Maryland Law Review

Volume 9 | Issue 1 Article 6

Power of a Municipal Corporation to Enter into a Check-off Agreement With a Labor Union - Mugford v. Mayor and City Council of Baltiinore

POWER OF A MUNICIPAL CORPORATION TO ENTER INTO A CHECK-OFF AGREEMENT WITH A LABOR UNION

Mugford v. Mayor and City Council of Baltimore[1]

This was a bill in equity brought by the taxpayers to enjoin and restrain the performance of an agreement between the City of Baltimore, entered into on its behalf by the Department of Public Works of the Mayor and City Council of Baltimore, and the Municipal Chauffeurs, Helpers and Garage Employees Union No. 825 (A. F. L.). The agreement provided, in substance, for automatic payroll deductions covering union dues. The bill of complaint contained four prayers: (1) That the agreement be declared null and void, (2) that the defendants be enjoined and restrained from giving preferential treatment to the union or its officers, (3) that the defendants be enjoined and restrained from making any payroll deductions for payment of union dues, and (4) for such further relief as the case required. The trial court granted the first two prayers, but denied the other two. The Court of Appeals affirmed the rulings of the lower court.

For proper understanding and comment upon this decision, it is necessary to look briefly into the nature of the check-off system, and to trace the background of this particular case.

Under a "check-off" system, union dues or other fees are regularly deducted from an employee's pay by his employer, to facilitate the union's making such collections. The employee may either voluntarily authorize such deductions, or general provision for it may be included in a management-labor union agreement.[1a]

The check-off system, in general, if "voluntary" on both sides, is not in itself legally objectionable, either in the light of the law prior to the N. L. R. A., or that since.[2] It

[1] 185 Md. 266, 44 A. 2d 745 (1945).

[1a] See, DANGEL AND SHRIBER, THE LAW OF LABOR UNIONS, (1941) 4, 5. Where there is not a closed shop, deductions under union agreements are, of course, only made in the case of members of those unions which have the check-off system in their labor contracts with the employer.

[2] See, 135 A. L. R. 507, citing specifically N. L. R. B. v. West Kentucky Coal Company, 110 F. 2d 984 (C. C. A. 7th, 1940); N. L. R. B. v. J. Greenebaum Tanning Company, 110 F. 2d 984 (C. C. A. 7th, 1940); Gasaway v. Borderland Coal Corporation, 278 F. 56 (C. C. A. 7th, 1921). See also Borderland Coal Corporation v. International United Mine Workers, 275 F. 871, 873 (D. Inc. 1921), where check-off apparently was enjoined only because the money thus collected was used for an unlawful purpose. See also, 29 U. S. C. A. (1947) sec. 186.

is true that the Railway Labor Act of of 1934,[3] prohibiting the check-off system in the case of carriers and certain other employer-employee relationships,[4] was held constitutional; and, presumably in the absence of a specific state statute, this system would not *per se* be unconstitutional.[5]

The question of whether a municipal corporation, as distinguished from a private corporation, may enter into a check-off agreement with a labor union, has confronted the courts[6] in but few instances. It must be remembered that municipalities obtain their powers under charters from state legislatures, so that acts beyond such authority are *ultra vires,* and unenforceable.[7]

In general, legislative or discretionary powers which the council or governing body of a municipality derive under law or charter cannot be delegated without express legislative authority; but functions regarded as purely administrative or ministerial may be delegated to subordinates.[8]

The right to fix wages and hours of municipal employees is a right generally provided by charter to be vested in the city government or its departments, usually under some type of civil service system.[9] Entering into a wage-hour agreement with a labor union can conceivably be held a surrender of the city's discretionary power under such subjects. For example, a municipal ordinance of the City of Milwaukee, under which the wages paid to laborers employed on work done for the city were to be governed by prevailing wages as determined by those paid members of any labor organization, subject to the municipal common

---

[3] 45 U. S. C. A. (1934) sec. 152.

[4] Brotherhood of Railroad Shop Crafts v. Lowden, 86 F. 2d 458 (C. C. A. 10th, 1936).

[5] Md. Code (1939) Art. 8, Secs. 11-17, limit the assignability of wages under certain conditions, but do not make such assignment void for all purposes.

[6] It should be noted that the National Labor Relations Act expressly excludes "any state or political subdivision thereof" from the definition of "employer", indicating a policy of excluding municipal corporations from enforced collective bargaining. 29 U. S. C. A. (1935) sec. 152 (2).

[7] Hanlon v. Levin, 168 Md. 674, 179 A. 286 (1935); Rushe v. Hyattsville, 116 Md. 122, 81 A. 278 (1911); Rossberg v. State, 111 Md. 394, 74 A. 581 (1909); Baltimore City v. Gahan, 104 Md. 145, 64 A. 716 (1906); Librizzi v. Plunkett, 16 A. 2d 280 (1941); Borough of Weatherly v. Warner, 25 A. 2d 831 (Pa. 1942); Shaw v. City and County of San Francisco, 13 Cal. App. 547, 110 Pac. 149 (1910); In re Babcock, 115 App. Div. 191, 101 N. Y. S. 90 (1906); Stewart v. City of Springfield, 165 S. W. 2d 626 (Mo. 1942). See also Duff and Whiteside, *Delegata Potestas Non Potest Delegari: A Maxim of American Constitutional Law* (1929) 14 Corn. L. Q. 168.

[8] M. & C. C. of Baltimore v. Wollman, 123 Md. 310, 91 A. 339 (1914).

[9] See, Charter and Pub. Loc. L. of Baltimore City (1938) secs. 268-284, relating to the Merit System (City Service Commission).

council, was held to be void as a surrender by the common council of its right to exercise judgment in the matter; and an agreement under which the council would be bound by wage scales which labor unions would be in a position to determine.[10]

In a comment written shortly after the 1939 unification of transit facilities in New York City under municipal ownership, it was concluded that "the validity of the assumption of the collective (bargaining) agreement is quite doubtful, in that it appears to constitute an unauthorized limitation of the discretion required to be exercised by "[the municipal agency]".[11]

A case close in point is the recent *City of Cleveland v. Division 268, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.*[12] There, the City of Cleveland had authority, under the Ohio Constitution, to operate a street railway system. The city charter authorized the Transit Board to manage a system, and establish wages and working conditions. An action for a declaratory judgment was brought to test the power of the Board to enter into a collective bargaining agreement with a union. The Court held that the Board would be illegally delegating legislative authority by entering into such a contract, surrendering (without right to do so) its continuing discretionary power. Furthermore, recognizing a union as a sole bargaining agent would be discriminatory to non-union employees. It will be noted that, while the question here involved was one relating to a proprietary function, the Court propounded, by way of strong *dicta,* the ruling that this case would be followed even where a proprietary function was not involved.[13]

The Court of Appeals of Maryland was faced with the problem in the present case.[14] The Court approved the relief granted the taxpayer in holding void an agreement by the City with a labor union, on the basis that the City, in recognizing a union as the collective bargaining agency for certain municipal employees, would have delegated or abdicated its power of continuing discretion. The Court pointed out that, to the extent that hours, wages and work-

---

[10] Wagner v. City of Milwaukee, 177 Wis. 410, 188 N. W. 487 (1922).

[11] Note, *Labor Law—Right of Municipality to Enter into Collective Bargaining Agreement on Behalf of Civil Service Employees* (1941) 18 N. Y. U. L. Q. Rev. 247, 260.

[12] 30 Ohio Op. 395 (1945).

[13] See, Note, *Municipal Corporations—Collective Bargaining Contracts—Implied Power to Bargain with a Labor Union.* (1946) 44 Mich. L. R. 664, 5.

[14] *Supra,* n. 1.

ing conditions "are covered by provisions of the City Charter, creating a budgetary system and a civil service, those provisions of law are controlling." Even when left to departmental determination, the City may not delegate its continuing discretion. The proper exercise of that discretion includes the right to change hours, wages and working conditions, and entry into agreement with a labor union on such subjects would be in contravention to that discretion.

The Court further pointed out that while a member of a labor union cannot be barred from public service[15] because of such membership, a municipality may not, on the other hand, discriminate in favor of members of labor unions. It might readily be argued that an agreement by a municipality with a labor union would tend to discriminate in favor of union members as against other municipal employees.

However, the precise matter on appeal in the *Mugford* case was the allowance by the trial Court of check-off of union dues where individual union members "voluntarily" requested it, though a general check-off of all union members' dues was enjoined. The Court of Appeals looked with approval upon this distinction, regarding the permitted deductions upon an individual's request in the same light as deductions made at the request of employees for war bonds and charitable funds.[16]

In this decision, it is submitted that the Court of Appeals was exemplifying a familiar trend in judicial history, of standing by the guns of earlier decisions while not allowing these embattlements to become a hindrance to "social changes." While the principle remains, the application is altered to recognize a modified form of collective bargaining by a municipality. While a city government cannot delegate its charter-granted powers, and relinquish its discretionary control over the wages, hours and working conditions of its employees, it may *voluntarily* agree to make deductions of union items from employees' pay upon the *voluntary* application therefor by those union employees who request such action.

[15] Raney v. Montgomery County, 170 Md. 183, 197, 183 A. 548, 554 (1936); cited in Mugford v. Mayor & City Council of Baltimore, *supra*, n. 1.

[16] It is perhaps possible to draw a contrary conclusion from the case of Hughes v. Svboda, 168 Md. 440, 178 A. 108 (1935), noted (1937) 1 Md. L. Rev. 172, in which the Court refused to allow a public officer or public institution to be subject to garnishment as to funds of a prisoner which were taken from him at the time of his incarceration. This might be an indication of public policy which would reflect against public collection of union dues.