1970).

Following the Civil War, political organization by industry necessitated the political involvement of labor. The National Labor Union, formed in 1866 to advocate the eight-hour day, and the Greenback-Labor Party, organized in 1878 to advocate a broad program of labor and social legislation, were two manifestations of labor's response to the challenge of national industry. See, e.g., discussion in Rayback, supra.

The American Federation of Labor, or AFL, was formed in 1881, and from its inception, sought both the election of politicians sympathetic to its needs, and the enactment of favorable legislation. See, e.g., Taft, The A.F. of L. in the Time of Gompers, pp. 289-92 (1957); David,

"One Hundred Years of Labor in Politics", in The House of Labor, pp. 90-98; Kaufman, Samuel Gompers and the Origins of the AF of L 1848-1896 (1973).

The official policy of the AFL was as follows:

> The American Federation of Labor is not partisan to a political party, it is partisan to a principle, the principle of equal rights and human freedom. We, therefore, repeat: Stand faithfully by our friends and elect them. Oppose our enemies and defeat them; whether they be candidates for President, for Congress or for other offices, whether Executive, Legislative or Judicial. Quoted in Bakke, supra, n. 75 at 215, and Wohl, supra, at 145. See Article II, AFL-CIO Constitution (1972).

Opposed to the AFL, were the Knights of Labor, the Greenback-Labor Party, Socialist Labor Party, and Industrial Workers of the World, or "wobblies", all of whom supported more radical forms of direct political action. See, e.g., Rayback, supra; Brissenden, The IWW (1957). The "wobblies", however, refused to engage in political action in coalition with the employing class, with whom workers "had nothing in common". Preamble, IWW Constitution, in Laslett, The Workingman in American Life (1968) p. 70.

At the turn of the century, industry launched a "mass offensive" against labor union recognition and collective bargaining, See Dulles, supra, n. 75 at 195-6, and labor's political role became mandatory.

> Spearheading the attack was the National Association of Manufacturers. In 1902 the NAM caused the defeat of labor-supported eight-hour and anti-injunction bills before Congress. And in the 1904 elections the NAM scored signal successes in its efforts "to cut off labor's influence at the source by defeating

> congressmen and senators favorable to labor". As a final blow, the unions about this time suffered a series of crippling reverses in the courts, through the application of injunctions and the antitrust laws.
>
> Labor found it necessary to respond to the onslought by campaigning actively to elect its friends and defeat its enemies, regardless of party affiliation. Through the years these efforts helped to secure such gains as the Clayton Act of 1914, The Railway Labor's Act of 1926, the Norris - La Guardia Act of 1932, the Wagner Act of 1935 and the wide range of social legislation passed in the early days of the New Deal. Wohl, supra, p. 146. Footnotes omitted.

Indeed, Justice Frankfurter, dissenting in IAM v. Street, 367 U.S. 740 (1961), wrote:

> To write the history of the Brotherhoods, the United Mine Workers, the Steel Workers, the Amalgamated Clothing Workers, the International Ladies Garment Workers, the United Auto Workers, and leave out their so-called political activities and expenditures for them, would be sheer mutilation. Suffice it to recall a few illustrative manifestations. The AFL, surely the conservative labor group, sponsored as early as 1893 an extensive program of political demands calling for compulsory education, an eight-hour day, employer tort liability, and other social reforms. The fiercely contested Adamson Act of 1916, see Wilson v. New, 243 U.S. 332, was a direct result of railway union pressures exerted upon both the Congress and the President. Street, supra, at 800-1, footnotes omitted.

Nor had industry restricted itself, in opposing labor's programs, in the use of financial methods for winning political influence. Elihu Root declared, to New York's 1894 Constitutional Convention:

> I believe that the time has come when something ought to be done to put a check to the giving of $50,000 or $100,000 by a great corporation toward political purposes upon the understanding that a debt is created from a political party to it. Elihu Root, Addresses on Government and Citizen ship 143 (1916), quoted in U.S. v. UAW, 352 US 567, at 571 (1957).

Shortly thereafter, Charles Evans Hughes reported, of the same state legislature:

> The frank admission that moneys have been obtained for use in State campaigns upon the expectation that candidates thus aided in their election would support the interests of the companies, has exposed both those who solicited the contributions and those who made them to severe and just condemnation. Id. at 573, n. 10.

In 1904, the Joint Committee of the New York Legislature reported substantial amounts had been spent by insurance companies on state and national campaigns. The Committee concluded:

> Contributions by insurance corporations for political purposes should be strictly forbidden. Neither executive officers nor directors should be allowed to use the moneys paid for purposes of insurance in support of political condidates or platforms. . . . Whether made for the purpose of supporting political views or with the desire to obtain protection for the corporation, these contributions have been wholly unjustifiable. In the one case executive officers have sought to impose their political views upon a constituency of divergent convictions, and in the other they have been guilty of a serious offense against public morals. The frank admission that moneys have been obtained for use in State campaigns upon the expectation that candidates thus aided in their election would support the interests of the companies, has exposed both those who solicited the contributions and those who made them to severe and just condemnation. Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate the Affairs of Life Insurance Companies, 397 (1906), cited in U.S. v. UAW, 352 U.S. 567 (1957), at 573.

Justice Frankfurter wrote subsequently, of the changes which had taken place on a national level:

> The concentration of wealth consequent upon the industrial expansion in the post-Civil War era had profound implications for American life. The impact of the abuses resulting from this concentration gradually made itself felt by a rising tide of reform protest in the last decade

> of the nineteenth century. The Sherman Law was a response to the felt threat to economic freedom created by enormous industrial combines. The income tax law of 1894 reflected congressional concern over the growing disparity of income between the many and the few. Id. at 570.

Frankfurter cited historians Morison and Commager, who concluded that:

> The nation was fabulously rich but its wealth was gravitating rapidly into the hands of a small portion of the population, and the power of wealth threatened to undermine the political integrity of the Republic. Ibid., citing 2 Morison and Commager, The Growth of the American Republic (4th ed. 1950), 355.

In 1905, Governor Robert La Follette addressed the Wisconsin legislature, stating:

> The participation in government of the corporation as a corporation is a menace. Its action is governed by no sense of individual or personal responsibility. It is controlled by no sentiment of patriotism. Corporations are organized for profit and gain, and enter the field of politics solely in the interests of the business for which they are created. Cited in State v. Joe Must Go Club, 270 Wis. 108, 111, 70 N. W. 2d 681, 682 (1955)[emphasis in original), quoted in Comment, "Civil Responsibility for Corporate Political Expenditures", 20 U.C.L.A. L. Rev. 1327, 1331 n. 25 (1973).

Nor were these sentiments confined to "muck-rakers" like La Follette. In President Theodore Roosevelt's annual message to Congress on December 5, 1905, he declared:

> All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be', as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts. 40 Cong. Rec. 96.

A number of bills were introduced before Congress to stem this abuse, and Samual Gompers, President of the

AFL-of L, testifying in favor of one of them, said:

> Whether this bill meets all of the needs may be questioned; that is open to discussion; but the necessity for some law upon the subject is patent to every man who hopes for the maintenance of the institutions under which we live. It is doubtful to my mind if the contributions and expenditures of vast sums of money in the nominations and elections for our public offices can continue to increase without endangering the endurance of our Republic in its purity and in its essence.
>
> . . .If the interests of any people are threatened by corruption in our public life or corruption in elections, surely it must of necessity be those, that large class of people, whom we for convenience term the wageworkers. Cited in U.S. v. UAW, supra at 574.

In 1907, Congress passed the Tillman Act, Pub. L. No. 59-36, 34 Stat. 864 (1907) 2 U.S.C. Section 441b, which prohibited corporate contributions in federal elections:

> . . . it shall be unlawful for any national 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. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which President and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator. Id. at 865 See, also, U.S. v. U.S. Brewers' Assn., 731T F. 163 (WD Pa. 1916) holding the Act constitutional. Cf., Newberry v. U.S., 256 U.S. 232 (1921). See also, on the absence of common law authority, Comment, "Corporate Campaign Funding", 4 Cum. Sam. L. Rev. 544, 547 (1974).

As the Supreme Court later commented:

> This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders. U.S. v. C.I.O., 335 U.S. 106, at 113, citing 40 Cong. Rec. 96;

41 Cong. Rec. 22; Hearings before the House Committee on the Election of the President, 59th Cong., 1st Sess. 76 (1906).

The 1909 Congress made several unsuccessful attempts to amend the Act, proscribed the contribution of anything of value, and extended its application to the election of state legislators. In 1910, it placed further curbs on the power of wealth in a publicity law that required committees operating to influence the results of congressional elections in two or more States to report all contributions and disbursements, identify contributors, recipients of substantial sums, and any persons who spent more than $50 annually for the purpose of influencing congressional elections in more than one State, and to report those expenditures if they were not made through a political committee. 36 Stat. 822. At the next session the Act was extended to require Congressional candidates to make detailed reports with respect both to nominating and election campaigns. The amendment placed maximum limits on the amount congressional candidates could spend in seeking nomination and election, and forbade them to promise employment for the purpose of obtaining support. 37 Stat. 25. In 1918 Congress made it unlawful either to offer or solicit anything of value to influence voting. 40 Stat. 1013. In 1921, however, the U.S. Supreme Court struck down federal regulation of Senate primary elections, creating substantial doubt as to the constitutionality of the Act. Newberry v. U.S., Id. This forced Congress, in 1925, to enact the Federal Corrupt Practices Act, Pub. L. No. 68-506, Section 313, 43 Stat. 1070, 1074 (1925) (repealed in 1948),

see 2 U.S.C. Section 441b, whose section 313 expanded the Tillman Act's definition of "contribution" to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes *a.* contract, promise, or agreement, whether or not legally enforceable, to make a contribution." Id. Section 302 (d), 43 Stat. 1070, 1071.

Senator Robinson, one of the Senate spokesmen for the legislation, stated:

> We all know. . .that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively. 65 Gong. Rec. 9507-9508.

No further legislation of corrupt political practices took place until World War II, in part because the New Deal relied heavily on campaign contributions during the depression, and F.D.R. actively encouraged labor's involvement in political action. As Professor Tanenhaus has written:

> In 1936 organized labor dramatically leaped into the political arena by investing three-quarters of a million dollars in Franklin Roosevelt's first re-election campaign. John L. Lewis' United Mine Workers contributed or lent $469,000 to the Democratic cause, and two other CIO affiliates added $141,000 more. The Mine Workers' expenditure alone was five times greater than the total amount the AFL reported raising for political purposes in the preceding thirty years. . .

> Labor's political contributions in 1936 were impressive - so much so that the excitement generated by the Landon-Roosevelt battle had barely subsided before suggestions for restricting labor's political spending echoed through Congressional chambers, Joseph Tanenhaus, "Organized Labor's Political Spending", 16 J. of Pol. 446 (1954).

This inpetus was given considerable assistance by John L. Lewis, who declared:

> Everybody says I want my pound of flesh, that I gave Mr. Roosevelt $500,000 for his 1936 campaign, and I want my quid pro quo. The United Mine Workers and the CIO have paid cash on the barrel for every piece of legislation that we have gotten. . . I say that labor's champion has to a large extent here been a bought and paid-for proposition. Quoted in Saul Alinsky, John L. Lewis, New York: Cornwall Press, 1949, pp. 177-78.

The outbreak, of war changed all that, as the United States Supreme Court later recognized:

> The need for unprecedented economic mobilization propelled by World War II enormously stimulated the power of organized labor and soon aroused consciousness of its power outside its rank. Wartime strikes gave rise to fears of the new concentration of power represented by the gains of trade unionism. And so the belief grew that, just as the great corporations had made huge political contributions to influence governmental action or inaction, whether consciously or unconsciously, the powerful unions were pursuing a similar course, and with the same untoward consequences for the democratic process. United States v. UAW, supra, at 578 (1957).

In addition, the old AFL philosophy of "voluntarism", which advocated governmental abstention from labor regulation, and restrained labor's participation in political action, was made obsolete by depression and war. See e.g., Michael Rogin, "Voluntarism: The Political Functions of an Apolitical Doctrine", 15 Ind. and Job Rel. Rev. 521 (1962).

In 1940, labor unions were made subject to Section 13 of the Hatch Act, 54 Stat. 767 (1940), 18 USC 608, which

created, by a narrow margin, a $5,000 limit on campaign contributions by any person, including "any committee, association, organization or other group", 54 Stat. 767, to a candidate in a federal election or any national political committee. Proposed by Senator Bankhead in an effort to kill the bill by making it objectionable to Republicans, Section 20 made it unlawful for any "political committee", as defined in the Act of 1925, to receive contributions of more than $3,000,000 or to make expenditures of more than that amount in any calendar year.

Supporting these amendments, Senator Bankhead stated:

> We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue. 86 Cong. Rec. 2720.

A substantial loophole was opened, when the Committee of the whole of the House Judiciary Committee accepted Representative Vreeland's suggestion, without discussion or debate, that contributions made to or by a state or local committee or other state or local organization be exempt from the $5,000 proviso. 86 Cong. Record 9452. Associations as well as individuals could as a result legally contribute without limit to any candidate, if only state or local organizations were set up to receive and spend these funds.

To plug up these holes, in 1943 the Smith-Connally

Act, also known as the War Labor Disputes Act, 57 Stat. 167-8 (1943), 50 USC 1501 (expired June 30, 1947), was passed over FDR's veto, see Senate Documant No. 75, 78th Cong., 1st Sess. (1943); temporarily making unions subject to the 1925 Federal Corrupt Practices Act, supra, which did not cover primary elections, nominating conventions, or direct expenditures on political issues. While debate on the bill was hardly a model of clarity, see, e.g., Cong. Rec. 5228, 5243, 5310, 5337, 5339, 5344, 5348 (1943), Congressman Landis, author of the measure, testified before a subcommittee of the House Committee on Labor, that

> public opinion toward the conduct of labor unions is rapidly undergoing a change. The public thinks, and has a right to think, that labor unions, as public institutions should be granted the same rights and no greater rights than any other public group. My bill seeks to put labor unions on exactly the same basis, insofar as their financial activities are concerned, as corporations have been on for many years. Hearings before a Subcommittee of the House Committee on Labor on H.R. 804 and H.R. 1483, 78th Cong., 1st Sess. 1, 2, 4. Cited in U.S. v. UAW, supra, at 579.

Landis added that the specific impetus to this legislation was what he beleived to have been government intransigence during the recent national coal strike:

> ... The source of much of the national trouble today in the coal strike situation is that ill-advised political contribution of another day [referring, apparently, to the reported contribution of over $400,000 by the United Mine Workers in the 1936 campaign, see S. Rep. No. 151, 75th Cong., 1st Sess.]. If the provision of my bill against such an activity has [sic] been in force when that contribution was made, the Nation,

> the administration, and the labor unions would be better off. Ibid.

In 1944, rumors of extensive labor political spending led to a congressional investigation, which disclosed that labor had spent more in 1944 then in any previous election, but since the bulk of this had gone for advertising as opposed to contributions, there was "no clear-cut" violation of law. S. Rep. No. 101, 79th Cong., 1st Sess., 23 (1945), See also, e.g., Comment, "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience", 19 U. Chi. L. Rev. 371, 374 (1952). The Committee also investigated a complaint by Senator Taft, that the Ohio C.I.O. Council distributed to the public 200,000 copies of a pamphlet opposing his re-election. In response to C.I.O.'s contention that this was not a proscribed "contribution" but merely an "expenditure of its own funds to state its position to the world, exercising its right of free speech ... ," the Committee requested the Department of Justice to bring a test case, S. Rep. No. 101, 79th Cong. 1st Sess. 23, at 59, and recommended extension of §313 to cover primary campaigns and nominating conventions. Id., at 81

It has also been reported that:

> During the 1944 election, when speculation arose as to who might be the Democratic Vice-Presidential choice, President Roosevelt was reported to have replied, "Clear everything with Sidney", referring to Sidney Hillman of CIO-PAC. The remark has subsequently been interpreted to indicate the extent of union influence in the election, thus justifying in many opponents' minds the passage of the Smith-

> Connally Act. Hillman's organization spent approximately $1.3 million in that election, and was to play a leading role in later elections, none more than the 1952 campaign when it denied the Democratic Presidential nomination to Alben Barkley. Thayer, Who Shakes the Money Tree?, supra, p. 74.
>
> Professor Wohl has written, however:
>
> The highly publicized role played by the CIO's Political Action Committee in the 1944 campaign was partially responsible for a thorough investigation by a special Senate committee on expenditures in the federal elections of that year. The findings were a striking refutation of any suggestion of undue union influence. The total labor expenditure of 1.6 million dollars, including both union dues and individual contributions, ... accounted for only 7.7 percent of the total Republican and Democratic federal expenditures of 20.6 million dollars.
>
> An even more startling revelation is that in the same 1944 elections, 242 individuals representing 64 family groups made direct contributions to political organizations in the amount of 1,277,121 dollars. This means that expenditures on behalf of many millions of workers only slightly exceeded the contributions made by sixty-four families. Wohl, supra, at 147, citations omitted.

The House Special Committee to Investigate Campaign Expenditures, in its 1945 Report, also observed:

> The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nationwide basis; and many of them have affiliated local organizations. One was found to have an annual budget for "educational" work approximating $1,500,000, and among other things regularly supplies over 500 radio stations with "briefs for broadcasters". Another, with an annual budget of over $300,000 for political "Education", has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another representing

> an organized labor membership of 5,000,000, has raised $700,000 for its national organizations in union contributions for political "education" in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations. H.R. Rep. No. 2093, 78th Cong., 2d Sess. 1, 3 (1945).

In 1946, the Committee studied electoral activities by labor unions, and concluded that

> The intent and purpose of the provision of the act prohibiting any corporation or labor organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term "making any contribution" related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf? H.R. Rep. 2739, 79th Cong., 2d Sess 40.

The committee recommended that the statute:

> be clarified so as to specifically provide that expenditures of money for salaries to organizers, purchase of radio time, and other expenditures by the prohibited organizations in connection with elections, constitute violations of the provisions of said section, whether or not said expenditures are with or without the knowledge or consent of the candidates. Id., at 46. (Italics omitted.)

In 1947 the Special Committee to Investigate Senatorial Campaign Expenditures which had been made in the 1946 elections, also known as the Ellender Committee, urged Congress to "plug the existing loophole", S. Rep. No. 1, Part 2, 80th Cong., 1st Sess. 38-39, and Senator Ellender introduced a bill to that effect.

This section, however, was incorporated by Representative Hartley into the Taft-Hartley Act, 61 Stat. 159-60 (1947), 18 USC 610, and provided, in Section 304, 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 persons 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 of 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 willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both. Ibid. For an analysis of the legislative history and political agitation which lead to the adoption of this section, see Kallenbach, "The

Taft-Hartley Act and Union Political Contributions and Expenditures", 33 Minn. L. Rev. 1 (1948); Chang, "Labor Political Action and the Taft-Hartley Act", 33 Neb. L. Rev. 554 (1954); Conference Report, House Report 510, 80th Cong., pp. 67, 68.

Explaining the purpose of this section, Senator Taft stated:

> I may say that the amendment is in exactly the same words which were recommended by the Ellender committee, which investigated expenditures by Senators in the last election.... In this instance the words of the Smith-Connally Act have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If "contribution" does not mean "expenditure", then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee, in the Ellender bill. 93 Cong. Rec. 6439.

According to a majority of the House Committee, Section 304 was intended to do three things: (1) place restrictions on union "contributions" contained in the temporary War Labor Disputes Act on a permanent basis? (2) extend the prohibition on union and corporate spending to include "expenditures" as well as "contributions"; (3) make these, restrictions applicable to primaries, as well as to regular elections. House Report No. 245, 80th Cong., 1st Sess. (1947), p. 46.

Debate on H.R. 3020 lasted for three days and was perhaps more bitter than enlightening. Only one member, Representative Miller of California, addressed himself squarely to section 304, and he attacked it as irrelevant, unnecessary, undesirable, and discriminatory. Representative Charles Halleck briefly defended section 304., and reminded the House that it had subscribed to a similar proposal when it passed the War Labor Disputes Act. 93 Cong. Rec 3522-3, 3666 (1947).

Labor's strategy was to defeat the bill in its entirely, or make it so severe it would have to be vetoed. The Senate version contained no similar provision. Nonetheless, when debate took place in the Senate on June 5 and 6, nearly half the time was spent debating Section 304. In the opinion of Senator Taft, who presented the Conference report, Section 304 raised no new questions, but merely continued the War Labor Disputes Act, due to expire on June 30th. Ibid, at 6436. Most of the debate then centered on the publication of editorials in union newspapers, see, e.g., Cong. Rec. p. 6437. Also questioned, was at what point an election campaign may be said to have begun, Ibid., at 6447, and Senator Barkley pointed out that, there was no "fundamental difference in principle" between electioneering and lobbying. 93 Cong. Rec. 6533 (1947).

Legislative history also records that a fundamental purpose of this legislation was to restrict labor unions to the economic arena, and weaken labor's ability to support Democratic Party candidates and programs. As one observer has commented:

> Section 9 of the War Labor Disputes Act and section 304 of the Labor Management Relations Act were, this writer believes, motivated primarily by the desire to weaken materially labor's ability to influence public policy to its advantage. With rare exception, the most vocal sponsors of prohibitions on union spending were Congressmen with records conspicuous for hostility toward organized labor. Rehmus and McLaughlin, Labor in American Politics, p. 346 (1967).
>
> And Joseph Rauh has written:
>
> The Senate spokesman for the bill, Senator Taft, flatly announced that labor unions are supposed to keep out of politics ..." The purpose of the political ban, an outside commentator suggested, was "to weaken materially labor's ability to influence public policy to its advantage." Or, to quote Mr. Justice Rutledge a year after the law's enactment, the object of Section 610 was "to force unions as such entirely out of political life and activity...." Rauh, "Legality of Union Political Expenditures", 34 So. Cal. L. Rev. 152 (1961). (footnotes omitted.)

The Act was vetoed by Truman for these reasons, among others, but, after a week-end filibuster, the Act was passed over his veto. See, e.g., discussion in Kallenbach, "The Taft-Hartley Act and Union Political Contributions and Expenditures", 33 Minn. L. Rev. 1, 9, n. 16 (1948); Comment, "Union Political Expenditures Under Taft-Hartley Section 304", 48 Nw, U. L. Rev. 64, 68 (1953); Comment, "An Attempt to Restrict Union and Corporate Political Activity", 46 Marq. L. Rev. 364, 367 (1962-3). His objections to section 304 were that the "ordinary" union would be prevented from taking a stand on any candidate or issue in a national election. "I regard this

as a dangerous intrustion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purpose of this bill." House Doc. No. 334, supra, at 9.

The first case to test the new provision was U.S. v. CIO, 335 U.S. 106 (1948), in which the CIO News, a weekly newspaper published by the CIO with membership funds, deliberately circulated a statement by CIO President Phillip Murray urging members to vote for a congressional candidate. The federal district court dismissed a criminal indictment, on the grounds that prohibition of union political expenditures violated the First Amendment. 77 F. Supp. 355 (DDC, 1948).

As appellees' stated in their brief to the U.S. Supreme Court, the potential damage caused by Section 304's application to these facts was enormous:

> This measure thus on its face would prevent a labor organization from holding a meeting for the purpose of advocating the election or defeat of a particular political candidate. It would preclude a labor organization from organizing a public gathering to advocate the election of a candidate pledged to the defeat of such a measure as Section 304. [§313 as amended.]
>
> A labor organization under this statute could not place at the disposal of a candidate its own hall. It could not engage radio time to denounce a candidate who had identified himself with interests fundamentally opposed to those basic to the interests of the defendants. Nor could it pay the salary or expenses of an individual for the purpose of permitting him to participate in a political campaign.
>
> Handbills, placards or union newspapers advising the union membership of the voting records of public officials could not be published or distributed at election time to advocate either the election of labor's

friends or the defeat of labor's enemies. Paid advertisements and radio publications for the same purposes would be likewise proscribed.

No matter how dangerous the threat presented by a candidate to the fundamental interests of a labor organization, it is powerless under this law to speak and to inform the people of its views. It could not send to a single member a penny postcard dealing with such a candidate. It could not even send a delegate or observer to a political convention.

It could oppose bad laws but not "in connection with any election". It could endorse good laws but at all times both its opposition and its endorsement would be undertaken at the peril of crossing the line at which such opposition or endorsement or advocacy could be regarded as being "in connection with any election".

Moreover, a labor organization could not sponsor a public meeting in connection with an election for the purpose of hearing the views of candidates of various political parties with respect to issues of importance to its membership since such a meeting would inevitably require expenditures.

The traditional campaigns on the part of labor organizations prior to federal elections to "get out the vote" would, since they require expenditures, be proscribed by the statute. And the publication of voting guides and analyses of the voting records of candidates would likewise be condemned. Cited in Rutledge, J. (concurring), 335 U.S. at 151-2.

Joseph Rauh has commented:

Certainly a trade union can put anything it wants about candidates and political activity in the regular periodicals it sends its members. Nor would there seem to be any logical or workable line of demarcation between the distribution of such a regular periodical to union members and any other appropriate method of communicating with the membership. There

> is nothing in either the language of the statute or its legislative history to justify a distinction between Mr. Murray's message in the CIO News and a similar message from Mr. Murray delivered to the membership by mail, by handbills at plant gates, or through union organizers buttonholding individual members. Rauh, supra, at 157.

On appeal, the US Supreme Court affirmed, but was sharply divided when it came to rationale. Justices Rutledge, Murphy, Black, and Douglas held Taft-Hartley's §304 to be unconstitutional under the First Amendment, but a five-member majority side-stepped the constitutional issue, holding the statute inapplicable to a union publication issued in the regular course of business, and advising its members of the merits of various candidates for political office. In so doing, the Court declared any effort to reach such a publication would create "the gravest doubt... as to its constitutionality". Id. at 121. Yet legislative history seemed to support application of the Act to precisely these facts. See, e.g., Id. Appendix; 93 Cong. Rec. 6436, 6440 (1947).

Justice Reed, writing for the majority, found the word "expenditure" particularly troublesome:

> The reach of its meaning raised questions during Congressional consideration of the bill when it contained the present text of the section. Did it cover comments upon political personages and events in a corporately owned newspaper?... Could unincorporated trade associations make expenditures?... Could a union-owned radio station give time for a political speech?... What of comments of a radio commentator?... Is it an expenditure only when A is running against B or is free, favorable publicity for prospective candidates illegal?... What of corporately owned religious papers supporting a candidate on moral grounds? The Anti-Saloon League? Id. at 112.

Justice Rutledge concurred, finding the legislative history to have been:

> a veritable fog of contradictions relating to specific possible applications, contradictions necessarily bred among both proponents and opponents of the amendment from the breadth and indefiniteness of the literal scope of the language used. Id. at 134. Footnote omitted.

Rutledge argued strongly for pluralism and bloc representation? Id. at 143-4 , and deplored the absence of any showing "legislative or otherwise, of corruption so widespread or of influence so dominating as could possibly justify so absolute a denial of these basic rights." Id. at 146. Rutledge found the principal purposes of the Act to be:

> (1) To reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections;
>
> (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as corporate entities; and
>
> (3) to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views. Id. at 134.

As to these purposes, Rutledge found:

> There are, of course, obvious differences between such evils and those arising from the grosser forms of assistance more usually associated with secrecy, bribery and corruption, direct or subtle. But it is not necessary to stop to point these out or discuss them, except to say that any asserted beneficial tendency of restrictions upon expenditures for publicizing political views, whether of a group or of an individual, is certainly counterbalanced to some extent by the loss for democratic processes resulting from the restrictions upon free and full public discussion. The claimed

> evil is not one unmixed with good. And its suppression destroys the good with the bad unless precise measures are taken to prevent this.
>
> The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. Id. at 144.

He went on to argue such restrictions violate not only the free speech rights of union members, but also the right of the public to hear:

> There is therefore an effect in restricing expenditures for the publicizing of political views' not inherently present in restricting other types of expenditure, namely, that it necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose. Ibid.

In Rutledge's opinion, the Fallacy of centering one's attention entirely on minority rights is that of ignoring the principle of majority rule:

> Under the section as construed, the accepted principle of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy. Union activities in political publicity are confined to the use of funds received from members with their explicit designation given in advance for the purpose. Funds so received from members can be thus expended and no others. Even if all or the large majority of the members had paid dues with the general understanding that they or portions of them would be so used, but had not given explicit authorization, the funds could not be so employed. And this would be true even if all or the large

> majority were in complete sympathy with the political views expressed by the union or on its behalf with any expenditure of money, however small...
>
> [T]he dissentient is given all the benefit derived from the union's political publicity without having to pay any part of its cost. This is but another of the important and highly doubtful questions raised on the section's wording and construction. U.S. v. CIO, supra, at 148. Citations omitted.

Moreover, since the burden of proof was on the union, the assumption of such protection was that the majority disagreed with its elected leadership:

> The section does not merely deprive the union of the principle of majority rule in political expression. It rests upon the presumption that the majority are out of accord with their elected officials in political viewpoint and its expression and, where that presumption is not applicable, it casts the burden of ascertaining minority or individual dissent not upon the dissenters but upon the union and its officials. The former situation may arise, indeed in one notable instance has done so. But that instance hardly can be taken to be a normal or usual case. Unions too most often operate under the electoral process and the principle of majority rule. Nor in the latter situation does it seem reasonable to presume dissent from mere absence of explicit assent, especially in view of long-established union practice.
>
> If merely "minority or dissenter protection" were intended, it would be sufficient for securing this to permit the dissenting members to carry the burden of making known their position and to relieve them of any duty to pay dues or portions of them to be applied to the forbidden uses without jeopardy to their rights as members. This would be clearly sufficient, it would seem, to protect dissenting members against use of funds contributed by them for purposes they disapprove, but would not deprive the union of the right to use the funds of concurring members, more often than otherwise a majority, without securing their express consent in advance of the use. Id. at 149. Footnotes omitted.

In Rutledge's opinion, the object of such legislation was clearly "to force unions as such entirely out of political life and activity, including for presently pertinent purposes the expression of organized viewpoint concerning matters affecting their vital interests at the most crucial point where the expression would become effective." Id. at 150. See also, Comment, "Unions in the Political Arena: Attempts to Control Union Participation in Politics", 23 Sw. L. J. 713, 716-7 (1969); "British and American Experience", supra, note 24, at 376-77 and n. 44; Note, "Interpretation of Statutes to Avoid Constitutional Questions Re Labor Union Political Contributions", 22 Md. L. Rev. 348, 354 (1962); see Note, "Section 304 of the Labor-Management Relations Act of 1947 After the Decision In The United States vs. Congress of Industrial Organizations", 1949 Wis. L. Rev. 184, 191 (1949).

In U.S. v. Painters Local 481, 172 F.2d 854 (CA 2, 1949), the Taft-Hartley Act's prohibition against political "expenditures" was held not to apply to a small union's payment for political advertising in a local daily newspaper of general circulation, or to political advertisements over a local radio station, in spite of the fact that they had been paid for from general membership funds, and advocated rejection of particular candidates for federal political office. The Court of Appeals emphasized the rationale of the Supreme Court's opinion in CIO, supra, the fact that this union owned no newspaper, and that "publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own." Id. at 856. Judge Hand wrote that any effort to differentiate a union-owned newspaper, as had been involved

in the CIO case, from an independent newspaper or radio station, "seems without logical justification; nor is such a differentiation suggested by the apparent purposes or by the terms of the statute or by its legislative history." Id. at 856. He added,

> In each instance, it seems unreasonable to suppose that the members of the union objected to its policy in criticizing candidates for federal offices. In the CIO case this was thought to be true because the publication was a "normal organizational activit[y]". See 335 U.S. at page 123, 68 S. Ct. at page 1357. In the case at bar, the expenditures were authorized by a vote of the union members at a meeting duly held. Ibid.

In U. S. v. Construction and General Laborers Local 264, 101 F. Supp. 869, (WD Mo., 1951), a federal district court held that Section 304 did not prevent a union from using general membership funds derived from compulsory dues to pay its own employees to engage in political activities. A contrary interpretation, the Court reasoned, would be impossible to administer, and subject union employees to prosecution for engaging in protected political action. The Court concluded, that if the union's activities were prohibited, "any political activity of any person on the payroll of a labor organization, from its president to its janitor, would render that Union and its principal officers liable." Id. at 876.

The Court rejected the argument that the statute was intended to apply to these facts:

> It seems difficult for me to believe that the Congress intended that its definition of "expenditure" should be construed by the court so narrowly as to apply in a case of this type." Here we have three employees, two of whom were regularly on the payroll of the Union, one for a long period of time, devoting a considerable portion

> of their time to political activities, some of which, activities, such as the registration of voters and taking voters to the polls, were for the general benefit of those who were candidates, and some devoted exclusively to the political interests of one candidate for Congress,...
>
> If Philip Murray or William Green, for example, or any other president of a labor organization should draw a salary while making a speech in support of or in opposition to any candidate for Federal office, or if any of the expenses during such time were paid by a labor organization, such an activity would raise a serious question as to whether or not the labor organization and its officers might not be prosecuted under this Act. Id. at 875-6. See also, Comment, "Of Politics, Pipefitters, and Section 610: Union Political Contributions in Modern Context", 51 Tex. L. Rev. 936, 947 and n. 52 (1973); Comment, "Union Political Expenditures Under Taft-Hartley Section 304", 48 Nw. U. L. Rev. 64, 71 (1953); Comment, "Federal Regulation of Union Political Expenditures: New Wine in Old Bottles", 1977 Brig. Young L. Rev. 99, 108-9.

Following these decisions, Senator Taft brought about repeal of the "expenditure" prohibition in the Senate, S. 249, 81st Cong. 1st Sess. (1949), but the House failed to act on it. The Department of Justice brought no new indictments for six years, and Assistant Attorney General Warren Olney III testified that this was because "out of 9 members of the Supreme Court there was not 1 that expressed the view that Section 313 118 U.S.C. §601] was constitutional." Hearings on S. 636 Before the Subcommittee on Privileges and Elections of the Senate, committee on Rules and Administration, 84th Cong., 1st Sess., 201-10 (1955).

Nonetheless, two months later, the United Auto Workers Union was indicted for using dues money to pay for television broadcasts urging and endorsing the election of specific candidates for federal office, and in U.S. v. UAW, supra, the Supreme Court voted 6-3 to uphold the statute. Reversing the District Courts' dismissal of the indictment because these were "not expenditures prohibited by the Act" under previous interpretations, 138 F. Supp. 53, 5.9 (E.D. Mich., 1956), the majority refused to pass on the statute's constitutionality in advance of trial. Distinguishing CIO, the Supreme Court held:

> [U]nlike the union-sponsored political broadcast alleged in this case, the communication for which the defendants were indicted in C.I.O. was neither directed nor delivered to the public at large. The organization merely distributed its house organ to its own people. The evil at which Congress has struck in §313 is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party. Id. at 589. Emphasis added.

Justice Frankfurter, writing for the majority, suggested several tests which might be applied on remand:

> [W] as 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? Did the broadcast reach the public at large or only those affiliated with [the union]? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election? Id. at 592. See also, e.g., for use of these tests, United States v. Lewis Food Co., 236 F. Supp. 849, 853 (S.D. Cal. 1964); United States v. Anchorage Central Labor Council, 193 F. Supp. 504, 506 (D. Alas. 1961).

Dissenting in UAW, Justices Douglas, Black and Warren agreed with Rutledge, but found the Act both on its face and as applied to be "a broadside assault on the freedom of political expression guaranteed by the First Amendment." Id. at 598. Douglas also suggested that the British practice of permitting dissenters to refuse to contribute to political causes would avoid First Amendment problems. Id. at 597, n. 1. On remand, the jury was instructed as follows:

> "... may the funds used be fairly said to have been obtained on a voluntary basis?"
>
> If—that last part—if by that is meant passing of the hat for voluntary contributions by individuals members approached by some committee or otherwise, then, this, what happened here, was not voluntary, because it came out of the dues. There was no passing of the hat or anything like that. But I believe that the word "fairly" was put in there for some reason. The Supreme Court does not usually use words recklessly. It said - and here I quote from part of the question - " - or may the funds be fairly said to have been obtained on a voluntary basis?"
>
> So in deciding whether or not the funds used may be fairly said to have been obtained on a voluntary basis, you have a right to take into consideration the fact that these men, in 1954, were delegates to a convention just like any other convention and just like any other delegates. They represented others. The whole membership couldn't go to the convention any more than the whole membership of some fraternal organization can go to a convention. They send delegates. And at the convention in 1953 these delegates, acting for the UAW membership, voted as they had on previous conventions, authority for their governing board to use part of the dues for this educational program that the governing board had used and was preparing to use in the future. Quoted in John F. Lane, "Analysis of the Federal Law Governing Political Expenditures by Labor Unions", 9 Lab. L. J. 725, 733-4 (1958).

UAW President Walter Reuther and others testified the advertisements were directed primarily at UAW members, 41 LRRM 52 (1958), and the jury returned a verdict of "not guilty". Convictions for violation of §304 since have been quite rare. Cf. U.S. v. Boyle, 482 F.2d 755 (CA DC, 1973), cert. den., 414 U.S. 1076 (1973). In U.S. v. Teamsters Local 688, 41 LC 16, 601, (DC Mo., 1960), it was held that contributions or expenditures by a union in connection with a federal election, were lawful, if the funds were financed by donations which had been strictly segregated, if the union made it clear that donations were for a political purpose, and if refusals to donate did not result in reprisals. See also, U.S. v._ Anchorage Central Labor Council, 193 F. Supp. 504 CDC Ala., 1961), where a majority vote to contribute political funds was held voluntary, even though they were from the unions' general fund. Cf. Comment, 46 Marq. L. Rev., supra at 369, n. 33. These cases made it clear very early, that Taft-Hartley prohibitions against political activity refered only to partisan political activity, and did not include use of union dues to finance registration or get-out-the-vote drives, television debates, printing a public officials' voting record, speeches to union members, etc. See, e.g., discussion in Rauh, supra, at 154-7; Chang, "Labor Political Action and the Taft-Hartley Act", 33 Neb. L. Rev. 554, (1954); U.S. v. Construction and General Laborers Local 264, supra. See also, discussion of First Amendment standards in Goodman & Thomason, "Prohibition of Expenditures by Labor Unions in Connection with Federal Elections",

21 Ga. B, J. 575, 577-78 (1959); Kovarsky, "Unions and Federal Elections - A Social and Legal Analysis", 12 St. Louis U.L.J. 358, 374 (1968); Ruark, "Labor's Political Spending and Free Speech", 53 Nw. U.L, Rev 61, 73-74 (1958); Comment, "Section 3Q4, Taft-Hartley Act: Validity of Restrictions on Union Political Activity", 57 Yale L.J. 806, 816 (1948).

In 1959, Congress passed the Landrum-Griffin Act, or Labor Management Reporting and Disclosure Act (LMRDA), see 29 U.S.C. §101 et seq., which guaranteed union members rights of free speech and association, including the right of assembly, §101(a)(2), and established a fiduciary duty on the part of union officers, §501. See, generally, Beaird & Player, "Free Speech and the Landrum-Griffin Act", 25 Ala. L. Rev, 577 (1973); Atelson, "A Union Member's Right to Free Speech and Assembly: Institutional Interests and Individual Rights", 51 Minn. L. Rev. 403 (1967); Sherman, "The Individual Member and the Union: The Bill of Rights Title in the LMRDA of 1959:, 54 Nw. U. L. Rev. 803 (1960); Rothman, "Legislative History of the Bill of Rights for Union Members", 45 Minn. L. Rev. 199 (1960); Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959", 58 Mich. L. Rev. 819, 829 (1960); Wollett, "Fiduciary Problems Under Landrum-Griffin", 13 Annual Conference on Labor 267, 278-279; Smith, "The Labor-Management Reporting and Disclosure Act of 1959", 46 Va. L. Rev. 195, 228 (1960).

Section 501 originated in the House Education and Labor Committee, whose Report called on government to make certain union power was used, "for the benefit of employees whom the unions represent... and not for the personal profit and advantage of the officers and representatives of the union." H.R. Rep. No. 741

on H.R. 8342, 86th Cong., 1st Sess, 11 (1959), reprinted in I Legislative History at 769.

The Report, however, indicated Section 501 was limited in its scope:

> [O]ur language does not purport to regulate the expenditures or investments of a labor organization. Such decisions should be made by the members in accordance with the constitution and bylaws of their union. Union officers will not be guilty of breach of trust when their expenditures are within the authority conferred upon them either by the constitution and bylaws or by a resolution of the executive board, convention or other appropriate governing body (including a general meeting of the members) not in conflict with the constitution and bylaws. Id. at 81, reprinted at 839.

The Senate Labor Committee, lead by Senator McClellan, stated it followed three principles in acting on the bill, which included minimum interference in internal affairs, maintenance of democratic safeguards, and direct remedies for abuse. Id. at 403. During debate over the bill, the following exchange took place:

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Mr. Kennedy. Mr. President, I should like to ask the Senator from Arkansas a few questions.

Suppose an officer of a union expends money for an educational purpose, to advance what he and the other officers consider to be the interest of the union. Assume that there is nothing dishonest about the expenditure. It is not an expenditure for the purpose of taking money in a back-door deal. It is an honest expenditure for educational purposes, without any impropriety. Under the amendment of the Senator from Arkansas, would it be possible for a member to sue, on the argument that the educational purpose, which he does not like, is not really in keeping with the purposes of a labor organization? Could he take the cause into court?

Mr. McClellan. He might make such an allegation, and he might go to court. Each case must stand on its own merits. If the court found that the money was used for legitimate union purposes, for purposes which were proper under the constitution, and that it had been voted to authorize the use of money for educational purposes, I think it would come within the purview of the authority and right of the union officer. But, as my friend knows, the purpose of this amendment is to get at those who organize an executive board of their own, whose members are all in cahoots. One says to the other, "I will keep you employed at a good salary and give you a good expense allowance. You just do what I want."

That sort of thing is being done. Union treasuries are being pilfered in that way. I believe that this is a good amendment...

Mr. Ervin....We are under an obligation to see that the money is safely kept, to the end that it may be applied to duly authorized an legitimate union purposes.

Mr. Kennedy. As I understand, the Senator from Arkansas holds that view also.

> Mr. McClellan. That is correct. If the Senator has any thought that I am trying to interfere with COPE, that is not correct. There may be amendments directed to that point, and to deal with that direct question. However, I am not offering my amendment on the direct question of political contributions. Everyone knows my views on that subject, I assume. This is not a drive at that situation. It is a drive at the skulduggery of some leaders when they meet in executive session and pay off this one and pay off that one. 105 Cong. Rec. 5856-5857 (1959), reprinted in II Legislative History at 1130-1131.

Discussing the Conference Report, S. Doc. No. 51, 86th Cong., 1st Sess. (1959), the Senate observed:

> The bill does not limit in any way the purposes for which the funds of a labor organization may be expended or the investments which can be made. Such decisions should be made by the members in accordance with the constitution and bylaws of their union. Union officers will not be guilty of breach of trust under this section when their expenditures are within the authority conferred upon them either by the constitution and bylaws, or by a resolution of the executive board, convention or other appropriate governing body-including a general meeting of the members-not in conflict with the constitution and bylaws. This is also made clear by the fact that section 501(a) requires 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 alone, but encompass a broad spectrum of social objectives as the union may determine. 105 Cong. Rec. 16415 (1959), reprinted in II Legislative History at 1433.

The issue of voluntary contribution to a segregated

political fund first reached the Supreme Court in Pipefitters Local 562 v. U.S., 407 U.S. 385 (1972). See also, United States v. Pipefitters Local 562, 434 F.2d 1116, 1121 (CA 8, 1970), aff'd on rehearing, 434 F.2d 1127 (CA 8, 1970) (en banc), where a union and several of its officers were indicted for conspiracy to violate section 610 by spending money in a federal political campaign. The Supreme Court reversed the defendants' convictions based on an improper jury instruction, sidestepped the Constitutional question, and held political funds:

> must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments.. We hold, too, that, although solicitation by union officials is permissible, such solicitation must be conducted under circumstances plainly indicating that donations are for-a political purpose and that those solicited may decline to contribute without loss of job, union membership, or any other reprisal within the union's institutional power....
>
> [T]he rest of voluntariness under section 610 focuses on whether the contributions solicited for political use are knowing free-choice donations. The dominant concern in requiring that contributions be voluntary was, after all, to protect the dissenting stockholder or union member. Whether the solicitation scheme is designed to inform the individual solicited of the political nature of the fund and his freedom to refuse support is, therefore, determinative. Id. at 414-15. Footnote omitted.

The Court focused its attention not on problems of corruption or undue influence, but for the first time on voluntary contribution, labelling as a "misapprehension" the idea that Congress intended to ban the aggregation and expenditure of members' voluntary contributions, Id. at 415-6 n. 28. The Court held "Section 610 does not apply to union contributions

and expenditures from political funds financed in some sense by the voluntary donations of employees." Id. at 409.

Although there was no explanation by the Court as to what it meant by the words "in some sense", it did cite Senator Taft's comment favorably, that:

> If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose. Id. at 417. Citation omitted.

In addition,. the Court held in Pipefitters: 1) that the words "separate" and "segregated" are synonymous, so that political funds need to be separated from general treasury funds only in the sense that political monies must be kept distinct from dues and assessments, 407 U.S. at 414, 421-2; 2). that while general treasury funds may not be used directly for political purposes, they may be used to administer and maintain a political fund, Id. at 429-30, and; 3.) that while contributions to a segregated fund must be based on notice of its political nature and contain an option of refusal, such funds may be actively solicited by union officials. Id. at 414-5.

In McNamara v. Johnston, 522 F. 2d 1157 (CA 7, 1975), cert denied, 425 U.S. 11 (1976), the court held an injunction would not lie against union violations of Section 610 since the Federal Election Commission had "primary jurisdiction" over civil enforcement. The court, relying on legislative history, also held that Section 501 of the Landrum-Griffin Act was not violated by expenditures which were banned under 18 U.S.C.

Section 610, if such expenditures conformed to the union's constitution and did not involve "personal gain" to the officer. The court deemed it "significant", although apparently not indispensable, that dissenting members could have received a prorata share of the political expenditures they opposed. The court also noticed Cort v. Ash, 422 U.S. 66 (1975), which held Section 610 of the 1971 Act did not support a derivative action for corporate violations, and that relief, if any, should be based on state corporation law. ' The Supreme Court in Cort, referring to involuntary union membership, had stated: "We intimate no view whether our conclusion...necessarily would imply that union members, despite the much stronger federal interest in unions, are also relegated to state remedies." Id. at 78. In part, these cases led the NLRB's General Counsel to determine that political activity under Section 304 was outside NLRB jurisdiction, Administrative Decision of General Counsel, 1962 CCH NLRB P. 11, 802, Case No. SR - 1746, and consequently, there have been no labor board decisions in this area.

Section 304 has since been incorporated into the U.S. Criminal Code as Section 610, 18 U.S.C., ch 29, Section 610, making it enforceable in a criminal prosecution by the U.S. Attorney General. The statute was amended in 1951, Act of October 31, 1951, ch. 655, Section 20(c), to subject any person who accepts or receives any prohibited contributions, as well as any person or organization which "makes or consents to" prohibited expenditures or contributions, to a maximum penalty of $10,000 or imprisonment for two years, or both in the case of a willful violation. As amended, the provision reads:

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, 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 willful, shall be fined not more that $10,000 or imprisoned not more than two years, or both.
>
> 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. Ibid.

In addition to direct regulation embodied in Section 304 and Section 610, the Federal Regulation of Lobbying Act (1946), 2 U.S.C. Sections 261-270 (1964), required unions to file reports of legislative spending with the Clerk of the House

of Representatives if they "solicit, collect, or receive" money for the principal purpose of influencing federal legislation. The Supreme Court's narrow construction of that statute, together with its exemptions, contributed to the failure of filed information to give an adequate picture of lobbying in general and labor lobbying in particular, See, e.g., Wellington, Labor and the Legal Process 223 (1968), since the Act does not inquire into the source of lobbying funds. California has a similar provision. Government Code Sections 9900 et seq. (1949); see also, Smith, "Regulation of National and State Legislative Lobbying", 43 U. Det. L.J. 663 (1966).

In 1971, the Federal Election Campaign Act, 2 U.S.C. 4416, was passed, and in 1974, Congress passed an amendment, 88 Stat, 1263, under which contributions by "separate segregated funds" may not exceed $5000 per candidate. See Section 101(a). Unions and corporations were not subjected to any limitations by the Act with respect to expenditure-categories permitted under Section 610, namely communications by unions to their members or the costs of establishing or administering a separate segregated fund. See Fleishman, "The 1974 Federal Elections Campaign Act Amendments: The Shortcoming of Good Intentions", 1975 Duke L.J. 851; Comment, "Campaign Finance Acts - An Attempted Balance Between Public Interests and Individual Freedoms", 24 D. K. L. Rev. 345, 368 (1976).

As Senator Hansen, author of the 1971 Amendments, remarked,

> [I]t should be noted that this prohibition is the most far-reaching in the entire election law. While [section 610 is] based on a fear of the effects of aggregated wealth on politics [corporations

> and labor] organizations are not the sole repositories of funds adequate to finance big money contributions. Yet Congress has never regulated the activities of legal, medical or farm organizations, for example, nor has it placed comparable stringent limitations on wealthy individuals.... 117 Cong. Rec. 43380. Emphasis added.

In Barber v. Gibbons, 367 F.Supp. 1102 (E. D. Mo. 1973), the Court held that pledging a portion of mandatory union dues to a voluntary political fund associated with the union constituted a section 610 violation, if non-pledging members were still required to pay the same amount of dues. The Court reasoned, that if the amount of dues owed by all members remained constant, authorization, to allocate a portion for political purposes constituted an implicit direction for the union fund to use that portion of the regular due's rather than voluntary pledges, thus unlawfully burdening non-pledging members.

In United States v. Boyle, 482 F.2d 755 (D.C. Cir.), cert. denied 414 U.S. 1076 (1973), the District of Columbia Court of Appeals held the statute was not overly broad because protection of minority members was not possible through less restrictive means. The court was not impressed with the argument that the goals of federal campaign financing statutes were attainable by the less restrictive alternative of majority rule. Id. at 763.

The 1974 Amendments limited contributions by individuals to $1,000 per candidate for federal office with a total contribution ceiling of $25,000 yearly for all candidates, expenditures by an individual "relative to a clearly identified candidate" were limited to $1,000 per year, the amount of personal funds that could be spent by candidates in their own

campaigns was limited, total expenditure limits for federal campaigns were specified, cash contributions in excess of $100 and contributions from foreign countries were banned, reporting and disclosure requirements were strengthened, the Federal Election Commission was created, with responsibility for oversight and Civil enforcement powers, and a public financing system for presidential contests was elaborated. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, Section 101, 88 Stat. 1263. Several of these provisions were repealed or amended by the FECA Amendments of 1976. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 2, 26. U.S.C. 441(b). Section 441(b), which replaced Section 610, provided:

> the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisian registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital

stock.

In addition, the statute provided in Section 3(a) that it would be unlawful for such a fund:

> to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction; (b) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and (c) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

In sub-section 5, the Act provided:

> Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

In Buckley v. Valeo, 424 US 1 (1976), see also, Note, 76 Col. L. Rev. 862 (1976), a divided Supreme Court construed the Act and upheld its 1974 Watergate-inspired amendments, except for the ceilings on independent, overall, and candidate expenditures, which were struck down as infringements on political speech, and the Federal Election Commission. Id. at 58-59, 43. It held the First Amendment was designed to create "the widest possible

dissemination of information" and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Id. at 49, quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964) [quoting Associated Press v. United States, 326 U.S. 1, 20 (1945) and Roth v. United States, 354 U.S. 476, 484 (1957)].

In response to Buckley, Congress passed the Federal Election Campaign Act of 1976, Pub. L. No. 94-283, Section 101, 90 Stat. 475, 475-477, amending 2 U.S.C. Section 437 (Supp. IV 1974), which repealed sections of Title 18 of the U.S. Code regulating union political activity, amended, and recodified them. The general ban on use of union funds in federal elections remained, but with a new group of exceptions, see Id., 90 Stat. at 491, 2 U.S.C. 4416. The 1976 Act provided that unions could engage in the following activities with general treasury funds:

> (1) communicate with union members and their families on any subject whatever;
>
> (2) conduct registration and get-out-the-vote drives aimed at members and their families;
>
> (3) if not prohibited by state law, make contributions and expenditures supporting state and local candidates or in connection with state and local referenda;
>
> (4) expend funds aimed at the general public in an educational campaign; and
>
> (5) establish, administer, and solicit contributions to a separate, voluntary political fund. Id.

There must, of course, be a "strict segregation" of such monies, but union leadership was left free to direct the fund and solicit contributions to it. Members had been informed of the political purpose of the fund, and of their option to refuse

to contribute without reprisal. Id. Under the 1976 Amendments, a union was prohibited from:

> (1) making any contribution in connection with a federal election;
>
> (2) making expenditures in connection with a federal candidate directed at the general public; and
>
> (3) accepting or expending coerced contributions to a separate political fund. Id.

Once a union had established a legal fund, it could then contribute up to $5,000 per candidate for federal office and up to $15,000 to a national party committee, make independent expenditures of an unlimited amount, including active electioneering aimed at the general public, and use the fund for any purpose otherwise permitted to a general treasury fund.

More recently, on March 6, 1979, the Court of Appeals for the Eighth Circuit decided the case of Gabauer v. Woodcock, 85 LC 11, 147 (1979), in which union members had alleged that disbursal of funds to political, social and civic organizations violated union officers'fiduciary duties under Section 501 of the Landrum-Griffin Act, which provides in part:

> (a)...The officers,...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, to refrain from dealing with such organization

> as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transaction conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy. 29 U.S.C. Section 501.

The Court of Appeals upheld the District Court's dismissal of this count, stating: "In our view, the expenditures were clearly authorized by the union's constitution and resolutions of the union's national convention." Gabauer, supra, at 20, 513, footnote omitted. The Court added:

> Given the broad authorizations endorsed by the union membership and the absence of specific restrictions, this Court has neither the power nor standards by which to review expenditures challenged by a minority of the union merely because of their, politically controversial character. Id. at 20, 514; see also, McNamara v. Johnston, supra.

The Court of Appeals also considered an allegation that the union had violated 18 USC Section 610, reenacted as 2 USC Section 441b, and was liable in damages. The UAW's Community Action Program (CAP) was financed primarily by union dues, while its V CAP funds are separate and voluntarily financed. The Court held:

> There in no evidence in the record to indicate anything but that the appellees relied on their apparent authority. There is no evidence that would justify an inference that the appellees did not comply with the requirements of their constitution. Nor is there any evidence to the effect that any of the appellees knew or suspected that their constitution made any but adequate provision for the requirements of Section 610. On this record, we think summary judgment for the appellees was justified.
>
> We do not hold that the UAW's CAP structure satisfied the "segregated fund" requirements of Section 610 in the years relevant to the damage claims, or that it presently satisfies 2 U.S.C. Section 441b. That issue is not before us. Insofar as the appellants intend to challenge the validity of the CAP structure, as opposed to a claim that particular officers violated their duty to the union, they press claims against the union, which are not cognizable under a Section 501 derivative action. Id. at 20, 517, footnote omitted.

Yet in a footnote, the Court qualified this statement, and indicated an action might be brought under Section 441b:

> We do not hold that violations of 18 U.S.C. Section 610, and of its successor statute 2 U.S.C. Section 441b, can never amount to a violation of Section 501. Insofar as it is not reasonable to infer that a given donation was authorized, we think there is a remedy under Section 501 for violations of federal election laws. Cf. Miller v. American Telephone & Telegraph Co., 507 F.2d 759 (3rd Cir. 1974). We merely hold that apparent authority, if relied on in good faith, is a defense to liability under Section 501. See McNamara v. Johnston, 522 F.2d 1157, 1163 (7tE Cir. 1975), cert. denied, 425 U.S. 911 (1976). Id., N.7 at 20, 519.

Labor's Political Role:

Social scientists who have studied labor's involvement in political expenditure, have universally recognized the importance of its political activity. Alexander Heard, for example, who has conducted extensive studies of campaign financing, has found, "[i]n some jurisdictions the guts of the politics is the competition of rival economic enterprises, the political forum replacing the market place as the arena of the free enterprise system." A. Heard, The Costs of Democracy 113 (1960).

Joseph Rauh has similarly concluded that the political arena is obligatory for labor, in order that unions may fulfill their role in collective bargaining:

> As the federal government has increasingly legislated in the field of union activity and on economic matters such as wages, hours and conditions of employment which are of the most immediate concern to laboring men as workers and as union members, the necessity for labor union political activity has correspondingly increased. Today the passage or defeat of any number of bills affecting working men and their unions may be of as great importance to union members as the collective bargaining process itself. Rauh, supra, at 163.

Another author has concluded that "[i]ndeed, a reliance on economic force alone would place labor at a permanent disadvantage with respect to corporations, which generally have substantially greater financial resources." Comment, "The Regulation of Union Political Activity: Majority and Minority Rights and Remedies", 126 U. of Penn. L. Rev. 386 (1977), at 389. And another has written:

> The history of the American labor movement demonstrated irrefutably that labor's

> economic objectives cannot be entirely divorced from politics. Indeed, consciousness of the interconnection of politics and economics has advanced to the point where many union constitutions specifically authorize expenditures for political action. Rehmus & McLaughlin, supra, at 347.

An economist has gone so far as to define unions as essentially political organizations, which also represent their members in collective bargaining. See Lester, As Unions Mature, 14 (1958). Legal writers have similarly concluded that "political activity is a legitimate if not indispensable means of advancing the cause of organized labor", Note, 65, Yale L.J. 724, 733 (1956); that "political activities may be germane to collective bargaining insofar as favorable legislation, or the defeat of unfavorable legislation, strenghten the union's bargaining position", Note, 45 Va. L. Rev. 441, 447 (1959); that unions have an "inherent interest" in lending financial support to political causes, Note, 3 Vill. L. Rev. 230, 232 (1958); that "union political activity is wholly germane to a union's work in the realm of collective bargaining, and thus a reasonable means to attaining the union's proper object of advancing the economic interest of the worker." Wohl, supra at 149; and that "union support of platforms and candidates favorable to labor is a natural adjunct of other union activities", David A. Grosberg, "The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures', 42 U. of Chi. L. Rev. 148, 154-5 (1974).

Labor attorney Joseph Rauh has argued:

> From the first, there has been no line of demarcation between the bargaining, educational and political activities of unions. There is a tradition of

> over one hundred years of union political activity in this country. As the federal government has increasingly legislated in the field of union activity and on economic matters such as wages, hours and conditions of employment which are of the most immediate concern to laboring men as workers and as union members, the necessity for labor union political activity has correspondingly increased. Today the passage or defeat of any number of bills affecting working men and their unions may be of as great importance to union members as the collective bargaining process itself.
>
> Indeed, the very growth of the union movement in this country to its present stature was achieved at least in part through the pattern of federal labor laws in the 1930's and the restrictions adopted in 1947 and multiplied in 1959 materially curb the further growth of that movement.
>
> Under these circumstances, the election of federal candidates favorable or opposed to the interest of unions and laboring men is far from tangential or irrelevant to the purposes of labor unions. Political action and the public presentation of the union's views on who best represents the interest of working men and their associations, is essential to the preservation and advancement of their common interests. This is recognized by the constitution and organization of every major labor union in the country. Political representation of union members' interests as union members and workers is at the very center of the purposes for which labor unions are formed and maintained. Supra, at 163-4.

Recognizing the importance of political involvement to labor unions, Yale Economics Professor Lloyd G. Reynolds has similarly commented:

> It is often debated whether unions should "go into politics"; really, they have no choice in the matter. They are automatically in politics because they exist under a legal and political system which has been generally critical of union activities. The conspiracy suit and the injunction judge have been a problem from unions for earliest times.

> A minimum of political activity is essential in order that union may be able to engage in collective bargaining on even terms. Reynolds, Labor Economics and Labor Relations 80-81 (1959). See also, Key, Politics, Parties, and Pressure Groups, 100(1958), Sturmthal, Pressure Group or Political Action, and Hardman,"Labor Parties in the United States", in Unions, Management and the Public, 215-18.

Two other reasons have been suggested by commentators for union political activity:

> First, certain objectives in which labor has an interest cannot be achieved at all through collective bargaining. These include public education, social insurance of various kinds, adequate housing and effective anti-depression measures. Secondly, certain objectives which might be achieved through collective bargaining can be achieved much faster through legislation. This category embraces legislation covering minimum wages, maximum hours and the elimination of child labor. Wohl, supra, at 150.

Professors Daugherty and Parrish have added, as reasons for union political action,

> their inability to cope with anti-union employers on equal terms on the economic field, [and]...their inability to protect their members against the vicissitudes of depression", and their discovery of "what a great difference a favorable government made in their fortunes. Daugherty and Parrish, Labor Problems of American Society 408 (1952).

J. David Greenstone has concluded, in an extensive sociological examination of labor's involvement in political action:

However much it primarily appeals to economic interests in recruiting its members, the American labor movement has increasingly come to act in national politics less as an economic interest group than as an integral part of our two major political parties. J. David Greenstone, Labor in American Politics, p. XVIII (1969).

The attachment of labor to the Democratic Party has been partly responsible, in years of Republican ascendency, for efforts, to curtail it. Considerable concern has also been expressed over the size of labor's political expenditure. Professor Heard, for example, has estimated:

> The total UAW international's campaign-connected expenditures in 1956 would have come to less than $1,500,000. If an equal amount was spent by the UAW locals-also nothing but a guess-the total for this union would have been about $3,000,000, or less than $2.50 per member. This represents an outside figure for one of the most aggressive of all unions; for the 17,385,000 members of the labor movement resident in the United States, the percapita average would be a small fraction of it. Alexander Heard, The Costs of Democracy, 208 (1960), quoted in Wellington, supra at 236-7. See also, e.g., Comment, "Unions in the Political Arena: Legislative Attempts to Control Union Participation in Politics", 23 Sw. L.J. 713, 714 and n. 13 (1969); Kovarsky, "Unions and Federal Elections-A Social and Legal Analysis", 12 St. Louis U.L.J. 358, 369 (1968). See also, White, "Why Would Labor Leaders Play Politics with the Workers' Money?", Reader's Digest, Oct. 1958, at 158, estimating $62 million per year as a likely figure.

By 1972, labor contributed approximately $3.6 million to the campaigns of congressional candidates. This figure represented the single largest dollar input by any broad interest group in that year; however, it accounted for only five and two tenths percent of the contributions received by those candidates, and did not nearly match the total of corporate contributions. Common Cause, 1972 Federal Campaign Finances, in Interest Groups and Political Parties, at vi (1974)

Individual political contributions, coupled with contributions from groups associated with corporations, labor

unions, and other organizations, self-financing by candidates, and, most recently, public financing efforts, translate into millions of dollars that are available for election campaigns. In 1968 these campaign expenditures reached an estimated $300 million. Although this figure may seem large in the aggregate, a partial explanation lies in the fact that Americans fill over half a million positions by means of the electoral process. Comment, 126 U. of Penn. L. Rev., supra, at 390 (citations omitted). In 1972, Congressional candidates received contributions totalling $69.7 million. Of these contributions, $16.6 million came from special interest contributors and political party committees, with $3.6 million originating with labor affiliated groups and $3.4 million originating with business, agricultural, and health organizations. Common Cause, supra, at iv - vi. Nonetheless, as Professor Wellington has pointed out,

> There is no reason to suppose that organized labor's political power is too great, or, to put it another way, that it is not properly held in check by the structure of American government, the overlapping of group membership, and the "rules of the game". Thus, for example, while the top three spenders among the organizations filing reports under the Federal Regulation of Lobbying Act in 1966 were labor organizations, the labor lobby in Washington has not in recent years been notoriously successful. It did not stop the Labor-Management Reporting and Disclosure Act, or obtain the repeal of the right-to-work section of the Labor-Management Relations Act. And this is at least some evidence that it did not interfere with the normal American political process; that it did not block the hearing that other legitimate groups in the population are entitled to.

> Wellington, supra, at 235, footnotes omitted.

The same might be said of labor's recent failure to pass a labor law reform bill. Moreover, it is generally recognized among social scientists that voluntary contributions to political funds by union members do not nearly match compulsory funds. As Joseph Rauh points out:

> The difficulty in raising these "voluntary dollars" should not surprise anyone. Union members generally believe that they have already contributed for all union activities by the payment of their union dues, intended not only for collective bargaining but also for legislation, political and other community activity. Union members do not expect that they will have to pay twice to protect their interests and are not anxious to contribute a second time. Rauh, supra, citing e.g., testimony of Jack Kroll and James McDevitt, formerly directors, respectively, of PAC AND LLPE and later co-directors of COPE, before Senate Subcommittee on Privileges and Elections, Sept. 10, 1956, Hearings before the Sub-Committee on Privileges and Elections of the Senate Committee on Rules and Administration, 84th Cong., 2d Sess., pt. 1 at 45-64 (1956). See also Heard, supra, 5 at 190-96; Tanenhouse, "Organized Labor's Political Spending", 16 J. Pol. 441 (1954).

While labor may spend in the range of $200,000,000 on political campaigns during an election year, only $3,000,000 of that sum will come from voluntary cash contributions from members. Rehmus and McLaughlin, supra, at 327. Nonetheless,

> On balance, ••• it is unlikely that the total union expenditure and union member contribution will exceed 5 percent-certainly not 10 percent-of the total amount spent on American politics in any contemporary campaign year. Yet organized workers and their families make up a quarter of the

American electorate. Ibid.

The authors point out that these figures make the great controversy over labor's political role "somewhat difficult to understand". They add, that:

> In the main, labor's political expenditures have two general objectives:
>
> 1. A concern for general governmental policy. This concern is reflected in support of policies and candidates commonly called "liberal" and generally identified with the Democratic party.
>
> 2. A desire for entree or easy access to government officials in both legislative and executive branches.
>
> The first is primarily a society-oriented rather than selfish motive, although, to a lesser extent, it may also involve the. achievement of certain group preferments. The second of these motives, access, is the concept most frequently used by practical politicians to describe the objective desired, and benefit received, by large contributors. Although it cannot be equated with decisive influence, access means the ready opportunity to voice one's case at crucial times and places. Thus, it directly affects the advantage or disadvantage that labor enjoys vis-a-vis competing interest groups in our society. Id. at 330.

In 1957, a Senate subcommittee studying political contributions by interest groups reported that for the 1956 national election, the results were as follows for individual or group contributions of $500 or more:

Of Twelve Selected Families to:

Republicans	$1,040,526
Democrats	107,109
Other	6,100
Total	$1,153,735

Of Officials of 225 Largest Corporations to:

Republicans	$1,816,597
Democrats	103,725
Other	16,525
Total	$1,936,847

Of Officials of Thirteen Professional,
Business, and Similar Groups to:

Republicans	$ 741,189
Democrats	8,000
Other	2,725
Total	$751,914

Of National and International Union Officials to:

Democrats	$ 16,500
Republicans	2,500
Total	$ 19,000

Of Labor Groups to:

Democrats	$1,074,927
Republicans	3,925
Total	$1,078,852

Report of Senate Subcommittee on Priveleges and Elections to Committee on Rules and Administration: 1956 General Election Campaigns, 85th Cong., 1st Sess. (1957).

Professor Wohl, commenting on these figures, has suggested:

> If labor's direct expenditures are added to its political contributions, the total still barely exceeds two million dollars. This is almost entirely offset just by the contributions of the officials of the 225 largest corporations. And the total labor outlay of two million dollars was merely 6.4 percent of the 31.7 million dollars spent by the Republican and Democratic parties and their candidates in the 1956 election. When it is considered that twelve families, some idea may be grasped of the magnitude of the task faced by workers in presenting their views to the public and in seeking the election of persons sympathetic to their interests. Wohl, supra, at 148-9.

From figures such as these, Andrew Levison has concluded:

> Even if the labor movement had twice the influence it does today, the American political system would still be decisively biased against the average worker. Although blue-collar workers are a majority of the population, in Washington their interests are treated as those of a "special interest" group...Labor's power is, in fact, defensive. They can prevent antilabor legislation from passage or win certain improvements in existing programs, but they cannot determine

> the basic shape of legislation, or ensure the passage of any bill by themselves alone...On some parochial issues of interest to only a small group of workers or to the unions alone, this would be understandable. But even when it is a basic social program, in the interests of the vast majority of workers and all Americans, labor's power is often insufficient to overcome the influence of special interests, and pro-business forces. Levison, The Working Class Majority, supra, at 126.

Moreover, election, costs are extraordinarily high, and non-associated workers could not possibly, through small contributions, match the power of concentrated wealth. As George Thayer has commented:

> The amount of money needed to run for any of the top 1,500 elective offices in the United States is invariably quite high. Unless very wealthy, an individual cannot seriously consider running for the offices of President, senator, representative, governor or mayor of a city over 200,000 in population without the help of many financial angels. Usually more money has to be spent to win one of these offices than the job itself pays over the entire term of office. Hundreds of candidates go broke each year seeking these jobs. Many of them have to spend years paying off their indebtedness.
>
> The intangible costs are just as high. They rise beyond the bounds of reason whenever a candidate, no matter how honest or high-minded, is forced to beg or bargain for the necessary funds; whenever he becomes beholden, either directly or indirectly, to his financial backers; and whenever he promotes the special interests of his angels to the detriment of the general public welfare. George Thayer, Who Shakes the Money Tree?, supra, at 273-4.
> The choices, for labor, are limited. In the absence of federal financing for political campaigns, labor may chose either to stand by and watch industry achieve political influence and control over legislative, executive and judicial authorities which

directly effect collective bargaining and other legal rights, or become a special interest itself, gathering all the financial strength it can muster. While labor may not be able to equal the monetary power of industry, by selective expenditure, it can nonetheless have an impact on elections and legislation.

Nonetheless, the largest part of labor's political expenditure goes to support legislation, rather than candidates, and a great deal of that legislation directly affects collective bargaining over wages, hours, working conditions, and other interests which workers have in common.

At the 92nd Congress, for example, the AFL-CIO supported the following bills:

> equitable wage-price controls, tax reform in favor of wage earners rather than corporations, job creation and full employment measures including both public service and public works legislation to give jobs to the unemployed, opposed revenue sharing as endangering social programs for the poor, more low-income housing and a better rapid transit system to allow the poor access to jobs, laws protecting workers from "environmental blackmail" (the threat of unemployment if pollution standards were enforced), a bill for $24 billion in antipollution facilities and increased criminal penalties for pollution, pesticide, toxic chemical, and noise control legislation, national health insurance, health personnel training, increased aid to education, busing and opposed all forms of segregation in the schools, increased spending for free school lunch programs for the poor, increased funds for the Office of Economic Opportunity, legal services, and comprehensive child development programs, increases in welfare benefits and improvements in a number of areas, creation of independent consumer agency and measures to extend its powers, product safety laws including criminal penalties for violation, more meaningful product warranties, no-fault insurance, auto safety legislation

> improving auto collision standards, better meat and fish inspection laws, stronger enforcement powers and coverage for fair employment laws, opposed nomination of William Rehnquist for the Supreme Court as "anti-libertarian" and racially conservative, repeal of "Emergency Detention Act", campaign practices reform, income tax deduction for political contributions by working people, direct, popular election of the President, home rule for the District of Columbia, and other reforms to make Congress more responsive. AFL-CIO Legislative Report, "Labor Looks at the 92nd Congress", December, 1972, in Levinson, supra, at 207-8. See also, for the 95th Congress, similar-expenditures in "Labor Looks at Congress 1978", AFL-CIO Legislative Report (1979).

It may be easier to understand the importance of politics to the labor movement by looking instead at the consequences of political powerlessness, which are nowhere more clear than in agricultural labor, whose history demonstrates that labor must engage in political and legislative action to achieve even the right of collective bargaining, or self-organization.

The failure of farm workers to organize politically has been held responsible for their exemption from coverage under the NLRA. Professors Schauer and Tyler have written, for example, that "political rather than administrative reasons" were the cause of the exclusion of farm workers from the NLRA. Robert F. Schauer and Dennis G. Tyler, "The Unionization of Farm Labor", 2 U.C.D. L. Rev. 4 (1970), citing Morris, supra note 21 at 1954-56. They go on to state:

> Farmworkers were also excluded from the Social Security Act of 1935, leading one writer to conclude that political realities dictated Congress[1] course of action. Senator Wagner recognized that the inclusion of agriculture might create widespread opposition from the strong farm lobby and thereby jeopardize passage of the NLRA. Representative Connery, who directed the bill in the House, stated:

> "If we can get this bill through and get it working properly, there will be opportunity later...to take care of the agricultural workers. Id., citations omitted.

In a footnote, the authors add that "Senator Wagner, the father of the National Labor Relations Act, favored coverage of farmworkers, but candidly acknowledged in private that the opposition of farm block made this impossible. " Id., citing Hearings Before the Subcommittee on Migratory Labor of the Senate Committee on Labor and Public Welfare on S.1864, S.1865, S.1866, S.1867, S.1868, 89th Cong., 1st and 2nd Sess. 463 (1966), testimony of Benjamin Aaron, Professor of Law and Director of the Institute of Industrial Relations, University of California at Los Angeles. Alexander Morin has likewise concluded:

> The deliberate exclusion of the farmworkers from legislative shelter is due to their weakness in the political arena, to the very great strength of farm organizations, and to the inertia of the urban population in these matters. Morini, Organizability of Farm Labor in the United States 69 (1952).

The same fact has been recognized on a state level. The temporary exclusion of farm workers from coverage under Oregon's Workers' Compensation Act, according to one source, was "a political compromise to keep farm groups from opposing passage of the bill". Skelton, The 1965 Oregon Workmen's Compensation Law: A New Model for the States, 45 0. L. Rev. 40, 45 (1965). This fact lead to exclusion of farm workers from workers' compensation coverage in 30 states and the District of Columbia. Loren E. McMaster, "Workmen's Compensation, Minimum Wage, & the Farmworker", 2 U.C.D. L. Rev. 128.

It has been recognized that agricultural employers have long had vastly greater political power than farm workers.

See, e.g., Englund v. Chavez, 8 Gal. 3d 527, 105 Cal. Rptr. 521, 504 F.2d 457 (1972). The disparate treatment of farmworkers under state welfare laws has thus been attributed to the political weakness of farm workers, and it has been shown that:

> In rural areas, political and economic problems have polarized around two interest groups: the large farmer and the farmworker. Such polarization has not occurred in urban areas since these areas still contain a multitude of interest groups with various levels of influence. The political and economic pressures generated by the two rural interest groups will obviously effect any governmental entity which is locally controlled. The county welfare departments in rural areas quite naturally cannot escape this phenomenon. In fact, welfare has a double handicap because there is always an additional conservative reaction to giving aid to the poor. The conservative reluctance to aid the poor, coupled with the heavily weighted influence of the large farmer in rural communities, has caused many undesirable administrative practices within local welfare departments. Arthur Chinski, "The Welfare System & the Farm Laborer", 2 U.C.D. L. Rev. 186. Citations omitted.

The author suggests several reasons for this:

> In many rural counties there exists an atmosphere in which it is very easy for local governmental entities to become over-responsive to the farmers' needs. Social institutions are sometimes used to fulfill the needs of the farmer even when detrimental to the needs of the rural poor. These practices have affected the rural poor and have made them feel that institutions which are supposed to provide them with services, work against and not for them. Often their feelings are justified. Id. At 187.

Those who have studied farm worker political behavior have concluded that "agricultural labor is less likely to vote

than any other occupation group". Douglas R. Cunningham, "The Non-voting Farmworker: Disenfranchised by Design?" 2 U.C.D. L. Rev. 220. The Bureau of the Census conducted a nationwide study of elections in November, 1966, and found that only 32.7 percent of the nation's male farm employees voted. By contrast, farmers and farm managers voted at a rate of 70.1 percent. U.S. Bureau of Census Current Population Reports, Voting and Registration in the Election of November, 1966, Series P-20, No. 174, at 23 (1968), cited in Id.. Professor Cunningham, examining these statistics, concluded:

> In other words, the nation's approximately 500,000 voting farmworkers are overwhelmed by 1,400,000 farm employer votes. The fact that farmworkers are outvoted by farmers at a rate of nearly three to one takes on added significance because the votes of both these groups are, by and large, cast in the same political districts. Unlike their urban counterparts, who are clustered in working class precincts apart from their employer, farmworkers find themselves a voting minority in their own communities. Scattered among rural constituencies, voting farmworkers are unable to concentrate the ballots needed to place spokesmen in state legislatures, county boards, or other elective bodies. Id. (Citation omitted.)

In a study done of California's Yolo County voters, it was similarly shown that:

> Of the 6,139 new affidavits of voter registration received during 1968, only 49 were from residents indentifying themselves as farm employees. The share of new voters who are farmworkers, 0.8 percent, is thus the same as the proportion of farmworkers among voters previously registered. This fact indicates that election involvement by farm employees in Yolo County is remaining at a low, if not

an almost negligible, level. Id.

The Agricultural Labor Relations Act is itself, a product of massive political and legislative efforts fay farm workers, which were unprecedented in California's history. See, e.g., Herman M. Levy, "The Agricultural Labor Relations Act of 1975...", 15 Santa Clara Lawyer 783 (1975); Lucinda Carol Pocan, "California's Attempt to End Farmworker Voicelessness: A Survey of the Agricultural Labor Relations Act of 1975", 7 Pac. L. J. 197 C1976); Refugio I. Rochin, "New Perspectives on Agricultural Labor Relations in California, 1977 Lab. L. J. 395.

Nor is the need for political action restricted to the passage of collective bargaining legislation, since it may always be amended subsequently. For example, the "Agricultural Employers Labor Report" for March 30, 1979 reports that the following bills relating to agricultural labor are presently before the state legislature, with obvious potential for impact on collective bargaining in agriculture:

> AB 1013 (Frazee, et al) Would repeal certain provisions of the agricultural labor relations law dealing with secondary boycotts, and provide that publicity, other than picketing, is not to be construed as unlawful secondary activity where the purpose is to truthfully advise the public, including consumers, that a product or products produced by an agricultural employer with whom the labor organization has a primary dispute are distributed by another employer, as long as such publicity does not have a prescribed secondary effect.
>
> SB 504 (Nimmo, et al) Would change the requirements for "membership" in a labor organization and in so doing, provide that an agricultural employer shall not justify discrimination against an employee which would otherwise constitute an unfair labor practice, if the employer has reasonable grounds for believing either that such membership was not available to the employee

on the same terms and conditions generally applicable to other members or that such membership was denied or terminated for reasons other than failure to tender uniformly required periodic dues and initiation fees. Such changes would also be applicable to labor organizations.

AB 1011 (Lehman) Would provide that the Agricultural Labor Relations Act of 1975 does not preclude any person from directly seeking appropriate legal or equitable remedies from the courts of this state, in situations involving mass picketing, blocking of entrances or exits, violence or trespass.

SB 577 (Vuich) Would specifically provide that an Agricultural Labor Relations Board order making employees whole shall not be appropriate in those situations where the employer refuses to bargain in order to seek judicial review of the certification of an election by the Board.

SB 584 (Vuich) Would require the General Counsel of the ALRB to investigate any charge that an unfair labor practice has been committed with 20 calendar days and determine whether there is reasonable cause to believe that such practice has been committed. Would require the Board to either dismiss such charge or issue a complaint within 20 calendar days after such investigation is completed.

In addition to these, the following bills are also pending before the Legislature:

AB 837 (Moril Amends the 7-day election requirement under the ALRA to 14 days from the date of filing the election petition.

AB 838 (Mori) Removes the requirement of an existing collective bargaining contract in order for employees or rival unions to file a petition for decertification, rescinds the one-year certification and extension of certification procedures substitutes an automatice two-year certification, and provides that the duty to bargain terminates upon the expiration of the two-year certification.
AB 840 (Mori) Limits the Board's authority

to issue a compulsory bargaining order requiring an employer to bargain with a union which has not been "selected or designated" by secret ballot, to where the labor organization has filed an election petition and the Board determines that the employer ' s unfair labor practices so taint the election process that a fair and reliable election cannot be conducted.

AB 756 (Lehman) Would provide a small farmer exemption to the ALRA, defined as an employer who employed less than 15 agricultural employees during the preceding 12 months.

AB 680 (Puffy) Would require the ALRB to follow NLRB ' s practice in taking written declaratory statements during investigations.

AB 1013 (Frazee) Repeals the provision under the ALRA which permits a certified union to request the public to cease patronizing where the primary employer's (struck employer) produce is being retailed.

It is clear that such measures directly affect a union's collective bargaining function, and cannot be ignored while employer lobbies expend considerable effort attempting to restrict, through legislation, union activity and the protective function of labor legislation. Without political funds, labor would lose its ability to participate effectively in protecting its rights, and we would return to the labor conditions which justified such legislation in the first place.

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