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Labor Law -- Trusts -- Union as Beneficiary

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that they do cautiously limit themselves to the application of principles well recognized at common law and designed to punish conduct obviously capable of immediate condemnation. Even though these principles are vague, they have sufficient meaning to operate as limitations upon official discretion and arbitrary action. Recognizing a purpose of the criminal law to be the deterrence of individuals from criminal conduct, this purpose could not be substantially frustrated in a few cases in which the crime was not previously declared, for in such cases the public conscience alone should be a sufficient deterrent.

FRED F. KAFTAN

LABOR LAW—TRUSTS—UNION AS BENEFICIARY—The problems of whether a labor union can be the beneficiary of a trust in this state is more than a mere academic question, although it seems never to have been considered by our supreme court. It gains its present significance because of the provisions in the constitutions of certain unions which involve the establishment of trusts. For example, the constitution of the American Federation of Labor provides that upon the "dissolution, suspension, or revocation of the charter of any local trade or federal labor union, central body or state branch, all funds and property of any character shall revert to the American Federation of Labor. It shall be held in trust until such time that the suspended or defunct organization may be reorganized and ready to confine its activities to conform with recognized enforceable laws of the American Federation of Labor. . . ."1 The situation envisioned by this constitutional provision has been arising with special frequency in recent years with the defections of federal labor unions and local trade unions from the AFL to the CIO. There is another aspect of this problem which is also important. In the future it seems likely that international and national unions will seek to exert more control over the funds of their locals so that if at some future time there is another split in labor's ranks it will be more difficult for the locals to carry their funds to the new or rival international. The locals at the same time will be seeking to establish new arrangements under which they will be able to keep control of their funds. One device of the locals will be to set up trust funds in some manner in order to preserve them from seizure by the international. Trusts established for the benefit of the local will then be open to question as to their validity.

1 American Federation of Labor Constitution, Art. XIII, §17.
There are practically no cases squarely in point on the general question of whether a trade union may be the beneficiary of a trust. There are two English cases which decide the question adversely to the unions involved, but they seem readily distinguishable from modern American situations. But a labor union is an unincorporated association, and there is a marked difference of opinion as to whether an unincorporated association can be the beneficiary of a trust. Bogert, under the heading, *Unincorporated Associations as Cestuis*, discusses the split of opinion on the problem:

Reference has been made to the common law attitude that such unincorporated associations are not legal persons and cannot acquire property interests. The older and more conservative cases maintain this same attitude toward an unincorporated association as cestui que trust. In some cases the courts merely decree that an attempted trust is void, while in other instances where the trustees for the association were members of it and there had been a conveyance from such trustees the courts hold that the trustees took absolute interests and that the words of the trust with regard to the association were of no effect.

The more modern tendency however is to give effect to private trusts for unincorporated associations, under one theory or another. Some courts recognize such associations as *de facto* legal entities and validate the trust for the association. Others find an intent that the beneficiaries be members of the association from time to time. Others support the trust as one for the members

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1 The first of these cases is *In re Amos; Carrier v. Price*, 3 Ch. 159 (1891). This case held a trust for a union invalid because it was held to be a perpetuity, but also, and primarily, because under the Trade Union Act the union might not take land. The other English case, *In re Gassiot; Fladgate v. Vintner's Co.*, 70 L.J. Ch. 242 (1901), held that a bequest to the Vintner's Company of £4000 to be used "for the benefit of individuals who have been engaged in the . . . wine trade" was invalid because there was not "on the face of this will any sufficient indication of charitable intent." However, there is some doubt as to whether a modern English court would consider the Vintner's Company to have been a trade union.

2 Wrightington, *Unincorporated Associations and Business Trusts* (2d ed. 1923) 337, expresses this view: "In most jurisdictions the rule is that an unincorporated association cannot in its aggregate capacity take title to lands in grant. . . . The reason given for declaring invalid deeds to associations is that they are void for uncertainty."

3 Cases collected here include *Kain v. Gibboney*, 101 U.S. 362, 25 L. ed. 813 (1879); *Mayfield v. Safe Deposit & Trust*, 150 Md. 157, 132 Atl. 595 (1926); and others.

until incorporation of the association and thereafter for the corporation.\(^7\)

Bogert enumerates other grounds for upholding trusts with unincorporated associations as beneficiaries and concludes with the expression of his belief that such trusts should be upheld:

It is believed that there will be an increasing disposition to uphold these trusts, either as trusts for \textit{de facto} entities (the associations themselves) or as trusts for the members from time to time.

This note is devoted to the question of whether a union in Wisconsin is likely to be considered a beneficiary \textit{sufficiently definite} for the trust to be held valid. The problem will not arise if the court should rule that a trust with a union as beneficiary is a charitable and not a private trust. The Wisconsin court has not passed on the problem of whether a trust with a trade union as beneficiary is charitable or private.\(^8\) If it should decide in favor of the latter classification, the question of sufficient definiteness of the beneficiary will arise; for while in a charitable trust the cestuis are necessarily indefinite, in a private trust "there must be certainty as to the beneficiaries"\(^9\) if the trust is to be valid. This note will discuss the legal meaning of the requirement of \textit{certainty}. The very serious question of whether a trust with a union as beneficiary violates the rule against perpetuities, as suggested in one of the English cases mentioned earlier\(^10\) can not be discussed here.

The question of the meaning of \textit{certainty of beneficiary} has been touched upon in several Wisconsin cases although it seems never to have been squarely met. The problem was first mentioned by the Wisconsin court in \textit{Ruth v. Oberbrunner},\(^11\) but the court refused to deal with the question. It recognized that there was a New York case\(^12\) holding that an unincorporated association might not be a

\(^7\) Bogert cites Fadness v. Braunborg, 73 Wis. 257, 41 N.W. 84 (1889); this case involves a charitable, not a private, trust.

\(^8\) A 1914 Massachusetts case (Attorney General v. Bedard, 218 Mass. 378, 105 N.E. 993) arising out of the public subscription for the benefit of the suffering inhabitants of Lawrence at the time of the textile strike of 1912 held that "The fund was raised and should be applied for the purposes of a public charitable trust." But in this case the money was clearly raised for charity and for the people of the town, not for the union as such.

\(^9\) 26 R.C.L. 1185.

\(^10\) In re Amos; Carrier v. Price, 3 Ch. 159 (1891), cited \textit{supra} note 2.

\(^11\) 40 Wis. 238 (1876).

\(^12\) Downing v. Marshall, 23 N.Y. 366 (1861).
cestui, but our court said of the problem, "We will not dwell upon it." The problem was again touched upon in *Heiss v. Murphy,* in the same year, when a trust for the benefit of the Catholic orphans of LaCrosse was held void for lack of certainty of beneficiary. The court emphasized the impossibility of deciding just what was supposed to be done with the money. The court did not explain whether it considered the trust private or charitable.

The most important of the Wisconsin cases is *McHugh v. McCole et al.* and it must be referred to at length.

The important facts were as follows: A bequest was made in which the testator said,

I do give and bequeath to the Roman Catholic Bishop of the Diocese of Green Bay the sum of $4150, the said sum to be used and applied as follows . . . (details about Masses follow).

It is important to note the court considered this a private trust and held the provision void

for the reason that there is no beneficiary or beneficiaries of the trust who may come into equity and enforce performance. It is evident that such a trust is not capable of execution and no court could take cognizance of any question in respect to it for want of a competent party to raise and litigate any question of abuse and perverseness of the trust.

The court relies on *Holland v. Alcock* paraphrasing the criticism of the trust in that case because "there is no beneficiary in existence who is interested in or can demand the execution of the trust."

In respect to this ruling, the decision was overruled in *Will of Kavanaugh: Kavanaugh v. Watt,* but then only because the *McHugh* case held that a trust for Masses was a private, not a charitable trust. There was no criticism in this case of the rule itself, but only of its application to Masses.

Another bequest was as follows:

$300 to the Bishop of Fond du Lac, Wisconsin, to be used by him for the benefit and behalf of the Protestant Episcopal Church of Fond du Lac, Wisconsin.
Said the court: This Church is not a body corporate or legal entity capable in law of taking, claiming, or asserting any right in court to the fund, and could not, as against the personal representatives and distributees of the donor or testator apply for and have it paid over.\textsuperscript{21}

The fourth headnote of the case perhaps best expresses its rule:

In order that a trust created by will may be sustained as valid, it must be of such a clear and definite nature that the court can, in the exercise of its ordinary judicial function, deal with and render its provisions effective, and there must be a beneficiary named or capable of being ascertained within the rules of law, who can enforce it.\textsuperscript{22}

What is significant in this decision is that the court seems to hold that certainty of the beneficiary depends on the beneficiary's standing in court. To have a valid private trust, "There must be a beneficiary . . . who can enforce it."

The belief that this is the Wisconsin law gains some further support from a passage which is probably mere dictum in Harrington v. Pier,\textsuperscript{23} in which it is said of private trusts "There must be certainty of beneficiaries holding the equitable title who can come into court and enforce it." The opinion in Holmes v. Walter\textsuperscript{24} also emphasizes standing in court as a quality necessary to establish sufficiency of definiteness.

The cases discussed above seem to show a Wisconsin tendency to hold that there is sufficient certainty of the beneficiary when the beneficiary has standing in court to enable it to enforce its claim. There can surely be no doubt, in Wisconsin at least, that a labor union does have sufficient standing in court to bring actions necessary to protect its rights. The federal courts, since the Coronado case,\textsuperscript{25} have also ruled that unions have legal standing. The Wisconsin Supreme Court has recently stated its position as follows: "We entertain no doubt that a local labor organization may, under our labor code, bring an action to protect its rights or the rights of its members when such rights are invaded."\textsuperscript{26}

\textsuperscript{21} Id. at 174, 72 N.W. at 634.
\textsuperscript{22} Id. at 167, 72 N.W. at 631.
\textsuperscript{23} 105 Wis. 485, 82 N.W. 345 (1900).
\textsuperscript{24} 118 Wis. 409, 95 N.W. 380 (1903).
\textsuperscript{25} United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).
\textsuperscript{26} Trustees of Wisconsin S. F. of Labor v. Simplex Shoe Co., 215 Wis. 623, 642, 256 N.W. 56, 63 (1934).
Thus it is clearly established that in Wisconsin unions can sue to protect their legal rights. Since, in the cases discussed here, it has been shown that the Wisconsin court tends to hold that there is sufficient certainty of the beneficiary of a trust when the beneficiary has standing in court and hence can protect its rights, it would seem consistent for the court to hold that a labor union would be sufficiently definite to be the beneficiary of a trust.

John Frank

The Wisconsin Safe Place Statute—This article deals with the duties and responsibilities imposed on an employer in his relationship to his employees and the frequenters of his place of employment and of the duties and responsibilities of the owner of a public building to his tenants and frequenters thereof under the safe place statute.¹

¹ Wis. Stat. (1937) §101.06. Employer’s duty to furnish safe employment and place. "Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein and for frequenters thereof and shall adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters. Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building, and every architect shall so prepare the plans for the construction of such places of employment or public building, as to render the same safe."

Wis. Stat. (1937) §101.07 provides that no employer shall require or permit an employee to go or be in a place of employment which is not safe.

The following definitions of terms found in 101.06 and 101.07 are given in Wis. Stat. (1937) §101.01:

(1) The phrase 'place of employment' shall mean and include every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is directly or indirectly, employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed in private or domestic service or agricultural pursuits which do not involve the use of mechanical power.

(2) The term 'employment' shall mean and include any trade, occupation or process of manufacture in which any person may be engaged, except in such private domestic service or agricultural pursuits as do not involve the use of mechanical power.

(3) The term 'employer' shall mean and include every person, firm, corporation, state, county, town, city, village, school district, sewer district, drainage district and other public or quasi-public corporations, as well as any agent, manager, representative or other person having control or custody of any employment, place of employment or of any employe.

(4) The term 'employe' shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment.