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Volume 12  
Issue 3 *Contributory Negligence Symposium*

Article

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1963

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#### Recommended Citation

Joseph T. Svete, Disposition of Local's Funds upon Disaffiliation, 12 Clev.-Marshall L. Rev. 539 (1963)

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## *Disposition of Local's Funds Upon Disaffiliation*

*Joseph T. Svete\**

**D**ISPOSITION OF FUNDS upon a local's disaffiliation from the international union has been one of the most difficult problems for the courts to overcome in the field of Labor Law. At first, the courts treated labor unions as unincorporated organizations and, therefore, applied to unions the same law as was applicable to unincorporated organizations; there even was an unsuccessful attempt in 1943 to make their incorporation mandatory.<sup>1</sup> But in 1949, after the expulsion of the United Electrical Radio & Machine Workers of America (hereinafter referred to as UE) by the CIO for Communist domination, the courts had to develop a new approach to avoid awarding the locals' funds to the Communist dominated UE. The courts began treating the international's constitution as a contract between the local and the international<sup>2</sup> which, thus enabling the courts to apply orthodox contract law of "implied condition" or "frustration of purpose" to defeat the international's claim to the local's property.<sup>3</sup> The application of common law doctrines<sup>4</sup> to a mobile field requiring flexible approaches posed many problems.<sup>5</sup>

Seemingly, a new theory had to be developed every time a new situation arose since the courts were reluctant to consistently apply any one theory because of its undesirable results. This resulted in the development of six distinct doctrines: "implied condition" or "frustration of purpose," "local autonomy," "trust fund," "unclean hands," "certification" and "breach of fiduciary obligation."

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<sup>1</sup> *Watson v. Jones*, 80 U. S. 679 (1871) (unincorporated assn.); and as to the mandatory attempt, see, *Oleck, Non-Profit Corporations & Associations*, 313 (1956).

<sup>2</sup> *Local 1140, United Electrical, Radio and Machine Workers of America v. United Electrical, Radio and Machine Workers of America*, 232 Minn. 217, 45 N. W. 2d 408 (1950).

<sup>3</sup> *King v. ABC Worker's Union*, 41 LRRM 2617 (Cal. Super. Ct. 1958); *Clark v. Fitzgerald*, 197 Misc. 355, 93 N. Y. Supp. 2d 768 (Sup. Ct. 1949); *Alvino v. Carracio*, 400 Pa. 477, 162 A. 2d 358 (1960); *Duris v. Iozzi*, 6 N. J. Super. 530, 70 A. 2d 187 (Ch. 1949).

<sup>4</sup> At first, courts attempted to apply the same rules of law as those applicable to unincorporated organizations. See *Henry v. Cox*, 25 Ohio App. 487, 159 N. E. 101 (1927); but see, *supra*, n. 1.

<sup>5</sup> See "Development of Various Doctrines" *infra*.

### Development of the Various Doctrines

In the early days of unions, the courts were inclined to use laws governing unincorporated associations.<sup>6</sup> Courts, therefore, were inclined to give the constitution and laws of the parent organization full meaning which usually resulted in a decision adverse to the seceding local or group. An early case involved a schism within a church; one group remaining loyal to the existing national church, the seceding group desiring affiliation with a new national church organization.<sup>7</sup> The court in holding against the seceding group said ". . . Under any of the decisions which we have examined, the appellants (seceding group) in their present position, have no right to the property, or to the use of it, which is the subject of this suit."<sup>8</sup> In another case,<sup>9</sup> in which all the members at the meeting voted to disaffiliate from the Knights of the Klu Klux Klan, Inc., the court held the property should remain with the local for the members who were not present at the meeting and did not wish to disaffiliate, on the theory that this being a voluntary organization each member was accepted as an individual and could withdraw as an individual; and members could even withdraw collectively; but they could not collectively "disband" from the national organization and take the property with them.

Generally there was a tendency on the part of the courts to leave the funds with the loyal minority or the international where the required number of members remained to carry on with the organization and to carry out its purposes.<sup>10</sup>

There were several early decisions<sup>11</sup> which treated the local's charter as a contract between the local and the international organization. In a dispute between the local and international when the local called a strike contrary to the laws of the Grand Lodge and was thereafter expelled from the Grand Lodge, the court upheld the constitution which provided that the local must surrender its assets when its charter was either reclaimed or vol-

<sup>6</sup> Grand Lodge I. A. M. v. Reba, 97 Conn. 235, 116 A. 235 (1922).

<sup>7</sup> Watson v. Jones, *supra* note 1.

<sup>8</sup> *Id.* at 734.

<sup>9</sup> Henry v. Cox, *supra* note 4.

<sup>10</sup> Brotherhood of Railroad Trainmen v. Williams, 211 Ky. 638, 277 S. W. 500 (1925); Alexion v. Hollingsworth, 289 N. Y. 91, 43 N. E. 2d 825 (1942); Henry v. Cox, *supra* note 4.

<sup>11</sup> See Brotherhood of Railroad Trainmen v. Williams; Alexion v. Hollingsworth, *supra* note 10.

untarily surrendered.<sup>12</sup> In accord with this decision another court held, "The charter granted by the international became a contract which determined the rights and duties of the constituent society and its members."<sup>13</sup> Use of the contract theory enabled the courts to apply common law rules in dealing with disaffiliating unions.

### Frustration Doctrine

In 1949, after the expulsion of UE from the CIO for Communist domination within its ranks, the courts devised the "frustration of purpose" or "implied condition"<sup>14</sup> doctrine. The "frustration doctrine" was instituted by the courts to avoid awarding the locals' property to the international and thereby refraining from supporting the Communist dominated UE. The constitution of the UE contained the provisions found in most international constitutions, preserving the status of a local union so long as seven or more members desired its continuation and further providing, that upon dissolution of a local union, its property and funds become those of the international.<sup>15</sup> UE attempted to retain the locals' funds by applying the constitutional provisions.

When applying the "frustration doctrine," the courts reasoned that the contract between the local and international had an implied condition that the international remain affiliated with the AFL or CIO.<sup>16</sup> Upon being expelled from the AFL or CIO, the international "frustrated" the purpose of the contract. In a series of cases involving actions brought by UE to recover the funds from the disaffiliating locals, the courts were not of unanimous opinion as to whom the funds should be awarded. The courts in upholding the "frustration doctrine" held that the affiliation with the CIO was an inducement for the local to affiliate with UE and upon UE being expelled the essence of the contract, affiliation with the CIO, was frustrated, thus releasing the

<sup>12</sup> *Brotherhood of Railroad Trainmen v. Williams*, *supra* note 10.

<sup>13</sup> *Alexion v. Hollingsworth*, *supra* note 10.

<sup>14</sup> Most courts treat the two phrases synonymously, although some treat them as though they were separate doctrines. One reason for this inconsistency is that some jurisdictions do not recognize the "frustration of purpose" doctrine in contract law.

<sup>15</sup> See Note, 63 Harv. L. Rev. 1413, 1416 (1950), which discloses similarity of union constitution.

<sup>16</sup> See *Clark v. Fitzgerald*, *supra* note 3; *Local 1140, United Electrical, Radio & Machine Workers of America v. United Electrical, Radio & Machine Workers of America*, *supra* note 2; *Alvino v. Carracio*, *supra* note 3; *King v. ABC Worker's Union*, *supra* note 3; *Duris v. Iozzi*, *supra* note 3.

local from any obligation to UE.<sup>17</sup> A Minnesota Supreme Court ruling on similar facts, held that the constitution between locals and UE was a contract and the termination of a material condition, implied in the contract, that UE remain affiliated with the CIO, relieved the local from any obligation to remain affiliated if a majority of members voted to disaffiliate and retain the assets.<sup>18</sup>

Several courts in holding for UE reasoned that the court was not authorized in resolving the dispute to apply one rule of law for Communists, and another for non-Communists.<sup>19</sup> Some courts gave strict construction to the international's constitution which provided that a local which "disbands" forfeits its funds to the international.<sup>20</sup> It may be noted that in each of the "implied condition" or "frustration of purpose" cases, widespread corruption or subversion were the grounds for expulsion of the international from the federation.

### Local Autonomy

The "local autonomy" doctrine is the offspring of the "New Jersey rule," which was the first rule to differentiate between independent and dependent local unions.<sup>21</sup> One court, in determining whether a local was an "autonomous" body, used the formation date of the local as one of the elements. If it existed prior to the formation of the international, the local was considered an independent body which could disaffiliate by a vote of majority and retain its assets.<sup>22</sup> In *International Union of United Brewery Workers, CIO v. Beacherer*,<sup>23</sup> the court emphasized,

<sup>17</sup> See cases cited, *supra* note 16.

<sup>18</sup> Local 1140, United Electrical, Radio & Machine Workers of America v. United Electrical, Radio & Machine Workers of America, *supra* note 2.

<sup>19</sup> Fitzgerald v. Abramson, 89 F. Supp. 504 (S. D. N. Y. 1950); United Pub. Workers v. Fennimore, 6 N. J. Super. 589, 70 A. 2d 901 (1950); Walter Kiddie & Co. v. United Electrical, Radio & Machine Workers of America, 7 N. J. 528, 82 A. 2d 184 (1951).

<sup>20</sup> E.g., Clark v. Fitzgerald, *supra* note 3; Duris v. Iozzi and Alvino v. Carracio, *supra* note 3; Olson v. Carbonara, 21 Ill. App. 2d 69, 157 N. E. 2d 273 (1959).

<sup>21</sup> See State Council, J. O. U. A. M. v. Enterprise Council No. 6, 75 N. J. Eq. 245, 72 A. 19 (1909); Vilella v. McGrath, 136 Conn. 645, 74 A. 2d 187 (1950); Huntsman v. McGovern, 56 Ohio L. Abs. 170, 91 N. E. 2d 717 (Ohio C. P. 1949).

<sup>22</sup> Vilella v. McGrath, *supra* note 21; Local 1140, United Electrical, Radio & Machine Workers of America v. United Electrical Radio & Machine Workers of America, *supra* note 2; *Contra*, House v. Schwartz, 18 Misc. 2d 21, 188 N. Y. Supp. 2d 308 (Sup. Ct. 1959).

<sup>23</sup> 142 N. J. Eq. 561, 61 A. 2d 16, 19 (1948) *aff'd*, 4 N. J. Super. 456, 67 A. 2d 900 (1949).

. . . that if the facts of the case show the local not to be a mere dues collecting agency for the international, but a self-sufficient organization, it retains title to its property as an autonomous unit.

One court has gone so far as to say that a local affiliating with a national union composed of local unions does not by such affiliation lose its character as a separate and distinct entity and it depends for its existence solely on its own membership which may withdraw at will.<sup>24</sup>

The "local autonomy" doctrine owes its existence to certain common grounds possessed by the cases decided by using this approach. Usually the locals were either formed prior to the international and aided in the establishment of the international, or were formed simultaneously, each entity thereby supporting the other's existence. Each local, therefore, was a member in a federation which it could support by remaining loyal, or withdraw at will if its interests were not adequately served. But if the international aided in the organizing and establishing of the local, the local owed its existence to the international and thereby could not be viewed as an autonomous body.

In *Crawford v. Newman*,<sup>25</sup> the court used "local autonomy" as the basis for the decision, but it did not use the respective formation dates of local and international as an element to determine independence. Instead, it defined what it considered an independent local:

The locals are autonomous and self sufficient, have their own by-laws, hold their own meetings, elect their own officers, collect dues from members, conduct their own business affairs, and pay a per capita tax to the international. . . It is unconscionable to hold that because a written contract does not expressly so provide, that a contracting party may not, without breaching the contract, disaffiliate from a corrupt and dishonest association.

The "local autonomy" doctrine has not found wide acceptance among the courts because of its limited application. It could not be applied justly where the international first established the local and subsequently the international was expelled for corruption. Under the "local autonomy" doctrine, the local formed by the international and the local which did not have an

<sup>24</sup> *Huntsman v. McGovern*, *supra* note 21.

<sup>25</sup> 13 Misc. 2d 198, 175 N. Y. Supp. 2d 903, 905, 907 (1958); *aff'd*, 8 A. D. 2d 289, 188 N. Y. Supp. 2d 943 (Sup. Ct. 1959).

independent existence in the opinion of the court, would forfeit its assets to the international upon disaffiliation, regardless of the reasons for such action.

### Trust Fund Doctrine

A few courts found it necessary to adopt the "trust fund doctrine"<sup>26</sup> to overcome the conventional contract theory which would result in awarding the local's funds to the international. One court in implementing this theory awarded the funds to the local on the ground that property accumulated by the local from individual membership fees and other contributions is held by the officers in trust for the individual members. Upon disaffiliation the property becomes vested in the beneficiaries, the individual members of the local.<sup>27</sup>

### Unclean Hands Doctrine

Another equitable utilized by some courts was the "unclean hands" doctrine.<sup>28</sup> This doctrine was applied where there was a clear indication of a breach of fiduciary duty on the part of the international union.<sup>29</sup> In *Crocker v. Weil*,<sup>30</sup> a decision involving the Bakery and Confectionery Workers International Union of America expulsion by the AFL-CIO for corruption, the court announced:

. . . That (a) material breach of that fiduciary duty can nullify the otherwise enforceable obligations of the intra-union compact.

This approach has merit since it gives the courts sufficient flexibility in cases of corruption or breach of fiduciary duty. But the "unclean hands" doctrine would not ordinarily find application in cases in which the local desired to disaffiliate for reasons other than the international's expulsion for corruption.

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<sup>26</sup> *United Auto Workers v. Wells Mfg. Co.*, 28 L. R. R. M. 2656 (Wis. Cir. Ct. 1951); *International Union of United Brewery Workers CIO v. Becherer*, *supra* note 23.

<sup>27</sup> See cases cited, *supra* note 26. See note, 45 Va. L. Rev. 244, 252 (1959).

<sup>28</sup> See *Bozeman v. Fitzmaurice*, 62 Ohio L. Abs. 526, 107 N. E. 2d 627 (Ohio Ct. App. 1951); *Crocker v. Weil*, 227 Ore. 260, 361 P. 2d 1014 (1961).

<sup>29</sup> See cases cited, *supra*, note 28.

<sup>30</sup> *Supra* note 28.

### Certification Doctrine

One Ohio court adopted the NLRB certification election as a determination of who is entitled to the local's funds.<sup>31</sup> The dispute arose between IUE and UE, both claiming the property of an old UE local. The court asked the two rival unions to vote for three impartial trustees to hold the local's assets until the NLRB run-off election. After one of the opposing unions became the recognized bargaining representative, the funds would then be delivered to such representative.<sup>32</sup>

Use of NLRB run-off elections has the advantage of allowing the membership to decide which union to affiliate with and thus to whom the funds should pass. The application of this method is limited, since in most cases the local's reasons for disaffiliating from an international are either a desire to affiliate with a new international, secede from the present corrupt international, or to become an independent local. In any case, the international from which the local is seceding has its destiny determined prior to the run-off election. That is, it is difficult to conceive a situation in which a local would vote to disaffiliate and at a subsequent run-off election vote to re-affiliate.

### Breach of Fiduciary Obligation

The breach of fiduciary obligation theory had its inception in *Bradley v. O'Hare*.<sup>33</sup> That case concerned a dispute which arose after the International Longshoremen's Union was expelled by the AFL following a finding that the officers diverted union funds for individual use and became laden with underworld figures. The local against which this action was brought seceded from the Longshoremen Union and retained its assets. The court in finding that the assets were rightfully retained by the local reasoned:

The entire union structure in its several layers is viewed as a fiduciary one. Each layer may retain assets held by it in accordance with internal constitutional provisions, provided such retention does not violate but rather implements the fiduciary obligation and trade-union function. On the same reasoning, the beneficial use of the assets is in the workers members, not in the organizational entity, which exists solely

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<sup>31</sup> *Huntsman v. McGovern*, *supra* note 21.

<sup>32</sup> *Huntsman v. McGovern*, *supra* note 21.

<sup>33</sup> 11 App. Div. 2d 15, 202 N. Y. Supp. 2d 141 (Sup. Ct. 1960).



for their benefit. A general breach of fiduciary obligations, such as widespread corruption or subversion, forfeits the right of the guilty entity to perform the fiduciary role. In that situation, the assets do not revert to the wrongdoers, but to the beneficial owners.

In ruling out "implied condition" as an approach to this type of inter-union dispute, the court pointed out that if the AFL had revoked the Longshoremen's charter, for reasons other than corruption, such as the feeling by AFL that they would benefit by expelling the Longshoremen's Union, then under these circumstances, the local would not be permitted to abandon the Longshoremen's Union and keep the funds.

In the ordinary case, affiliation with a federation is not the true implied condition. The true implied condition is the absence of such corruption, subversion or equally grievous fault in the international as would result in the loss of its trade-union charter.

A careful reading of the case suggests that the court in formulating the "breach of fiduciary obligation" approach combined the "local autonomy," "unclean hands" and "trust fund" doctrines and rejected the "implied condition" or "frustration of purpose" doctrine. The court described the union structure as composed of "several layers," but the beneficial use of the assets is in the worker member and the assets revert to the beneficial owners upon a finding of widespread corruption which forfeits the right of the guilty entity to perform the fiduciary role. By combining the three doctrines, the court was able to arrive at a flexible and uniform approach to this difficult problem. Using this approach, the union constitution may still be treated as a contract, except when the international has breached its fiduciary duty. It then becomes the duty of the court to award the funds to the beneficial owners.

### The BCW Cases

Another test was imposed upon the courts in 1957, when the series of Bakery and Confectionery Workers International Union of America cases (BCW) arose as a result of AFL-CIO expulsion of BCW on grounds that certain officers of the international were unethical and corrupt, as developed by the McClellan commit-

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<sup>34</sup> Hearing before the Select Committee on Improper Activities in the Labor Law or Management Field, 85th Cong., 1st Sess., Pt. 8, 2581 (1957).

tee.<sup>34</sup> At this time the courts had available five separate grounds with which to defeat the constitutional provisions of the international constitution relative to the funds of the affiliated local unions:<sup>35</sup>

1. Implied condition of affiliation with a federation of unions (frustration doctrine).
2. Local autonomy theory.
3. Unclean hands doctrine.
4. Trust fund doctrine.
5. Certification doctrine.

The BCW cases, instead of selecting and fortifying one theory in order to establish a consistent approach to similar factual situations, chose to widen the gap by applying three of the first five theories in the attempt to award uniform relief.<sup>36</sup>

One of the first BCW decisions found the basis for relief in the "local autonomy" theory.<sup>37</sup> In a case decided one year later on similar facts, the court held in applying the frustration doctrine that even though the secession was in violation of the local's constitution, this violation is excusable since the purpose became frustrated as implied from the constitution.<sup>38</sup> In *Crocker v. Weil*,<sup>39</sup> the court analyzed the various theories before applying the clean hands doctrine.<sup>40</sup>

The courts in the UE and BCW cases went to great length to conceive and devise new grounds to defeat the constitutional provisions of the internationals' constitutions regarding the funds of affiliated local unions. All this was inconsequential in the decision of *Robert v. Ferguson*,<sup>41</sup> which strictly construed the con-

<sup>35</sup> At this time the "breach of fiduciary obligation" theory had not been evolved.

<sup>36</sup> *Crawford v. Newman*, 13 Misc. 2d 198, 175 N. Y. Supp. 2d 903 (1958), Aff'd 8 App. Div. 2d 780, 188 N. Y. Supp. 2d 943 (Sup. Ct. 1st Dept. 1959); *Olson v. Carbonara*, *supra* note 20; *Alvino v. Carracio*, *supra* note 3; *Olson v. Miller*, 41 LRRM 2579 (D. D. C. 1958); *King v. ABC Workers Union*, *supra* note 3.

<sup>37</sup> *Crawford v. Newman*, *supra* note 37.

<sup>38</sup> *Olson v. Carbonara*, *supra* note 20; see *Alvino v. Carracio*, *supra* note 3.

<sup>39</sup> *Supra* note 28.

<sup>40</sup> The court analyzed what it conceived to be the four grounds applied by the courts to defeat the constitutional provisions of internationals' constitutions regarding the funds of affiliated local unions:

1. Implied condition of affiliation with federation of unions.
2. Frustration of contract.
3. Breach of fiduciary obligation.
4. Unclean hands.

<sup>41</sup> 131 So. 2d 323 (La. App. 1961).

stitutional provisions of the international and refused to apply any of the grounds used by the courts to defeat the constitutional provisions of the international. The factual situation in *Roberts v. Ferguson* can be distinguished from the other BCW cases.<sup>42</sup> Since a majority of the members desired continued affiliation with BCW, the court in holding for BCW argued that unless there are provisions in the constitution requiring the continued affiliation with AFL-CIO, or clear and convincing proof that original affiliation of the local with the national union, or its continuance, was in reliance on the national union's continued membership in the federation, expulsion will not work to defeat the international's right to the local's funds. We may question why the court did not apply the clean hands or fiduciary obligation doctrines which would not be limited by the facts in this case. The *Roberts* decision is the last reported case on this subject and also is the first case in the BCW dispute to award the funds to the corrupt international. Does it mean that a trend has been instituted to again uphold the international's constitution, or was the decision based on the unique factual situation?

### Conclusion

The need for a uniform approach cannot be overemphasized. The various theories evolved before the *Bradley v. O'Hare*<sup>43</sup> decision were not adequate for the numerous situations faced by the courts, thus opening the door for a theory which could encompass the different factual circumstances. The *Bradley* case in deviating from the orthodox approach evolved a theory with sufficient flexibility to fulfill this need. The "breach of fiduciary obligation" doctrine, devised in the *Bradley* decision, has a theme similar to the *Landrum-Griffith Act*.<sup>44</sup> In the Act, Congress placed a great deal of emphasis on the fiduciary responsibility of officers of labor organizations, demonstrating that unions dominated by officers who have breached their fiduciary duty by corruption or infidelity should not under any circumstances be allowed to receive the property of a local which is attempting to purge itself of this atmosphere.

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<sup>42</sup> E.g., See *Crocker v. Weil*, *supra* note 28; *Olson v. Carbonara*, *supra* note 20; *Crawford v. Newman*, *supra* note 37.

<sup>43</sup> *Supra* note 33.

<sup>44</sup> Labor-Management Reporting and Disclosure Act of 1959, Title V, sec. 501(a).