tices in the purchase and sale of securities. It is possible, therefore, that civil liability will be recognized in only the most flagrant situations, such as in the *Kardon* case, and further extensions of this type of investor protection will have to await another period like the one that brought about the original federal securities legislation.

JUDICIAL INTERVENTION IN INTERNAL AFFAIRS OF LABOR UNIONS

In a recent Illinois case a member of a labor union appealed to the courts for the redress of a grievance against the organization.[1] This litigation again illustrates the need for a forum appropriate for the consideration of intra-union disputes in an industrial society where more and more workers are abandoning individual bargaining in favor of institutional representation.

For controlling the internal affairs of trade unions, Anglo-American jurisprudence has developed no body of law separate and distinct from that applied to any other type of voluntary association.[2] And the general rule is that voluntary non-profit associations are self-governing organizations whose private affairs are not subject to judicial review.[3] In taking this position, the courts have stressed certain similarities between social and labor organizations, while they have ignored significant functional differences, as well as the quasi-public nature of unions.[4] Thus the bulk of labor unions, being unincorporated, are treated like churches and lodges, while the occasional incorporated union is subject to the rules governing any other corporation.[5] This approach seems a bit unrealistic when applied to the settlement of disputes concerning the internal administration by unions of matters like admission to membership,[6] expulsion and other

[1] Morgan v. Local 1150, United Electrical, Radio and Machine Workers of America, decided Dec. 31, 1946 (Ill. App., 1st Dist.) (unreported).

[2] 1 Teller, Labor Disputes and Collective Bargaining 159 (1940).

[3] Wrightington, Unincorporated Associations and Business Trusts 320 (1923).

[4] In contrast to membership in a fraternal order, which can properly be termed a voluntary association, approximately 6,300,000 workers in the United States in 1945 were covered by closed- or union-shop agreements by which union membership was made a condition of employment. An estimated 3,900,000 additional employees were covered by maintenance-of-membership provisions under which continued union membership was obligatory during the life of the contract. Extent of Collective Bargaining and Union Recognition in 1945, 62 Monthly Lab. Rev. 567, 567–69 (1946).

[5] Teller, op. cit. supra note 2, at 291.

[6] Mayer v. Journeymen Stone-cutters' Ass'n, 47 N.J. Eq. 519, 20 Atl. 492 (1890); Miller v. Ruehl, 166 Misc. 479, 2 N.Y.S. 2d 394 (S. Ct., 1938). Contra: James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 329 (1944). For a general discussion see Summers, The Right to Join a Union, 47 Col. L. Rev. 33 (1947).

types of disciplinary action,[7] the freedom and frequency of elections,[8] the administration of seniority in job opportunities,[9] abuses of power by union officials,[10] or the misuse and misappropriation of union funds.[11] Such items affect directly the economic life of too many people in modern industrial society to be so easily dismissed.

As might be expected, however, the courts have developed exceptions to the general rule that they will not interfere in the internal affairs of a non-profit association.[12] Thus, under certain circumstances, they will undertake to settle internal disputes where a "property right" of a member is involved.[13] But this jurisdictional requirement of a property right has been so liberally and ambiguously construed that it has ceased to have much precise significance as a substantive limitation on the judicial review of intra-union disputes.[14] Yet the courts will not always intervene even when this vague property right is affected; for, in addition to this, they stipulate that some actual injury must have occurred[15] in a situation where the union either acted in violation of its constitution or by-laws,[16] or engaged in conduct which was tainted by conspiracy, fraud, oppression, bad faith, or unfair dealing.[17]

Courts also frequently declare that, in any event, they will not intervene to settle an intra-union dispute until the member complaining has first exhausted all remedies afforded him by the internal rules of the organization.[18] But here again they have developed a number of exceptions to this general limitation on their assumption of jurisdiction. Thus, they have nevertheless intervened to settle intra-union disputes where insistence upon the exhaustion of internal

[7] Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931). For a general discussion see Steever, The Control of Labor through Union Discipline, 16 Corn. L.Q. 212 (1931).

[8] Bennett v. Kearns, 88 Atl. 806 (R.I., 1913). For a general discussion see Election Disputes within Trade Unions, 86 U. of Pa. L. Rev. 885 (1938).

[9] Shaup v. Grand International Brotherhood of Locomotive Engineers, 223 Ala. 202, 135 So. 327 (1931), cited in annotation beginning 142 A.L.R. 1055 (1943). For a general discussion see Seniority Rights in Labor Relations, 47 Yale L.J. 73 (1937).

[10] Balter v. Empire State Motion Picture Operators Union, Inc., 167 Misc. 430, 3 N.Y.S. 2d 290 (S. Ct., 1938) (semble). For a general discussion see Judicial Intervention in Revolts against Labor Union Leaders, 51 Yale L.J. 1372 (1942).

[11] Lumber & Sawmill Workers Union v. International Woodworkers of America, 197 Wash. 491, 85 P. 2d 1099 (1938). For a general discussion see Intra-Union Disputes Concerning Union Funds, 47 Yale L.J. 483 (1938).

[12] Wrightington, op. cit. supra note 3, at 320.

[13] Lundine v. McKinney, 183 S.W. 2d 265 (Tex. Civ. App., 1944).

[14] See Wrightington, op. cit. supra note 3, at 320–21.

[15] Sullivan v. McFetridge, 183 Misc. 106, 50 N.Y.S. 2d 385 (1944).

[16] Local Union No. 65 v. Nalty, 7 F. 2d 100 (C.C.A. 6th, 1925); Canfield v. Moreschi, 268 App. Div. 64, 48 N.Y.S. 2d 668 (1944).

[17] Canfield v. Moreschi, 268 App. Div. 64, 48 N.Y.S. 2d 668 (1944).

[18] Milam v. Settle, 32 S.E. 2d 269 (W.Va., 1944); De Stefano v. Papa, 37 N.Y.S. 2d 950 (S.Ct., 1942); Clark v. Morgan, 271 Mass. 164, 171 N.E. 278 (1930).

remedies would be unreasonable and constitute a practical denial of justice;[19] where the action of the union was plainly illegal and void;[20] where the available union tribunal lacked the power under its constitution or by-laws to enforce action on the remedy sought by the complaining member;[21] where the union had no adequate tribunal to hear appeals;[22] where the union tribunal provided was biased because of personal interest;[23] where for any reason pursuit of internal union remedies would be futile, illusory, or vain;[24] where provisions for appeal within the union are so unreasonable and harsh as to deny substantial justice;[25] where an expelled member does not request reinstatement but seeks damages;[26] or where the union's power over its members has been so abused as to compel judicial intervention in the public interest.[27]

When the complaining member has exhausted his recourse to available internal remedies, however, the courts are generally hesitant to upset the union's disposition of his grievance. Thus, they frequently declare that they will not substitute their judgment for that of the union tribunal.[28] Nor do they generally concern themselves with the wisdom of a union's constitution or by-laws.[29] Yet they do insist that the proceedings must have been undertaken in good faith[30] and that due process has been accorded, whether or not express guaranties to

[19] Local Union No. 57 v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944).

[20] Reubel v. Lewis, 182 Misc. 30, 47 N.Y.S. 2d 147 (S. Ct., 1944), aff'd 268 App. Div. 764, 50 N.Y.S. 2d 164 (1944), appeal granted 293 N.Y. 756, 56 N.E. 2d 749 (1944).

[21] Bell v. Sullivan, 183 Misc. 543, 49 N.Y.S. 2d 388 (S. Ct., 1944).

[22] People v. Musical Mutual Protective Union, 118 N.Y. 101, 23 N.E. 129 (1889).

[23] Maltz v. Rosenberg, 265 App. Div. 972, 38 N.Y.S. 2d 940 (1942).

[24] Local Union No. 57 v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944); Bell v. Sullivan, 183 Misc. 543, 49 N.Y.S. 2d 388 (S. Ct., 1944); Collins v. International Alliance of Theatrical State Employees and Moving Picture Machine Operators, 119 N.J. Eq. 230, 182 Atl. 37 (1935).

[25] Browne v. Hibbets, 290 N.Y. 459, 49 N.E. 2d 713 (1943). But cf. Snay v. Lovely, 276 Mass. 159, 176 N.E. 791 (1931).

[26] Smith v. International Printing Pressmen & Assistants' Union, 190 S.W. 2d 769 (Tex. Civ. App., 1945).

[27] Collins v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, 119 N.J. Eq. 230, 182 Atl. 37 (1935).

[28] International Longshoremen's Ass'n v. Graham, 175 S.W. 2d 255 (Tex. Civ. App., 1943); Bush v. International Alliance of Theater Stage Employees and Moving Picture Machine Operators, 55 Cal. App. 2d 357, 130 P. 2d 788 (1942); Norfolk & W. Ry. Co. v. Harris, 260 Ky. 132, 84 S.W. 2d 69 (1935); Maclean v. Workers' Union, [1929] 1 Ch. 602.

[29] Norfolk & W. Ry. Co. v. Harris, 260 Ky. 132, 84 S.W. 2d 69 (1935); Maclean v. Workers' Union, [1929] 1 Ch. 602. It has been held that when the duly adopted laws of a voluntary labor organization provide for final settlement of disputes among its members by a regularly constituted standing committee, action by the committee is final and conclusive and will not be disturbed by the courts unless it be unreasonable, arbitrary, capricious or oppressive. Boblitt v. Cleveland, C., C. & St. L. Ry. Co., 73 Ohio App. 339, 56 N.E. 2d 348 (1943).

[30] Campbell v. Johnson, 167 Fed. 102 (C.C.A. 9th, 1909); Maclean v. Workers' Union, [1929] 1 Ch. 602.

that effect are provided in the constitution or by-laws.[31] Indeed, some courts even require that the decisions of union tribunals conform to the indefinite standards of "natural justice."[32] The requirement of due process does not, of course, mean that the procedure employed be the same as that observed in ordinary judicial proceedings; but it is satisfied if the rules are calculated to provide fair play and substantial justice.[33]

As a practical matter of administration, the courts cannot review all the disciplinary actions and disputes which occur within labor organizations. Indeed, most of these conflicts are not of sufficient importance to warrant judicial review. Hence the judicial antipathy to encouraging a flood of such litigation is understandable. Moreover, such endless recourse to litigation would greatly hamper the unions in their most important function as collective bargaining representatives. Nevertheless, since unions are in a position to inflict serious economic injury on individual employees, it is important that the courts be in a position to curtail their arbitrary abuses of power in this respect. This is substantially the way the law has developed, with its general rules of limitations of jurisdiction and its broad categories of exceptions.

The courts thus are in a position to exercise considerable discretion in disposing of these cases on what are considered to be impersonal principles of law.[34] In protecting themselves from too much litigation of this sort, the courts continue to pay lip service to the rule that unions are self-governing autonomies capable of settling their own internal conflicts. At the same time, however, when substantial personal rights of union members are jeopardized by arbitrary action, the courts are becoming increasingly reluctant to let unions "claim the same freedom from legal restraints enjoyed by golf clubs or fraternal associations."[35] In most cases this closer surveillance seems likely to be achieved not so much by a change in the applicable rules of law but rather by a more sympathet-

[31] Dragwa v. Federal Labor Union No. 23070, 136 N.J. Eq. 172, 41 A. 2d 32 (1945); Mixed Local of Hotel and Restaurant Employees Union v. Hotel and Restaurant Employees International Alliance and Bartenders International League of America, 212 Minn. 587, 4 N.W. 2d 771 (1942); Gallagher v. Monagham, 58 N Y.S. 2d 618 (S. Ct., 1945).

[32] Dragwa v. Federal Union No. 23070, 136 N.J. Eq. 172, 41 A. 2d 32 (1945); Maltz v. Rosenberg, 265 App. Div. 972, 38 N.Y.S. 2d 940 (1942). Contra: Maclean v. Workers' Union, [1929] 1 Ch. 602. In the latter case the court criticized the use of "natural justice" as a criterion on the ground that the conception of what constitutes natural justice "differs widely in countries usually described as civilized." Ibid., at 624.

[33] Dragwa v. Federal Labor Union No. 23070, 136 N.J. Eq. 172, 41 A. 2d 32 (1945); Local No. 2 v. Reinlib, 133 N.J. Eq. 572, 33 A. 2d 710 (1943).

[34] Cf. Arnold, The Role of Substantive Law and Procedure in the Legal Process, 45 Harv. L. Rev. 617 (1932).

[35] James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 329, 335 (1944). In this case the California Supreme Court held a closed shop contract to be illegal where the union involved discriminatorily denied admission to Negroes. The traditional view has been that a voluntary association was the sole judge of its membership standards. Mayer v. Journeymen Stonecutters' Ass'n, 47 N.J. Eq. 519, 20 Atl. 492 (1890); Miller v. Ruehl, 166 Misc. 479, 2 N.Y.S. 2d 394 (S. Ct., 1938).

ic inclusion of fact situations within the already established categories of judicial review.

It seems obvious that some public body should be in a position to protect the rights of union members. It seems equally apparent, however, that a labor court or an administrative commission would be better equipped than the ordinary civil courts to make wise decisions in a field of this sort which requires such a broad and intimate knowledge of labor relations. Such a development, of course, would call for a statutory code of standards. And, in this connection, it seems inevitable that the growth of union power must soon require legislation which will grant rights to union members, in much the same way that the National Labor Relations Act gave certain rights to employees.[36] Already it has been held that a certified union must fairly represent those in the bargaining unit.[37] A special labor court or administrative agency would afford the dual advantages of expeditious recourse and reconsideration by experts.[38] Nevertheless, the functions and powers of such a body would have to be clearly defined; for, by depriving a union of its disciplinary powers, it could so weaken the organization that it might become ineffectual as a collective bargaining agent. For instance, if such a commission is allowed to pass on the reasonableness of internal union rules, the free contract nature of private bargaining organizations will virtually have been superseded in the field of trade unionism by state associations. And, if that happens, a basic alteration will have taken place in the traditional pattern of our democratic industrial society.

[36] Sec. 7 stated the "Rights of Employees" as follows: "Employees shall have 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 concerted activities, for the purpose of collective bargaining or other mutual aid or protection." 49 Stat. 452 (1935), 29 U.S.C.A. § 157 (1942). Already two states have enacted provisions to protect the rights of members within unions. Kan. Gen. Stat. (Corrick, Supp. 1945) c. 44, § 809; Col. L. (1943) c. 131, § 20(4)(f), now inoperative due to invalidity of § 20(1), AFL v. Reilly, 113 Col. 90, 155 P. 2d 145 (1944). The Kansas act protects the "right of franchise" which is defined to include the right to assemble peacefully, to speak freely, and to publicize the facts concerning a grievance against the union, while the Colorado provision permits any member with a complaint regarding the right to work, punishment, fees or malfeasance of officers to carry his complaint directly to the commission which administers the law or to the courts.

[37] Steele v. Louisville & Nashville Railroad Co., 323 U.S. 192 (1944); cf. Betts v. Easley, 161 Kan. 558, 169 P. 2d 831 (1946), noted in 14 Univ. Chi. L. Rev. 292 (1947).

[38] The American Civil Liberties Union has recommended the enactment of legislation by the states and by the federal government which will provide "that when members have exhausted the machinery set up within the union for contesting suspensions and expulsions, and for adjusting such complaints, they should have the right to a hearing by a commission set up as a permanent division of the state labor department, or selected for specific hearings from a panel, with adequate representation of labor on such a commission. Appeal from the decision of the commission should be to an appellate court." American Civil Liberties Union, Democracy in Trade Unions 17 (1946).