

Stating its grounds with candor, the court clearly indicated that the decision was intended as a penalization of Campbell for turning its standardized contract into a device for exploiting the farmer.

RIGHTS TO LOCAL UNION PROPERTY AFTER SECESSION*

WHEN a majority or the entire membership of a local union breaks away from the parent organization, the seceding group usually tries to take collective bargaining rights and local union property along with it. Conflicting claims by the parent or "loyal" minority are practically inevitable. While the national or state labor relations board handles the more important problem of determining the rightful collective bargaining representative,¹ conflicting claims to local property are carried to the courts.

In resolving these property interests courts look to the two-fold contract relationship which binds the parent and local as well as the local and its individual members. This contract, embraced in the charters and constitutions of the parent and local unions, impresses monies collected by the local with a trust for the benefit of all members, and is impliedly accepted by workers on joining the union.² In addition to this contract, courts in determining entitlement to local property consider several other factors: the type of funds involved, the derivation of the local's charter, the relative organization dates of the parent and local, and the extent of the secession movement involved.³

In *Harker v. McKissock*,⁴ a recent New Jersey case, the court looked to the organization dates of the Industrial Union of Marine and Shipbuilding Workers of America and its Local No. 1 to determine whether the local's seceding majority or remaining minority was entitled to the local's funds. Local No. 1 had been created in 1933 as an independent voluntary association of shipyard workers, and through its efforts the national had been formed the following year. Subsequently, however, the parent violated its own constitution by admitting to the national organization locals not composed of shipbuilding workers.⁵ Thereafter it acted contrary to the alleged interests of the local by

premium, but died before his application was approved by the home office. Pointing to another clause in the policy which made such approval an express condition precedent, the insurer had denied liability.)

* *Harker v. McKissock*, 62 A.2d 405 (N.J.Ch. 1948).

1. Comment, 51 YALE L. J. 465, 466-72 (1942); Note, 48 YALE L. J. 1053 (1939); Comment, 38 MICH. L. REV. 516 (1940); Annotation, 131 A.L.R. 902 (1940).

2. See, e.g., *Grand Lodge of Int. Ass'n of Machinists v. Reba*, 97 Conn. 235, 238, 116 Atl. 235, 236 (1922); *Brotherhood of Railway Trainmen v. Williams*, 211 Ky. 638, 644, 277 S.W. 500, 502-3 (1925); *O'Neill v. Delany*, 158 N.Y.Supp. 665, 666-7 (Sup. Ct. 1909); Note, 22 NOTE DAME LAW. 99 (1946).

3. For a discussion of the weight which courts sometimes give to some of these factors in cases involving benevolent non-profit associations and labor unions, see Note, 47 YALE L.J. 483 (1938).

4. 62 A.2d 405 (N.J. Ch. 1948).

5. The constitution of the national provided that it opposed craft unionism and was in

opposing Congressional legislation beneficial to the shipbuilding industry.⁶ At a local meeting called to protest these actions, an overwhelming majority of members present voted to secede from the national.⁷ In the resulting suit by the loyal minority against the seceding majority,⁸ title to the local's funds were held to rest in the seceding group.

Following an apparently formalistic approach to the problem, the court decided that since the local had been created before the national, it was an "independent" body which could disaffiliate on the vote of a majority of its members.⁹ Having once existed without the national, the local retained the capacity to reestablish a separate existence at any time. Regardless of whether it represented the objectives for which the affiliation had originally been formed, a majority on secession could retain the local funds as representative of the "original" local.¹⁰ On the other hand, had the local been created by the national, and thus been "dependent," the loyal minority in the *Harker* case would have been awarded the funds.¹¹

While New Jersey decisions have repeatedly differentiated between property rights of "independent" and "dependent" locals,¹² other courts have not given weight to this distinction.¹³ In respect to incorporated locals, the pre-

favor of "one industry, one union," and that its jurisdiction should extend to "all workers employed in shipbuilding, ship repairing, marine maintenance industry and industries producing marine equipment and allied enterprises." The dissentient members of the local contended that these provisions were violated by admission to national membership of organizations of turnkeys in federal penitentiaries, attendants at mental hospitals and other non-shipyard workers. *Id.* at 407.

6. The national opposed legislation then pending in Congress to increase government subsidies for shipbuilding. *Ibid.*

7. Of a total membership of about 3,200 members over 700 attended the meeting. On the secession vote all voted in favor of disaffiliation except 25 who did not vote and 8 who voted in the negative. Subsequently 90.04% of the total membership gave written approval of the action taken at the meeting. *Id.* at 407, 415.

8. The national organization did not become a party to this litigation.

9. The court reasoned that a local which had existed prior to the creation of the parent became merely a constituent unit of a voluntary confederation when it joined the parent. 62 A.2d 405, 413 (N.J. Ch. 1948).

10. Though there was no express provision in the constitution of the national relative to "withdrawal," the constitution did contain a provision that all local by-laws must be approved by the national before becoming effective. Article III, Sec. 3 of the Constitution of Industrial Union of Marine and Shipbuilding Workers of America. The court discounted this provision, however, declaring that it was not intended to cover a by-law passed by the local to sever relations with its parent. 62 A.2d 405, 415 (N.J. Ch. 1948).

11. The court said that a group withdrawing from a "dependent" organization must be supported by a unanimous vote of the membership in order to constitute itself the "original" local entitled to the funds. *Id.* at 410.

12. *E.g.*, *International Union v. Becherer*, 142 N.J.Eq. 561, 61 A.2d 16 (Ch. 1948); *State Council v. Enterprise Council*, 75 N.J.Eq. 245, 72 Atl. 19 (Ct. Err. & App. 1909); *State Council v. National Council*, 71 N.J.Eq. 433, 64 Atl. 561 (Ch. 1906), *aff'd*, 67 Atl. 432 (1907).

13. *Brown v. Hook*, 79 Cal.App.2d 781, 180 P.2d 982 (1st Dist. 1947); *Alexion v. Hollingsworth*, 289 N.Y. 91, 43 N.E.2d 825 (1942), *reversing* 28 N.Y.S.2d 45 (Sup. Ct. 1941),

vailing view has been that the local may secede without forfeiting its property to the parent irrespective of the relative organization dates of the national and local or of any provisions in the parent's constitution.¹⁴ Underlying these decisions is the theory that even after the affiliation the foundation of the local organization continues to be the charter granted by the state, since the local cannot surrender to another body those basic powers derived from the state charter.

When dealing with unincorporated labor organizations, which comprise the major number of union locals today,¹⁵ courts distinguish between "special" funds, collected under local direction for purely local purposes, and "general" funds, collected under direction of the parent to meet its assessments or to make payments to the various funds which it administers.¹⁶ Monies raised for purely local purposes, such as local expense funds or local funeral funds, are not impressed by the two-fold contract with a trust for purposes approved by the parent.¹⁷ Accordingly the parent cannot deprive a seceding majority

and 263 App. Div. 710, 31 N.Y.S.2d 671 (1st Dep't 1941) (which had granted funds to the seceding majority following the "independent-dependent" dichotomy).

14. *Moyer v. Butte Miners' Union*, 232 Fed. 788 (D.Mont.1916); *Goodman v. Jedidjah Lodge No. 7*, 67 Md. 117, 9 Atl. 13 (1887) (withdrawal permitted despite protest of loyal minority); *State Council v. National Council*, 71 N.J.Eq. 433, 64 Atl. 561 (Ch. 1906), *aff'd*, 67 Atl. 432 (N.J.Ch. 1907). The rule holds true also where the local is expelled by the national. *State ex rel. Graham v. Miller*, 66 Iowa 26, 23 N.W. 241 (1885); *Wells v. Monihan*, 129 N.Y. 161, 29 N.E. 232 (1891).

15. Report of the Senate Committee on Labor and Public Welfare on the Proposed Federal Labor Relations Act of 1947, SEN. REP. No. 105, 80th Cong., 1st Sess. 15-18 (1947).

16. The uses to which general funds may be put by the local are often spelled out in the constitution or rules of the parent organizations. For example: "The General Funds or property of a Local Union shall be used only for such purposes as are specified in the Constitution and Laws of the United Brotherhood and as may be required to transact and properly conduct its business, viz.: Payment of salaries and donations to sick members; purchasing stationery, books, cards, printing, payment of rent, or any legally authorized bill against the Local Union. But under no circumstances shall any of the General Funds be used for loans or donations to members, Contingent Funds or for political or religious purposes. Violation of this section subjects the offending Local Union to the penalty of suspension." Section 58 of the Rules and Regulations of the United Brotherhood of Carpenters and Joiners of America as quoted in *Local No. 2508, L. & S.W. v. Cairns*, 197 Wash. 476, 479-80, 85 P.2d 1109, 1111 (1938).

For an excellent discussion of the differences in treatment accorded properties raised by locals under direction of the parent and those raised on its own initiative, see dissenting opinion of Justice Beals in *Lumber and Sawmill Workers v. International W.W. of A.*, 197 Wash. 491, 500-15, 85 P.2d 1099, 1103-9 (1938).

17. *E.g.*, *O'Neill v. Delany*, 158 N.Y.Supp. 665 (Sup.Ct. 1909); *Shipwrights', Joiners' & Calkers' Ass'n Local No. 2 v. Mitchell*, 60 Wash. 529, 111 Pac. 780 (1910); *cf.* *Detroit Savings Bank v. Haines*, 128 Mich. 38, 87 N.W. 66 (1901) (benevolent association); Note, 47 YALE L.J. 483, 484-5 (1938).

If the local dissolves, special local funds will not revert to the parent but will be distributed among the local members. *State Council Junior Order United Mechanics of Pennsylvania v. Emery*, 219 Pa. 461, 68 Atl. 1023 (1908). The result will be the same where the charter of the local is revoked by the parent. *Scott v. Donahue*, 93 Cal.App. 126, 269 Pac. 455 (1st Dist. 1928).

of any special funds even where provisions in its constitution require forfeiture of local property in the event of withdrawal or dissolution.¹⁸ But the local charter does bind local members to employ the funds only for those purposes agreed upon at the time of their collection, which may prevent a withdrawing group from conveying the special local funds to a rival union.¹⁹

Rights to general property, as distinguished from special property, are determined primarily through an examination of "withdrawal" and "dissolution" provisions in the parent's constitution. Following the rules laid down by courts in dealing with benevolent associations, it would appear that if the constitution contains no "withdrawal" or "dissolution" provisions, secession cannot be effected by less than a unanimous vote of the local members.²⁰ Even if the property is vested by the constitution in the local, a withdrawing majority cannot force a loyal minority to resort to desertion of the parent in order to preserve its property rights. The trust of local funds created by the two-fold contract is for the benefit of all members of the local as long as they remain members of the local.²¹

18. *Donovan v. Danielson*, 271 Mass. 267, 171 N.E. 823 (1930) (benevolent association); *cf. Wicks v. Monihan*, 130 N.Y. 232, 29 N.E. 139 (1891); *State Council Junior Order of Mechanics of Pennsylvania v. Emery*, 219 Pa. 461, 68 Atl. 1023 (1908) (constitution provided for forfeiture upon "dissolution or expulsion" and expulsion took place). This generally includes monies out of which are paid assessments levied by the parent since they are not affected with a trust in the parent's favor beyond the amount of the assessment, *e.g.*, *Suffridge v. O'Grady*, 84 N.Y.S.2d 211 (Sup. Ct. 1948). Sometimes courts overlook this distinction, however, and impress the entire fund with the trust for the benefit of the parent, *e.g.*, *Lumber and Sawmill Workers v. International W.W. of A.*, 197 Wash. 491, 85 P.2d 1099 (1938); *Local No. 2508 L. & S. W. v. Cairns*, 197 Wash. 476, 85 P.2d 1109 (1938). Though these payments constitute a direct financial interest of the parent in the continued affiliation of the local, this interest is insufficient under the two-fold contract to entitle the parent to claim the entire funds after local members have complied with the constitutional requirements for withdrawal. *National Council of American Mechanics v. State Council*, 64 N.J.Eq. 470, 53 Atl. 1082 (Ch. 1903).

19. *E.g.*, *Liggett v. Koivunen*, 34 N.W.2d 345 (Minn. 1948); *see Suffridge v. O'Grady*, 84 N.Y.S.2d 211, 217 (Sup.Ct. 1948) (a local acquiring funds for a specific purpose could not divert them from that purpose even by unanimous consent).

20. *Henry v. Cox*, 25 Ohio App. 487, 159 N.E. 101 (1927) (benevolent association). As to property rights in the event of secession in benevolent associations generally, *see Note 47 L.R.A. (N.S.) 927 (1914)*; *WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS* § 60 (2d ed. 1923).

21. *See, Scott v. Donahue*, 93 Cal.App. 126, 132, 269 Pac. 455, 458 (1928); *accord, Steinmiller v. McKeon*, 21 N.Y.S.2d 621, 623 (Sup.Ct. 1940), *aff'd mem.*, 261 App. Div. 899, 26 N.Y.S.2d 491 (1st Dep't 1941), *aff'd mem.* 288 N.Y. 508, 41 N.E.2d 925 (1942); *Plywood and Veneer Workers v. Taylor*, 197 Wash. 515, 518-9, 85 P.2d. 1116, 1117 (1938).

This follows logically from the theory of benevolent associations that the property of the local belongs to all of the members and that its permissible uses are determined by the two-fold contract. Interest in the property is abandoned by those members who withdraw even though they are a majority of the membership. Unanimous withdrawal from the parent amounts to a dissolution of the local, entitling its constituent members to the property though they do not distribute it among themselves. *See Suffridge v. O'Grady*, 84 N.Y.S.2d

Where the constitution makes no mention of "withdrawal" but instead provides for dissolution in the event local membership falls below a designated number, the seceding majority is entitled to the funds if the specified minimum does not remain loyal.²² But should the constitution also provide for "forfeiture" to the parent in the event of "dissolution," the parent can claim the property when the local membership falls below the necessary size.²³ Yet if the constitutional minimum of the local refuses to secede, neither the parent nor the seceding majority can lay claim to the local's funds under a "dissolution" provision, for the loyal minority is entitled to the property by virtue of the trust among local members imposed by the two-fold contract.²⁴

In addition to a "dissolution-forfeiture" provision, the constitutions of

211 (Sup.Ct. 1948) (theory explained in respect to special property); and see generally, WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS § 60, pp. 351-3 (2d ed. 1923).

22. *State v. Postal*, 215 Minn. 427, 10 N.W.2d 375 (1943). The burden of showing that the necessary minimum no longer remains is on the seceding body. See *Rosenthal v. Reinfeld*, 48 Misc. 652, 96 N.Y.Supp. 199 (Sup.Ct. 1905).

It is generally recognized that a benevolent association may be dissolved in the manner provided in its constitution; and in the absence of any provision on the subject, it cannot be voluntarily dissolved except by unanimous vote of its members. See *Koerner Lodge No. 6, K. of P. v. Grand Lodge K. of P.*, 146 Ind. 639, 652-3, 45 N.E. 1103, 1103 (1897). In the absence of charter provision, where the court finds that there has been a "dissolution," the property will be distributed *per capita* among the members. See *Low v. Harris*, 90 F.2d 783, 784 (7th Cir. 1937); *Local No. 2508 L. & S. W. v. Cairns*, 197 Wash. 476, 487, 85 P.2d 1109, 1114 (1938). Where there is a provision in the constitution designating the minimum number with which the local can function, a dissolution cannot be declared unless withdrawals have left less than this number, *McFadden v. Murphy*, 149 Mass. 341, 21 N.E. 868 (1889) (benevolent association). See *Kanzler v. L. C. & S. T. Workers Local*, 20 Wash.2d 718, 724-5, 149 P.2d 276, 279 (1944).

Where a local is expelled by the parent, it is held that the parent cannot claim the local funds by virtue of a "dissolution" provision. *Grand Lodge of Int. Ass'n of Machinists v. Reba*, 97 Conn. 235, 116 Atl. 235 (1922).

23. *Subsidiary High Court of Foresters v. Pestarino*, 41 Cal.App. 712, 183 Pac. 297 (1919). Cf. *Brown v. Hook*, 79 Cal.App.2d 781, 180 P.2d 982 (1947), where more than the charter minimum remained loyal but the loyal group failed to protest the secession and did not join the suit of the parent to recover the funds. The court gave the funds to the parent as having a better right to them by virtue of the "dissolution-forfeiture" provision than did the seceders. Cf. *Die Gross-Loge Des Ordens der Hermanns-Soehne v. Wolfer*, 42 Colo. 393, 94 Pac. 329 (1908) (benevolent association); see *Koerner Lodge No. 6, K. of P. v. Grand Lodge K. of P.*, 146 Ind. 639, 45 N.E. 1103 (1897).

If the constitution provides for forfeitures in case of "expulsion," the parent still cannot claim the funds unless it has justifiable cause for the expulsion. See *Brotherhood of Railway Trainmen v. Williams*, 211 Ky. 638, 646-7, 277 S.W. 500, 504 (1925).

24. *Low v. Harris*, 90 F.2d 783 (7th Cir. 1937); *State v. Postal*, 215 Minn. 427, 10 N.W.2d 373 (1943); *Hogan v. Williams*, 160 Ore. 520, 86 P.2d 456 (1939). Where there is no charter minimum, nothing less than unanimous secession will entitle the seceding group to the local funds under a "dissolution" provision. See *Grand Court of Washington F. O. A. v. Hodel*, 74 Wash. 314, 317-8, 133 Pac. 438, 439-40 (1913) (benevolent association).

many parent organizations contain express limitations on a local's right to "withdraw."²⁵ The usual proviso is that an attempted separation is ineffectual so long as a stated number of local members is willing to continue the organization. The minimum number is typically very small;²⁶ and they need not protest the withdrawal motion or even attend the meeting when the secession vote is taken provided they assert their loyalty and lay claim to the local charter within a reasonable time after the decision to withdraw.²⁷ Courts recognize them as the "original" local, and uphold their claim to local property against the withdrawing members.²⁸ Should the number remaining loyal be less than the charter minimum, the local's property will vest in the parent under the "dissolution-forfeiture" provision.²⁹

Where the constitution contains a "withdrawal" but not a "dissolution-forfeiture" provision, the loyal group is entitled to the funds so long as the necessary minimum remains in the local.³⁰ Where the number falls below

25. The typical provision of union constitutions is to the effect that the property of the local must be forfeited to the parent in case of "dissolution, suspension, or secession" of the local. Note, 47 YALE L.J. 483, 484 (1938). For cases involving this type of provision, see *Steinmiller v. McKeon*, 21 N.Y.S.2d 621 (Sup.Ct. 1940), *aff'd mem.*, 261 App. Div. 899, 26 N.Y.S.2d 491 (1st Dep't 1941), *aff'd mem.*, 288 N.Y. 508, 41 N.E.2d 925 (1942); *Harris ex rel. Carpenters' Union No. 2573 v. Backman*, 160 Ore. 520, 86 P.2d 456 (1939); *Local No. 2618, Plywood and Veneer Workers v. Taylor*, 197 Wash. 515, 85 P.2d 1116 (1938); *cf. Quinn v. Marvin*, 168 Ore. 52, 120 P.2d 227 (1941) (where the majority in an A.F. of L. local accepted C.I.O. memberships in violation of a charter provision against dual unionism, the minority, which was greater than the minimum set in the withdrawal provision, was held entitled to declare itself to be the true union entitled to local funds).

26. *E.g.*, *Rosenthal v. Reinfield*, 48 Misc. 652, 96 N.Y.Supp. 199 (Sup. Ct. 1905) (ten); *State v. Postal*, 215 Minn. 427, 10 N.W. 2d 373 (1943), and *Brownfield v. Simon*, 94 Misc. 720, 158 N.Y. Supp. 187 (Sup. Ct. 1916) (seven); *Steinmiller v. McKeon*, 21 N.Y.S.2d 621 (Sup. Ct. 1940), *aff'd mem.* 261 App.Div. 899, 26 N.Y.S.2d 491 (1st Dep't 1941), *aff'd mem.* 288 N.Y. 508, 41 N.E. 2d 925 (1942) (five).

27. *Local No. 2618, Plywood and Veneer Workers v. Taylor*, 197 Wash. 515, 85 P.2d 1116 (1938); *Local No. 2508 L. & S. W. v. Cairns*, 197 Wash. 476, 85 P.2d 1109 (1938); *cf. Low v. Harris*, 90 F.2d 783 (7th Cir. 1937) ("dissolution-forfeiture" provision but no withdrawal provision).

28. *Steinmiller v. McKeon*, 21 N.Y.S.2d 621 (Sup.Ct. 1940), *aff'd mem.*, 261 App. Div. 899, 26 N.Y.S.2d 491 (1st Dep't 1941), *aff'd mem.*, 288 N.Y. 508, 41 N.E.2d 925 (1942); *Alexion v. Hollingsworth*, 289 N.Y. 91, 43 N.E.2d 825 (1942); *Harris ex rel. Carpenters' Union No. 2573 v. Backman*, 160 Ore. 520, 86 P.2d 456 (1939).

29. *See Ahlendorf v. Barkous*, 20 Ind.App. 657, 664, 50 N.E. 887, 889 (1898).

30. *Brownfield v. Simon*, 94 Misc. 720, 158 N.Y.Supp. 187 (Sup.Ct. 1916); *Local No. 2508 L. & S. W. v. Cairns*, 197 Wash. 476, 85 P.2d 1109 (1938); *Lumber and Sawmill Workers v. International W.W. of A.*, 197 Wash. 491, 85 P.2d 1099 (1938). Where the constitution contains no specification as to the necessary minimum which must remain loyal to prevent a withdrawal, it has been held that all must join the movement to entitle the secedents to the property. *Bridgeport Brass Workers Union, Local 320 v. Smith*, No. 75979, Super. Ct., Fairfield County, Conn., Sept. 20, 1948.

Where the parent organization itself changes affiliation, the funds are granted to the faction of the local which adheres to it although a constitutional minimum expresses a desire to continue under the former organization. *Textile Workers Union of Anniston v.*

this minimum, a seceding majority would seem entitled to the funds since the contract conditions of withdrawal have been complied with. Nevertheless, courts have favored the parent.³¹ Maintaining that this minimum membership clause was inserted only for the benefit of the parent, the courts have said that a provision which prevents a local from withdrawing so long as a stated minimum objects is not equivalent to an affirmative provision permitting withdrawal with the funds whenever less than the minimum protests.³² They have even said that a parent has power to keep its local alive when no faithful local members remain.³³ In that event those new members which the parent might recruit to fill the vacant ranks of the local would be entitled to the local property.³⁴

Courts have derived these rules from principles traditionally applied to voluntary benevolent associations without considering the special problems posed by their application to trade unions.³⁵ They have accepted as precedent a body of law which strongly favors the parent organization or the loyal local minority regardless of the effect on important union functions such as those performed in collective bargaining.

The National Labor Relations Act³⁶ contemplates a situation in which labor and management can bargain on relatively equal terms.³⁷ The seces-

Local No. 21500, 240 Ala. 239, 198 So. 606 (1940); *accord*, *Martin v. Smith*, 286 Mass. 227, 190 N.E. 113 (1934) (question was only as to which group was the "original" local, no funds being involved).

31. *Suffridge v. O'Grady*, 84 N.Y.S.2d 211 (Sup.Ct. 1948) (on the grounds that the insurance fund there involved was collected under the collective bargaining agreement negotiated by the parent); *accord*, *Centralia Labor Temple Ass'n v. O'Day*, 139 Wash. 331, 246 Pac. 930 (1926) (where membership fell below the charter minimum, the court allowed the parent to take the funds from the remaining minority and give them to a newly created local). *See M & M Wood-Working Co. v. Plywood & V. Workers Local Union*, 23 F. Supp. 11, 18 (D. Ore. 1938), *aff'd on other grounds*, 101 F.2d 938 (9th Cir. 1939). *But see* Local No. 2508, *L. & S. W. v. Cairns*, 197 Wash. 476, 488, 85 P.2d 1169, 1114 (1938).

32. *See Suffridge v. O'Grady*, 84 N.Y.S.2d 211, 218-9 (Sup.Ct. 1948).

33. *See, M & M Wood-Working Co. v. Plywood & V. Workers Local Union*, 23 F. Supp. 11, 18 (D. Ore. 1938), *aff'd on other grounds*, 101 F.2d 938 (9th Cir. 1939).

34. *Centralia Labor Temple Ass'n v. O'Day*, 139 Wash. 331, 246 Pac. 930 (1926) (benevolent association).

35. It has been frequently stated that the same legal concepts are applicable to labor unions and voluntary non-profit associations generally. WRIGHTINGTON, UNINCORPORATED ASSOCIATIONS AND BUSINESS TRUSTS, § 54, p. 288 (2d ed. 1923); Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993, 1001, 1016, 1021 (1930). The courts in dealing with labor problems rely heavily on cases involving these associations. *See, e.g., Liggett v. Koivunen*, 34 N.W. 2d 345 (Minn. 1948); *Harris ex rel. Carpenters' Union No. 2573 v. Backman*, 160 Ore. 520, 86 P.2d 456 (1939); *Grand Lodge of International Ass'n of Machinists v. Reba*, 97 Conn. 235, 116 Atl. 235 (1922).

36. 49 STAT. 449 (1935), 29 U.S.C. § 151 *et seq.* (1946), as amended, 61 STAT. 136 (1947), 29 U.S.C.A. § 151 *et seq.* (Supp. 1948).

37. The policy is stated in Section 1 of the Act: "The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of

sion of local groups prevents a parent from presenting a unified front and accordingly reduces its power to force concessions from management.³⁸ Yet secession of a local group is not likely to be discouraged by threat of deprivation of local funds. Nor has the National Labor Relations Board felt that the best interests of collective bargaining are served if a discontented local group is forced to remain an unreasonably long time under leadership which it no longer supports. While, in the interest of stability, the Board sometimes withholds certification of a new majority union during the term of a collective agreement, it tends to enforce the democratic rights of workers to be represented at all times by a union of their own choosing.³⁹

In disposing of local funds, the courts if possible should assist the Board in its efforts to establish stable but democratic bargaining units. From this standpoint distinctions between "special" and "general" funds are meaningless and questions as to the incorporation of locals or their "independence" are irrelevant. Where the two-fold contract states specifically that on secession local property vests in loyal members or in the parent if less than a specified minimum remain, the court should follow the contract only if the parent has remained faithful to its obligations.

After a parent has ceased to uphold objectives agreed upon when the local joined the national organization, those who declined to continue the affiliation should not forfeit all claim to local property on seceding.⁴⁰ The interests of

contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

* * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions . . . by encouraging the practice and procedure of collective bargaining. . . ." National Labor Relations Act, 49 STAT. 449 (1935), 29 U.S.C. § 151 (1946), as amended, 61 STAT. 136 (1947), 29 U.S.C.A. § 151 (Supp. 1948).

38. BROOKS, *WHEN LABOR ORGANIZES* 40-5 (1937); DAUGHERTY, *LABOR PROBLEMS IN AMERICAN INDUSTRY*, 411-2 (5th ed. 1941); de Vyver, *The Intra-Union Control of Collective Bargaining*, 5 *LAW & CONTEMP. PROB.* 288, 297 (1938).

39. For a discussion of the policy of the National Labor Relations Board toward certification after a secession has taken place from the ranks of the collective bargaining agent, see Comment, 51 *YALE L. J.* 465, 466-72 (1942); Comment, 37 *ILL. L. REV.* 43, 46-7 (1943); Comment, 10 *MO. L. REV.* 64 (1945).

Though some of the union stability is lost when employees are allowed to change their affiliation, a categorical refusal to allow a change of affiliation may enable union leadership to tramp on the local members. Comment, 37 *ILL. L. REV.* 43, 49 (1943). There is some indication of efforts by entrenched union leadership to choke off the legitimate criticism of minorities. Note, 96 *U. OF PA. L. REV.* 537, 541 (1948).

40. Adoption of this rule would turn future litigation on the question of fact as to the good faith of the parent in following the terms and spirit of the two-fold contract.