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# Kickback Act Held Not to Apply to Labor Union Officials

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**KICKBACK ACT HELD NOT TO APPLY TO LABOR UNION OFFICIALS.**—*United States v. Carbone et al.*, 66 S. Ct. 734, 61 F. Supp. 882 (1946).—This case raises an important question as to the meaning and scope of Sec. 1 of the Act of June 13, 1934, commonly known as the Kickback Act, making it unlawful to prevent any person employed in government construction and repair from receiving the full compensation to which he is entitled.

This case was originally adjudicated in the First District Court of the United States and the following facts were found: the defendants, four labor union officials, were indicted for conspiring to violate Sec. 1 of the Kickback Act. It was found that two contractors were engaged in the construction of various public buildings for the United States at Fort Devens, Mass. on a cost plus fixed fee contract. The defendants, by virtue of their positions as local labor union officials, made an agreement with the contractors by virtue of which the contractors agreed to hire as laborers on the job only individuals who were approved by the defendants and to discharge any of those employed at the request of the defendants. The defendants approved for hire only those individuals who were members of the union or who agreed to join the union. These laborers, once hired, understood that discharge would result if either their labor union initiation fee was not paid, or, for members, if their dues became delinquent. These fees were also understood to be paid out of the salary that each laborer received for his work.

Non-members met the requirement of joining the union by paying their initiation fee with five dollar weekly installments. By presenting the weekly receipts, signifying his full payment of the initiation fee, the laborer was recorded by the union officials as a member. However, some laborers did not remain on the job long enough to pay their full initiation fee by this installment plan, consequently they were never recorded as members. The amount which they did pay toward their initiation fee was never accounted for by the defendants. As a result of this the United States brought this criminal action against the defendants on the grounds that they induced the laborers to give up part of the compensation to which they were entitled and pilfered transient laborers' fragmentary initiation payments.

The defendants made a motion to dismiss on the grounds that the indictment did not state an offense cognizable in law. They claimed that the Kickback Act was not violated by this method of collection of initiation fees from prospective union members. In this view the District Court agreed, holding the view that the facts as alleged in the indictment fell outside the scope of the Kickback Act, the history or purpose of which did not include these defendants in its scope.

This holding was affirmed by the Supreme Court of the United States by a vote of five to three and the opinion of the majority as

delivered by Mr. Justice Murphy emphasized the fact that the language of the Act must be read in the light of the evils giving rise to the statute and the aims its proponents sought to achieve. The Kickback Act which reads "whoever shall induce any person employed in the construction . . . of any . . . work, financed in whole or in part by loans or grants from the United States, . . . to give up any part of the compensation to which he is entitled under this contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined . . . or imprisoned . . . or both" grew out of an investigation which revealed that wages of American labor were being filched by contractors through a system whereby laborers were paid the prevailing rate of wages but were forced, upon threat of discharge, to pay to the contractors a certain percentage of the pay they lawfully earned. Thus on a government project, where the United States set the wages of the laborer, the kickback would render the contractor an unlawful profit at the expense of the laborer and taxpayer. The purpose of the Act, then, was to insure that workers on federal projects would receive the full amount of the stipulated wage. Viewed in this light, the Court pointed out, it is apparent that the statute was not instituted to affect every person that fell in the sweep of its literal construction. And since the closed shop is a lawful union practice, this method of obtaining such a shop should not subject one to criminal prosecution.

It has been shown that the collection of initiation fees under the threat of discharge is ordinarily the method of attaining a lawful closed shop. However the indictment was directed at those cases where the fee was but partly collected and the funds that were received remained unaccounted for. Embezzlement and failure to obey union rules regarding the mishandling of initiation fees are vastly different from an unlawful demand upon an employee to return part of the wages he has earned. Subsequent wrongs do not render a previous lawful act unlawful, nor do the subsequent wrongs characterize said acts as kickbacks.

This opinion and decision were a complete departure from previous holdings of other federal courts which had prosecuted union officials under similar facts on the basis of the Kickback Act.

*Thomas Broden.*

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REJECTION OF RADIO SCRIPT MUST BE REASONABLE.—*Rose v. Brown et al.*, Supreme Court, Monroe County, 58 N. Y. S. (2d) 654 (1945).—Action by Angelo A. Rose, against Gordon P. Brown, doing business as WSAY Radio Station, and others, for a mandatory injunction to compel the defendant to broadcast two fifteen minute political broadcasts in compliance with a contract.