Cleveland State Law Review

Volume 18 | Issue 2 Article 20

1969

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TENEMENTS WILL CONTINUE to be abodes of many families for years to come. Tenants living in these tenements understandably desire a comfortable habitat for a reasonable rent.[1] This desire, however is not always fulfilled. Because of the usual overabundance of tenants, a landlord need not concern himself with the dissatisfaction of a few.[2] Since tenants may have no other place to go, the landlord need not listen to, let alone consider and remedy, just complaints of tenants.[3]

A *tenant union* is "an organization of tenants formed to bargain collectively with their landlord for an agreement defining the parties' mutual obligations." [4] One may suppose that tenant unions may be beneficial only to poor slum dwellers, but there is no reason why they should be that limited.[5] Tenants of all economic standings may find group action advantageous in solving common problems.[6]

Various articles have been written about the sociological aspects of tenant unions.[7] This paper will consider, however, only the following tenant union problems:

1. the right of a tenant union to provide an attorney to represent its members in the litigation of personal causes against the landlord.

2. the right of a tenant union, acting as an entity, to bargain collectively with the landlord, sign a contract with him, and then enforce the contract.

3. the right of a tenant union to sue the landlord on behalf of its members.

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1 Coulson, The Tenant Union New Institution or Abrasive Failures, 14 Prac. Law 23 (1968).

2 Note, Tenant Unions: Collective Bargaining and the Low-Income Tenant, 77 Yale L. J. 1368 (1968).

3 *Ibid.*

4 Housing for the Poor: Rights and Remedies, Project on Social Welfare Law, Supplement No. 1 N.Y.U. Law School (1967).

5 *Supra* note 1.

6 Aurbach, Legal Rights and Housing Wrongs: Procedures to Resolve Disputes between Indigent Tenants and their Landlords, A Study by the American Arbitration Association under a grant from the Office of Economic Opportunity (1967).

7 Davis and Schwartz, Tenant Unions: An Experiment in Private Law Making, 2 Harv. Civ. Lib.-Civ. Rights L. Rev. 237 (1967); Schoshinski, Remedies of the Indigent Tenant: Proposal for Change, 54 Geo. L. J. 519 (1965); O'Connor, Toward a Theory of Community Union, Studies on the Left, No. 2 at 99 (1964); see also: Lawson v. Hewell, 118 Cal. 613, 50 P. 763 (1897); O'Neil v. See Bee Club, 69 Ohio L. Abs. 442, 118 N.E. 2d 175 (1954); McClees v. Grand International Brotherhood, 26 Ohio L. Abs. 672, 18 N.E. 2d 812 (1938); Liggett v. Koivunen, 227 Minn. 114, 34 N.W. 2d 345 (1948); Gilbert v. Crystal Fountain Lodge, 80 Ga. 284, 4 S.E. 905 (1887).

Because the tenant union concept is new, few cases have been litigated. Therefore, it is difficult to state the law which would answer conclusively the above three questions. A corollary approach must be attempted. Comparison of tenant unions to labor unions may be helpful. However, it must be remembered that labor unions have national laws which may not apply to tenant unions.[8]

Tenant unions are "associations" or "groups" of individuals, and are unincorporated.[9] Thus, a tenant union falls into the realm of unincorporated associations. At common law an unincorporated association had no status distinct from the persons composing it.[10] This, however, has been changed by statutes in many jurisdictions.

Only Ohio statutes will be considered in this article.

Rights of Tenant Unions to Supply Their Members With Attorneys

A person who considers himself wronged by another has a right to seek any legal advice he desires. This is a natural right of the individual. The state does have the right to regulate the legal profession,[11] but such regulations must not infringe upon individual rights. It would appear logical that people may form groups which in turn would hire lawyers to litigate personal matters of the members. Certain states, however, have considered this unethical legal practice.[12] But the United States Supreme Court has not agreed. It held in *NAACP v. Button*[13]

> that the activities of the NAACP, its affiliates and legal staff . . . are modes of expression and association protected by the First and Fourteenth Amendments which Virginia may not prohibit, under its powers to regulate the legal profession, as improper solicitations of legal business . . .

Thus the holding allows a corporation to defray the expenses of, and conduct litigation for, litigants whom it decides to assist, even though the corporation solicits business from only selected litigants.[14]

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[8] Note, Hazards of Enforcing Claims Against Unincorporated Associations in Florida, 17 U. Fla. L. Rev. 211 (1964).

[9] *Supra* note 1.

[10] United Packing House Workers of America v. Boynton, 240 Iowa 212, 35 N.W. 2d 881 (1949). However, a recent Ohio case, Miazga v. International Union of Operating Engineers Local 18, 20 Ohio App. 2d 153, 196 N.E. 2d 324 (1964), gives a clear and direct judicial statement that a non-profit unincorporated association is a legal entity, at least in the case of a fairly large organization. See, Oleck, Non-Profit Associations as Legal Entities, 13 Clev.-Mar. L. Rev. 350 (1964); Oleck, Non-Profit Corporations, Orgns. & Assns., c. 3 (2d ed., 1965).

[11] United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217 (1967). "That the states have broad power to regulate the practice of Law is, of course, beyond question."

[12] Illinois State Bar Association v. United Mine Workers of America, 35 Ill. 2d 112, 219 N.E. 2d 503 (1966), vacated 389 U.S. 217 (1967).

[13] 371 U.S. 415 at 428-429 (1963).

[14] *Ibid.*

In the case *Brotherhood of Railroad Trainmen v. Virginia* [15] the United States Supreme Court allowed an unincorporated association, a labor union, to recommend to its members, lawyers whom the union believes to be honest and competent. The right to do so is guaranteed to the members by the First and Fourteenth Amendments, even though such practice tended to channel all or nearly all members' claims to certain lawyers chosen by the union.[16]

The ruling in *United Mine Workers of America v. Illinois State Bar Association* [17] extended this concept. In this case the Supreme Court held that a labor union has a constitutional right protected by the First and Fourteenth Amendments to employ a lawyer, on a salary or retainer basis to represent its members who wished his services to prosecute . . . claims.[18] To expedite matters, the union "provides injured members with forms entitled 'Report to Attorney on Accidents' and advises them to fill out these forms and send them to the Union's legal department." [19] The members, however, were not compelled to employ union counsel, and were so advised.

These Supreme Court decisions [20] did not apply specifically to all unincorporated associations, or to tenant unions. However, there is some language in the *United Mine Workers of America* case which may allow us to extend its holding to tenant unions. The Court said:

> We hold that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights.
>
> We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." . . . The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.[21]

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[15] 377 U.S. 1 (1964).

[16] *Ibid.*

[17] 389 U.S. 217 (1967).

[18] *Ibid.*

[19] *Id.* at 220.

[20] Excellent reviews of these three cases may be found elsewhere in this issue.

[21] *Supra* note 17 at 221-222.

This philosophy should apply as well to tenant unions. Tenants who band together to achieve common goals concerning their rented quarters should not be treated differently from workers united in labor unions, as far as Constitutional rights of the collective are concerned.[22] Their unions should be permitted to recommend lawyers of their liking to members seeking to prosecute a cause. If the tenant union is financially able, it should not be prohibited from hiring a lawyer on a salary or retainer to represent its members, if the members wish to avail themselves of his services.[23]

From the above reasoning of the court, it would appear that all stated arguments which apply to a labor union in the case above,[24] would also apply to a tenant union. The arguments were not specifically geared to labor unions. The basic premise was the right of all persons to assemble peaceably to exercise their rights of speech, assembly, and petition guaranteed to all, not just to labor union members. Tenants have just as much a right to unite for these purposes as any other group. All arguments promulgated in this case allowing a labor union to hire lawyers to represent its members would be just as apropos if the word "labor" is replaced by the word "tenant". Unless the Court changes its philosophy it would have to make an identical ruling with respect to the rights of tenant unions. Thus it may safely be assumed that tenant unions have the right to hire lawyers for the benefit of their members, and such action would not constitute an illegal practice of law. By analogy, tenant unions may also suggest to their members certain lawyers whom the union considers to be honest and capable.

The Right of the Tenant Union to Deal With the Landlord

The tenants are free to assemble and organize into a union.[25] By so doing they give up some of their personal freedoms to the union so that it may function efficiently.[26] They may make any type of an association ranging from a discussion group to a formal organization. However, to deal with the landlord effectively, the association must be powerful enough to bargain with the landlord, and to culminate such bargaining with a contract.[27]

Some landlords are willing to deal with a tenant union which promises stability. Otherwise his property may be destroyed by malicious

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[22] *Id.* at 228, dissent opinion of Justice Harlan: ". . . the interest of the Union stems from its members' constitutionally protected right to seek redress in the courts . . ."

[23] DeMille v. American Federation of Radio Artists, 31 Cal. 2d 139, 187 P. 2d 769 (1947), cert. denied, 333 U.S. 876 (1948). An unincorporated association may devote its funds to any purpose which promotes its objectives.

[24] *Supra* note 17.

[25] U.S. Const. Amend. I.

[26] Dewey, Freedom and Culture (1939).

[27] Krosney, Beyond Welfare: Poverty in the Supercity: (1966).

tenants.[28] However, not all tenant unions wish to accept the role of watchdog over their members.[29] And landlords appear unwilling to deal with a tenant union which is unwilling to supervise its members.[30]

At common law, an unincorporated association, as such, may not enter into a contract.[31] However, one who deals with the association as an entity capable of transacting business, and in consequence receives value from it, may be estopped from denying its right to contract.[32] The name or title of a voluntary unincorporated association may be regarded as a designation of individuals which it represents.[33] The unincorporated association may protect its name against its unauthorized use by others.[34] However, persons making contracts for unincorporated associations acquire personal liability on the theory that they in fact were principals, and not agents of a principal with no legal status.[35] A non-entity can have no agents.[36] At best, if an unincorporated association defaults on its contract, the purported agent of the association may turn out to be its surety.[37]

In Ohio this common law rule is changed by statute. "Any unincorporated association may contract or sue in behalf of those who are members and, in its own behalf, be sued as an entity under the name by which it is commonly known and called." [38]

The right of a tenant union to contract may be an empty right if the tenant union is weak. To maximize its power the union must organize as many of the tenants as possible to forcefully persuade the landlord to the bargaining table.[39]

The union should have the right to bargain collectively with the landlord. The right to contract presupposes the right to negotiate and bargain. If the right to collective bargaining was held to be a fundamental right of employees which existed prior to, and was independent of,

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[28] *Supra* note 1.

[29] *Supra* note 2.

[30] *Ibid.*

[31] Some Aspects of the Law of Unincorporated Associations, 3 U. of B.C. L. Rev. 137 (1967); Hunt v. Adams, 111 Fla. 325, 149 So. 24 (1933); Lewis v. Tilton, 64 Iowa 220, 19 N.W. 911 (1884).

[32] Petty v. Brunswick & W. Ry. Co., 109 Ga. 666, 35 S. E. 82 (1900).

[33] Lamm v. Stoen, 226 Iowa 622, 284 N.W. 465 (1939).

[34] Faisan v. Adair, 144 Ga. 797, 87 S.E. 1080 (1916); Purcell v. Summers, 145 F. 2d 979 (4th Cir. 1944).

[35] I. W. Phillips & Co. v. Hall, 99 Fla. 1206, 128 So. 635 (1930).

[36] Ross v. Gerung, 69 So. 2d 650 (Fla. 1954).

[37] *Supra* note 36—five members of Board of Trustees of an unincorporated church association were held liable when the association defaulted on a note.

[38] Ohio Rev. Code § 1745.01.

[39] *Supra* note 2.

the National Labor Relations Act,[40] then by analogy there is no reason why it should not also be a fundamental right of tenants.

Congress stated that our national goal should be "a decent home and a suitable living environment for every American family, thus contributing to . . . the advancement of the growth, wealth, and security of the Nation." [41] But ". . . poverty continues to be the lot of a substantial number of our people." [42] This "paradox of poverty in the midst of plenty" must be eliminated "by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity."[43] The intent of Congress is unambiguous.

Tenant unions are one of the means by which this clear Congressional intent may be implemented. Common law courts cannot be hostile to tenant unions in their drive to improve the general living conditions of the tenants. Such considerations cannot be overshadowed by undue concern for the possible harm to the landlord—even as labor unions were not outlawed per se in the last century in similar struggles with employers.[44] The tenant union's demands upon a landlord for recognition or for collective bargaining rights violate no law. It is not contrary to the public policy of any state.[45] It is, however, emphatically within the spirit of the national policy enunciated by Congress in the Economic Opportunity Act.[46]

Hence, in the absence of statutes compelling the landlord to negotiate with a duly constituted and representative tenant union, the tenants should not be prevented from using self-help. Self-help measures may be in the form of rent withholding until such time as the landlord agrees to recognize the union and negotiate with it.[47] Such actions may be successfully challenged by the landlord.[48] But the judicial climate may change, and courts may be persuaded to reexamine the equities—being more favorable to tenant unions.

A landlord who has to be coaxed in some fashion into signing a contract with the union may later repudiate it, claiming that it was signed under duress, or that it lacks consideration. Both may be sound defenses for the landlord's breach of contract, so the union must be care-

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[40] Amalgamated Utility Workers v. Edison Co., 309 U.S. 261 (1940). The N.L.R.A. cannot properly be said to have 'created' the right of self-organization or of collective bargaining since this right is fundamental.

[41] 42 U.S.C. 1441.

[42] 42 U.S.C. 2701.

[43] *Ibid.*

[44] Commonwealth v. Hunt, 4 Met 111 (Mass. 1842).

[45] *Supra* note 2.

[46] 42 U.S.C. 2701-2981.

[47] *Supra* note 1.

[48] Casner, 1 American Law of Property (1962).

ful to deny them to him. Every negotiation presupposes compromise. Seldom does one side achieve all it would want. Such compulsion is not ipso facto duress. A lawful labor strike, although a forceful influence upon the employer, is not considered legal duress.[49] Such should also be the case with lawful tenant union action.

Typical contracts between landlords and tenant unions include: A union commitment not to strike, and to encourage tenants to properly maintain their quarters; a landlord commitment to make certain initial repairs, subsequent minimal maintenance standards and services, and to maintain some maximum rent scale for the life of the contract.[50] Such promises should constitute mutual sufficient consideration for a viable contract. The promise not to strike was held sufficient consideration in labor contracts.[51] The landlord's promise to repair constitutes sufficient consideration flowing to the tenant union.[52] Thus if the tenant union is careful in the drafting of its contract with the landlord, the problem of insufficient consideration on either side of the contract can be eliminated.

It is recommended that the contract include some form of binding arbitration, and some agreement concerning rent withholding in the event of landlord's breach.[53] This gives power to the agreement. If, however, such an arbitration agreement is not in the contract, and the contract is breached, the union may sue the landlord for such breach—as provided for by Ohio Statute.[54]

The Right of the Tenant Union to Sue on Behalf of Members

The tenant union does not have a sweeping right to maintain every conceivable suit on behalf of its members. This may be deduced from various holdings in labor law. The *Rock Drilling, Blasting etc.*[55] case held that at common law, an unincorporated association had no cause of action in tort to recover damages sustained by members. It further held that the provision of the Labor Management Relations Act which allows labor unions to sue "as an entity in behalf of the employees whom it represents" is not a blanket provision. It does not authorize a union to sue to recover damages for employers' private torts against individual employees.[56] The union has no standing to sue to collect wages due to employees, even where the union asks for specific enforcement of the collective bar-

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[49] Lewis v. Quality Coal Corporation, 270 F. 2d 140 (7th Cir. 1959), cert. denied, 361 U.S. 929 (1960).

[50] *Supra* note 2.

[51] Harper v. Local Union No. 520 I. B. of E. W., 48 S.W. 2d 1033 (Tex. 1932).

[52] *Supra* note 2—This article has a good analysis of contracts between landlords and tenant unions, as well as recommendations of how to avoid some common pitfalls.

[53] *Ibid.*

[54] *Supra* note 39.

[55] Rock Drilling, Blasting, etc. v. Mason and Hanger Co., 217 F.2d 687 (2d Cir. 1954).

[56] *Ibid.*

gaining agreement.[57] The labor union may not sue to enjoin violations of a wage scale agreed upon.[58] In general, the labor union may not sue to enforce rights personal to employees, even when the employees may sue themselves.[59]

Generalizing this to tenant unions, it would appear that tenant unions would have no standing to sue to protect rights personal to their members. The union would have to search for some direct injury to itself, coincidental with the injury to its member, before it could presume a standing to sue.

It may be difficult to say when an injury is only personal to the tenant, and when the union as a whole is injured. If a tenant suffers a personal injury, most likely the cause of action belongs to the injured tenant, and not to the union. If the landlord breaches some part of his contract with the tenant union which injures the tenants in general, then the tenant union as a entity would probably have standing to sue.[60] But what if, for example, the landlord charges a new tenant a higher rent than one agreed upon in a contract with the union? According to the *Communications Workers of America* case,[61] it would appear that the union may not have standing to sue. At least that case would be used by the defense to establish a precedent. Arguments would have to be considered in an attempt to dissuade the court from accepting such a "precedent."

It may be argued that if the landlord raises the rent of a tenant, even a new one, contrary to the contract between him and the tenant union, all the tenants may be in jeopardy of having their rent increased. There may be the added danger of the landlord disregarding other contract provisions, if this violation is not challenged. Hence any breach of contract, even if the breach injures only one tenant directly, is an injury to the whole union of tenants. The union, therefore, should be given the opportunity to defend its contract directly against any breach.

What if there is no contract between the tenant union and the landlord? It would appear that in such a case about all the union could do would be to supply its members with the legal counsel or to file an *amicus curiae* brief.[62] There would be no contract to rely on to argue for

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[57] Communications Workers v. Ohio Bell Telephone Co., 160 F. Supp. 822 (1958), cert. denied, 361 U.S. 814 (1959).

[58] Wilson v. Airlane Coal Co., 215 Iowa 855, 246 N.W. 753 (1933).

[59] Hotel & Restaurant Employees etc. v. Boca Raton Club, 73 So. 2d 867 (Fla. 1954).

[60] State Bar of Okla. v. Retail Credit Ass'n, 170 Okla. 246, 37 P. 2d 954 (1934). The case held that a professional society, protecting the personal interests of its members, could bring suit to stop unauthorized practice of the profession by unlicensed persons.

[61] *Supra* note 58.

[62] See, Oleck, Non-Profit Corporations, Organizations & Associations, Sec. 20; c. 32 (2d ed., 1965).

a standing to sue if some member was injured. Probably, under such circumstances, the union could only have standing to sue if the union suffered a direct injury. If, however, the injury were to the tenants in general, the union could acquire standing to sue by the procedural device of class action.[63]

Thus, if the union or the tenants in general suffer no injury, it would be almost impossible for the union to maintain an action for the protection of a tenant possessing a personal cause of action.

Why Should a Tenant Union Have a Right to Sue on Behalf of Its Members—Some Comments and Suggestions

The plight of some of the inner city dwellers has been in public view recently. Today, when a majority of American citizens enjoy a standard of living second to none, there are people, mostly living in dilapidated sections of our cities, whose plight is deplorable.[64] It is mainly these people who need the help that tenant unions may provide. Landlords generally disregard the tenants' requests, because they do not fear any reprisals.[65] Poor people usually don't have a big legal stick to swing when they are dealing as individuals.

Tenant unions may provide the strength that tenants need to achieve meaningful results from their negotiations with the landlord.[66] But such a tenant union cannot only be a "paper tiger." Statutes will have to be enacted which would compel landlords to bargain collectively with properly constituted and representative tenant unions.

The tenant union also needs the power to acquire standing to sue in some cases which now may only be personal to the injured party. It may be that the tenant who is injured may not want to sue the landlord for fear of reprisals against him.[67] For example, there may be a code violation in his apartment, but for fear of expulsion, the tenant may remain silent. If the tenant union had an undisputed right to assume such a case as its own cause of action, and if the union officials inspected the premise periodically, it would be able to press the landlord for a remedy, without any fear of reprisal against the tenant in question. This is just one example of the many types of actions which may be better prosecuted by the tenant union, rather than by the individual tenants.

Tenant unions should be given the standing to sue in cases involving any type of code violation in the dwelling; any condition in the dwelling

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[63] *Ibid.*

[64] Beyer, Housing and Society (1965).

[65] Schoskinski, *supra* note 7.

[66] *Supra* note 1.

[67] *Supra* note 6.

which may endanger people living therein; any questions of rent or eviction of tenants. By giving tenant unions these rights, tenants would be given much more power than they now possess to deal with their problems. More tenants would be willing to form and join tenant unions, if they saw some muscle added to the tenant union concept.

Conclusion

Tenant unions apparently have a right to employ lawyers for the benefit of their members. They also may form a list of acceptable lawyers, and promulgate such a list among their members. These rights have been affirmed by recent Supreme Court decisions, notably the *United Mine Workers of America* case.[68]

Tenant unions have a right to make and enforce contracts with landlords in the name of the tenant union. This right is granted in Ohio to all unincorporated associations by statute.[69] Tenant unions, by statute, have a right to sue for direct injuries suffered by the union as a whole. Rarely, if ever, does the tenant union have a right to sue in cases of injuries personal to some of the members.

The law of tenant unions is new. Many gaps exist. State and Federal legislation is necessary in most cases to grant tenant unions all powers necessary to deal effectively with the problems of tenants. With these new powers the tenant unions may do as much for the tenants as labor unions were able to do for workers.

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[68] *Supra* note 17.

[69] *Supra* note 39.