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BARGAINED-FOR GROUP LEGAL SERVICES: AID FOR THE AVERAGE WAGE EARNER?

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"For richer or for poorer" may refer at present not only to the marriage vows but to the furnishing of adequate legal care. Complete legal service, always at the beck and call of the well-to-do, is becoming increasingly available to the poor under expanded legal aid and government assistance programs. Largely ignored, however, has been the man in the middle, the wage earner of only moderate means, too well off for charity but too limited in resources to be able to afford adequate legal care.[1]

One yet unexplored approach to supplying legal services to many middle class wage earners is through collective bargaining. Legal services might be bargained for as a fringe benefit, much like medical or retirement benefits, or could even be supplied unilaterally by the union or the company. Although not every member of the middle class or even every wage earner belongs to a union, collective bargaining is now so widespread[2] that it offers much potential as a means of providing legal services for many millions of Americans who might otherwise do without.

There are a number of advantages to approaching the problem of supplying legal services to wage earners through the collective bargaining process. One is that the approach automatically would answer the question of whether there is any real demand or need for such services among blue-collar workers. If traditional private practice, buttressed by legal

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1 The problems of supplying legal services to the middle class are discussed in E. CHEATHAM, A LAWYER WHEN NEEDED 59-86 (1963). Cheatham points out that the problem is not entirely economic—many members of the middle class can afford a lawyer, but fail to retain one due to ignorance, fear, or inaccessibility of lawyers.

2 Union membership in the United States reached 18,843,000 in 1968. 93 MONTHLY LAB. REV. 38 (1970). The effects of collective bargaining contracts are not limited to union members, however. Such contracts apply to all employees within the bargaining units involved, whether or not union members. They also tend to set patterns for wage and other benefits in nonunion employment situations.

aid, lawyer reference, and legal fee finance plans,[3] already provide adequate legal service to the average wage earner, then legal service demands need not appear on the bargaining table, and, if they do appear, will not be so strongly urged as to come to fruition. On the other hand, if the need is strongly felt, the bargaining table is an ideal place at which to forge practical solutions. Another advantage of utilizing the collective bargaining process is that the resulting program would be funded with private money rather than by taxation, and would emerge from the cobblestones of the marketplace rather than from legislative chambers.

A connected trio of Supreme Court cases[4] has removed many of the legal and ethical barriers to using collective bargaining as a device for supplying legal services to wage earners.[5] The first of these cases was *NAACP v. Button*,[6] which dealt with the practice of the NAACP of using agents to solicit legal business involving civil rights for its staff lawyers. The Supreme Court held that a Virginia statute forbidding this practice was unconstitutional on the grounds that it violated the first and fourteenth amendments. The Court reasoned that the practice of the NAACP was protected by the first amendment guarantees of freedom of speech and of association, because the NAACP was using the courts as a means of political expression, and not merely as a means of resolving private differences. The fourteenth amendment, of course, makes these first amendment guarantees applicable to the states, and thus both the first and fourteenth amendments were violated by the Virginia statute.

Button was followed by *Brotherhood of Railroad Trainmen v. Virginia*,[7] where the Supreme Court, again relying on the first and fourteenth amendments, struck down an injunction which prohibited a union from recommending to union members and their families the names of particular lawyers for the prosecution of injury and death claims. This admitted "channeling" was claimed by the Virginia State Bar to amount to unlawful solicitation of legal business and unauthorized practice of law. The Supreme Court, however, found that this activity was protected because it fell under the first amendment, which guarantees citizens the

[3] *See* ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 320 (1968), which approves various plans for the financing of legal fees. Generally, the plans permit the client to give the attorney an installment promissory note which a bank then purchases from the attorney—with repurchase rights in the attorney but without recourse against him—provided that the client's credit is satisfactory to the bank. The attorney gets his money immediately. The client pays for the services in installments, with interest.

[4] United Mine Workers, District 12 v. Illinois State Bar Ass'n, 389 U.S. 217 (1967); Brotherhood of R.R. Trainmen v. Virginia, 377 U.S. 1 (1964); NAACP v. Button, 371 U.S. 415 (1963).

[5] A sample of the controversy generated by these cases may be seen by referring to Cady, *The Future of Group Legal Services*, 55 A.B.A.J. 420 (1969); Pitts, *Group Legal Services: A Plan to Huckster Professional Services*, 55 A.B.A.J. 633 (1969); Voorhees, *Group Legal Services and The Public Interest*, 55 A.B.A.J. 534 (1969).

[6] 371 U.S. 415 (1963).

[7] 377 U.S. 1 (1964).

right to gather together, select a spokesman, and assist each other in the assertion of their rights. The fourteenth amendment made these rights secure against state action.

Finally, in *United Mine Workers, District 12 v. Illinois State Bar Association*,[8] the Court held that a state may not prohibit a union from retaining a lawyer on a salary basis to represent union members in workmen's compensation claims. The bar association had challenged the union's practice as being the unauthorized practice of law, but the Supreme Court found the activity to be an exercise of the right to free speech, assembly, and petition guaranteed by the first and fourteenth amendments which could not be infringed upon by the state without a showing that state interests were thereby protected. The Court held that the remote possibility that a conflict of interest on the part of the attorney might arise was not a sufficient state interest.

It at first seemed possible that *Button* stood only for the principle that organizational assistance might be given in the advocacy of constitutionally protected *political* rights. *Railroad Trainmen*, however, made it clear that the enforcement of *any* legal rights, even purely personal civil injury claims, could be assisted by an organization. It appeared that *Railroad Trainmen* could conceivably be limited so that organizational assistance might extend only to making recommendations and referrals. But *Illinois Bar* approved a plan under which an organization both *employed and paid for* an advocate to present wholly personal workmen's compensation claims.

It is not the purpose of this article to surmise the possible future developments in the area of group legal practice, but rather to focus on what now appears to be possible through collective bargaining under the law in its present state. The key considerations, as set forth by the case law and the new *Code of Professional Responsibility*,[9] which must be kept in mind

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[8] 389 U.S. 217 (1967).

[9] The new *Code of Professional Responsibility*, which became effective January 1, 1970, replacing the old *Canons of Professional Ethics*, accepts as being professionally ethical the practices approved by the Supreme Court in the three group practice cases. ABA SPECIAL COMM. ON EVALUATION OF ETHICAL STANDARDS, CODE OF PROFESSIONAL RESPONSIBILITY, Canon 2, ETHICAL CONSIDERATIONS [EC] 2-1, 2-7, 2-16, 2-24 (especially n.55), and 2-25; DISCIPLINARY RULE [DR] 2-103.

However, a certain ambivalence is evident between the Ethical Considerations and the Disciplinary Rule. The Ethical Considerations are aggressively affirmative in imposing a duty on every lawyer to "assist in making legal services fully available," EC 2-1; encourage "the evolution of other ethical plans [than lawyer reference plans] which aid in the selection of qualified counsel," EC 2-15; "support and participate in" ethical activities designed to achieve the objective of providing necessary legal services to all, even though unable to pay all or a portion of a reasonable fee, EC 2-16; help "to institute and support additional programs to provide legal services" and support "all proper efforts to meet this need for legal services," EC 2-25.

On the other hand, the Disciplinary Rule goes neither jot nor tittle beyond *Button, Railroad Trainmen* and *Illinois Bar*. DR 2-103(D)(5) reads:

> A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his

when examining the possibilities for supplying legal services through collective bargaining are:

1. The practice of law is no longer an unqualifiedly binominal relationship of lawyer-client. It can be a tri-partite relationship of lawyer-client-organization.

2. For participation in such a *menage à trois*, an organization, in order to be qualified, should be nonprofit and one not organized primarily to render legal services. It must be one which does not itself profit financially from the rendering of the legal services and must not permit the legal services to be performed by lay persons. It must recognize the primacy of the direct lawyer-client relationship and must not interfere between the client and lawyer in the furnishing of the service. A union can qualify as such an organization.

3. A qualified organization may recommend lawyers (including recommendation from among a limited group) or may itself employ the lawyers and pay them for performing legal services for the client.[10]

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services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

. . . .

(5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met:

(a) The primary purposes of such organization do not include the rendition of legal services.

(b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

[10] These principles should not shock practitioners in another area of the law, personal injury litigation. They may even seem somewhat restrictive. There the three-party system has long been in practical effect, and the third party, the insurance company, is a profit-making organization. An insured motorist defendant will have his attorney selected and paid for by the insurance company. The attorney's first responsibility is recognized as being to the insured, but situations in which the interests of the insured and the insurance company clash are not unknown. Case law has developed to define the lawyer's responsibilities in such cases. *See, e.g.*, General Accident Fire & Life Assur. Corp. v. Little, 103 Ariz. 435, 443 P.2d 690 (1968), dealing with the duty in settlement negotiations to consider settlement within policy limits.

Intriguingly, the traditional explanation of why an insurance company which undertakes the defense of an action on behalf of an insured is not guilty of champerty or maintenance is that the insurance company *does* have a substantial pecuniary stake in the matter. Gelo v. Pfister & Vogel Leather Co., 132 Wis. 575, 113 N.W. 69 (1907).

COLLECTIVE BARGAINING

Before discussing the ramifications of bargained-for legal services, a brief look at the legal rules governing collective bargaining is in order. One of the overriding principles of the National Labor Relations Act is that any employer who is subject to the Act is required to bargain with the designated bargaining representative of his employees "with respect to wages, hours, and other terms and conditions of employment . . . ."[11] Particular subjects are either nonbargainable or bargainable. A nonbargainable subject is one over which the parties may not bargain because it either (1) must be included in a contract, or (2) may not be. Bargainable subjects are either permissive or mandatory.[12] A permissive bargaining subject is one about which a party may refuse to bargain if it chooses. Permissive subjects are those which are not within the scope of "wages, hours and other conditions of employment," such as an employer's participation in an industry promotion fund.[13] If a subject is permissive, neither side can insist on bargaining to an impasse on the subject.

Mandatory subjects are those concerning wages, hours, and conditions of employment about which the parties are required to bargain in good faith either to an impasse or to an agreement. They are not compelled to reach agreement but may be required to embody any agreement reached in a written contract. Mandatory bargaining subjects include the full spectrum of employee fringe benefits such as pension and retirement plans, which have been held to be a "condition of employment,"[14] and group health and insurance plans, which have been held to be part of the "wage."[15] It would seem likely that the subject of providing legal services for employees would, by analogy, also be a mandatory bargaining subject. It could be argued that free legal services are a "condition of employment," because such a program might resemble pension plans if funded by a trust fund, but the better and simpler argument is that free legal services would be "wages," since they would be a form of compensation earned by the employee's labor.

Although neither a union nor a company might refuse to bargain generally on the subject of providing legal care for employees, a party might lawfully refuse to bargain over a *particular* demand which it thinks illegal.[16] An employer, for example, might consider refusing to bargain with a union over a union's demand that the company make available to

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[11] National Labor Relations Act §§ 8(a)(5), 8(d), 29 U.S.C. §§ 158(a)(5), 158(d) (1964).

[12] *See* NLRB v. Borg-Warner Corp., 356 U.S. 342 (1958).

[13] NLRB v. Painters Local 1385, 334 F.2d 729 (7th Cir. 1964).

[14] Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), *aff'd sub nom.* Communications Ass'n v. Douds, 339 U.S. 382 (1950).

[15] W.W. Cross & Co. v. NLRB, 174 F.2d 875 (1st Cir. 1949).

[16] A party, for example, may not insist upon bargaining for a contract with an agency shop clause in a right-to-work state. Retail Clerks Local 1625 v. Schermerhorn, 373 U.S. 746 (1963).

employees the free services of a company's house counsel for advice on personal matters, upon the grounds that such would constitute illegal and unethical corporate practice of law. When there has been a refusal to bargain over a particular demand, either party may file an unfair labor practice charge before the NLRB. The decision of the NLRB as to the legality of the demand may then be appealed to the circuit court of appeals and the Supreme Court. In this manner the legality of any particular demand involving group legal servics could be determined.

BARGAINED-FOR AGREEMENTS

Challenging possibilities lie in the kinds of agreements which might be negotiated between companies and unions seeking to arrive at a practical and economic means of providing better legal care for employees. This is especially the case if the first experimental and formative agreements are reached with the assistance of local bar associations approaching the problem with the affirmative and open-minded attitude called for by the Ethical Considerations of the *Code of Professional Responsibility*.

One advantage of bargained-for agreements would be that each one would be tailor-made for the particular combination of union, company, industry, location, and economic climate. Another general advantage would be that each such agreement would be subject to evolution and modification at regular intervals as part of contract renegotiations. Thus, any number and variety of plans would be possible.

As to the sort of plans which might emerge out of the collective bargaining process, one can speculate that they might contain some of the following features.

Financial Assistance

Plans of this sort would involve the total or partial subsidization of particular legal services. The contribution might be solely the employer's, or a combination of contributions by employer and employees, or by employer and union, or by employer, union and employees. A simple provision might be merely that the employer pay an employee's attorney, say $25, toward the cost of the lawyer's review of the documentation of a house sale or purchase made necessary by the company having transferred the employee.

A more complicated arrangement might involve employer contributions on a cents-per-hour-worked basis to a fund administered by a board of union and employer (or employee association) representatives who would receive and pass upon employee requests for financial assistance for needed legal work. Situations in which such assistance might be considered particularly appropriate might be for the defense of collection suits to which employees are believed to have meritorious defenses, or for em-

ployee protection in consumer fraud cases. These are frequently encountered employee problems which often disrupt an employee's job performance and result in injustice simply because the employee lacks funds to pay for adequate legal protection.[17]

Such plans would not restrict an individual's choice of a private attorney nor disrupt the attorney-client relationship. They would provide a supplemental source of payment for attorneys' fees much as group insurance plans provide funds to supplement health care.

Lawyer Referrals

Here the company and union might agree upon a list of attorneys considered particularly skilled, honorable, and not likely to overcharge, and this list would be made available to employees. One of the reasons present lawyer referral plans are not utilized as they might be is that such plans assiduously avoid making value judgments as to the quality or suitability of a particular lawyer; but a client seeking a lawyer wants an opinion as to the attorney's competence and is going to get one from some source. It is likely to be more reliable coming from a list prepared jointly by a company and union than from a casual word-of-mouth recommendation of an acquaintance or from newspaper notoriety.

Bargaining demands would touch upon more sensitive areas should they seek to institute a program of referrals to particular attorneys. It is here, especially, that opponents of such plans would argue that any group practice plan with such a feature would deny clients the free choice of an attorney, lower the level of competency, constitute solicitation of legal business by a lay intermediary, and lead to divided loyalties.[18] Such arguments have been mooted to a large degree by *Railroad Trainmen* which makes it clear that a qualified organization such as a labor union may channel business to selected lawyers, at least where the legal subject matter is incidental and reasonably related to the primary purposes of the organization.

> The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. That is the role played by the members who carry out the legal aid program. And the right of the workers personally or through a special department of their Brotherhood to advise concerning the need for legal assistance—and, most importantly, what lawyer a member could confidently rely on—is an inseparable part of this constitutionally guaranteed right to assist and

[17] Also not to be overlooked would be the possibility of obtaining group insurance policies against catastrophic legal expenses. *See generally* Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 U. CHI. L. REV. 417 (1968).

[18] Proponents would argue that the real fear is economic, and that lawyers opposing such plans would really fear only that fee levels would be reduced or that favored lawyers would be in a position to corner large amounts of legal business.

advise each other.[19]

This raises a paradoxical consideration. The employees around whom collective bargaining centers are at the same time within two organizations. They are all employees of the company and at least most of them will also be members of the union. The union, under *Railroad Trainmen*, may refer its union members to particular attorneys. Presumably this could include house counsel or general counsel for a company should a collective bargaining agreement provide that such attorneys render legal services for employees at company expense.[20] The company, however, is not a nonprofit organization, and so would not be a qualified organization[21] and could not make the same referral. A company lawyer thus might find himself in the odd position of being ethically secure in rendering legal service to company employees who come to him as a consequence of a collective bargaining agreement, but only because the referrals originate from a union source.

Consultation

One fruitful approach might be to provide employees with convenient, low-cost or no-cost, office consultation with a lawyer over questions of the preventive or "do I have a legal problem?" kind. Such consultations might include routine reviews of simple contracts or proposed contracts, such as for the purchase of a house, car or television set, counseling on legal rights and remedies in creditor-debtor matters, and advice as to run-of-the-mill domestic relations and family law questions. It is this kind of preventive law and simple legal advice which the average worker of moderate means simply does without. Consequently, he often ends up having to pay a much higher price later when he has unwittingly drifted into a deep legal hole.

Direct Legal Assistance

Least likely to emerge through any collective bargaining process would be any sort of agreement which would call for the employment of an attorney or staff of attorneys solely to represent employees in general matters or in litigation. Even though in *Button* the employment by the NAACP of staff attorneys for private litigation (to vindicate political rights) was approved, this kind of service would doubtless face the greatest resistance by the organized bar, with some justification, as being the area in which there may be the greatest risk of ethical conflict.[22] In

[19] Brotherhood of R.R. Trainmen v. Virginia, 377 U.S. 1, 6 (1964).

[20] Although it would seem that such a plan would be legal, any questions as to legality could be resolved by the procedure set forth in the text accompanying note 16 *supra*.

[21] See note 24 *infra*.

[22] It is possible, under this sort of arrangement, that the interest of the employer or union, who would pay the attorney, could be contrary to the interest of

any case, costs would probably be higher than either a company or union would want to undertake, the relation of the legal service to the employees' work and to union activities would be more tenuous, and the chance of finding a lawyer acceptable to both a company and a union would be so remote that it seems more likely that an arrangement similar to legal aid offices would result. Rather than to use staff attorneys for assistance to employees with problems which could not be solved by the simple consultation process described above, employees would be referred to private attorneys, with possible financial aid furnished toward the payment of the fees of the private attorneys.

The area of bargaining over group legal service, then, appears to be wide open for demands of all kinds, ranging from mere contribution toward the costs of legal services to intricate plans which might involve referrals to particular lawyers and which might have provisions for payment of attorney's fees from a variety of sources and under various funding devices. Faced with such demands an employer would probably be under a duty to bargain generally concerning such services. An employer could refuse to bargain over any particular proposal it felt to be illegal, and such refusal would open up an avenue under the procedures of the National Labor Relations Act for determination of the plan's legality by the National Labor Relations Board, and ultimately, through appeal, by federal appellate courts.

UNILATERAL ACTIONS

Legal services could also be supplied by unilateral company or union action. For example, a union might decide that its recruiting chances would be enhanced if one of the benefits of union membership was a broadened legal assistance program including not only help in processing workmen's compensation claims but also the giving of general advice to union members on personal matters such as domestic relations, financial problems, wills and estate planning, racial discrimination claims, or other matters. The service might be limited to office conferences or, by extending the arrangement as in the *Button* case, might include actually providing attorneys to represent union members in private litigation.

How far a union might go in offering legal services is a question still unanswered under the trilogy of group practice cases. The Supreme Court has not by any means denied altogether the right of states to control and prohibit practices which are unethical or which amount to the illegal prac-

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the employee, who would be the client, thus putting the attorney in a position of conflict and interfering with the attorney-client relationship. An example of such a situation might be where an employee of an automobile manufacturing firm sues his employer in a products liability case arising out of an accident in a car purchased from the employer, or where an employee sues his employer in a workmen's compensation case. Another example could be where an employee sues his union in a racial discrimination case.

tice of law by laymen. Beyond the pale of any first or fourteenth amendment protections would no doubt be clear-cut cases of abuse. For example, if a union should undertake to provide general legal services as a profit-making activity or hold out a nonlawyer as being qualified to give legal advice, it would seem that these practices would not be constitutionally protected. About the only clue the Supreme Court has given as to how it might decide questions in this gray area between protected activities and abusive practices has been the intimation that something more than a mere theoretical risk of abuse would have to be shown, something perhaps akin to a "clear and present danger" test.[23]

The employer has more than a cursory interest in the unilateral expansion of legal services by the union. Prosecution of unemployment compensation claims, workmen's compensation claims, racial discrimination claims, and other claims of similar ilk may result in added costs to the employer in defending against them or in paying the price of any adverse results, either directly, as in having to pay a racial discrimination award, or indirectly, as in having to pay a higher premium for workmen's compensation insurance. More important, at the heart of the collective bargaining process is the struggle between the company and the union for the basic loyalty of the employee. If the company has that loyalty it is in far better position to withstand any strike. If the union has that loyalty it is far more likely to be able to call and win a strike. The organization, be it company or union, to which an employee is most inclined to go for help in time of personal need or trouble becomes a matter of great consequence. If an employee can obtain legal assistance from only one of the two organizations, that organization has gained a tremendous advantage.

But despite the employer's vital interest in the unilateral expansion of legal assistance by the union, the National Labor Relations Act does not provide an effective means by which an employer may challenge the legality of any such expansion. Internal union affairs in the main are immune from any challenge by employers, and this immunity is extended even though the "internal" union regulation has a demonstrable (and intended) adverse effect on the employer's business.[24] Policing such union activities for ethical abuses would thus have to fall largely upon the local bar associations through disciplinary activities against individual attorneys or suits against the union such as were brought in *Railroad Trainmen* and *Illinois Bar*.

An already unionized employer who would like to act in providing legal services for his employees is not as free to move unilaterally as the union. Generally, an employer is under a continuing duty to bargain with

[23] *See, e.g.*, United Mine Workers, District 12 v. Illinois State Bar Ass'n, 389 U.S. 217, 223-24 (1967).

[24] A union fine upon a union member for exceeding a union-imposed production quota is the most obvious example. Scofield v. NLRB, 393 F.2d 49 (7th Cir. 1968), *aff'd*, 394 U.S. 423 (1969).

the union and may not make any unilateral changes in wages, hours, or working conditions without first negotiating with the union.[25] Hence, the employer would have to take the proposed action to the union for negotiation and the situation would tend to become the same as discussed above in connection with bargained-for legal services. This may not always be the case, however, since an employer, even though under a duty to bargain with a union, may make unilateral changes under certain circumstances, such as when bargaining has proceeded to a genuine impasse,[26] and situations might arise in which the unionized employer could unilaterally decide to furnish legal services to employees.

As mentioned, merely subsidizing all or part of the legal services which an employee obtains from a private practitioner would seem to present no legal or ethical problem. What, though, if the employer wants to make available to employees, without charge, or on a partially underwritten basis, the services of the company's house counsel or general counsel? Of course a certain amount of this already occurs on an informal basis; but what if the employer wants to make it a formal company policy? This would present a problem. The employer is not a "nonprofit" organization such as might qualify under Disciplinary Rule 2-103(D)(5).[27] This problem might be avoided in many instances by use of an employee association. Most companies of any size already have such an association. These can be rather informal social and recreational groups; but not infrequently they are separately incorporated as nonprofit corporations, have separate governing bodies and officers, and have a tradition of not only conducting recreational and social programs but of rendering aid to employees who are in difficulty. An employer, for example, could contribute sufficient funds to such an association for it to employ an attorney for part time legal counseling of employees, or could release house counsel[28] to serve the employee association in giving legal advice to its members.[29]

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[25] NLRB v. Katz, 369 U.S. 736 (1962).

[26] *Compare* NLRB v. Florida Citrus Canners Coop., 288 F.2d 630 (5th Cir. 1961), *with* NLRB v. Crompton-Highland Mills, Inc., 337 U.S. 217, *rehearing denied*, 337 U.S. 950 (1949).

[27] The American Bar Association position that the organization must be a "nonprofit" organization seems unnecessarily limited. The Supreme Court's decisions seem to require only that *providing legal services* not be a source of income or profit to the organization. This is adequately covered by subsection (c) of DR 2-103(D)(5), which requires that a qualified organization must be one which "does not derive a financial benefit from the rendition of legal services by the lawyer." In other words, if a plan for providing legal services is not done for financial gain, there would seem to be no reason why an organization could not be a for-profit organization in other areas. The other side of the coin, too, is that a technically "nonprofit" organization is a frequently used vehicle for private financial advantage. A union is a good example, insofar as it provides jobs and other benefits for union officers and staff.

[28] One of the practical problems inherent in furnishing legal services to employees through house counsel is that some employees may be distrustful of lawyers paid by their employer, and may feel uncomfortable disclosing confidential information to such counsel. *See also* note 22 *supra*.

[29] Another advantage of the use of an employee association might be to mini-

An employer who is not presently organized would not be faced with the question of negotiating legal service plans with a union and would be free to implement such programs unilaterally. An employer which wants to fortify its position against possible union organizing efforts, to raise employee morale, or to strengthen employee loyalty, might well desire to put such legal assistance programs into effect well ahead of the appearance on the horizon of any union organizer.

CONCLUSION

Something quite comparable to the services furnished by legal aid societies could well emerge as a general pattern of furnishing legal services to employees with moderate incomes. "First aid" preventive legal advice might be furnished by attorneys engaged to give legal counseling on or off company premises, who would be paid by the company or by joint contributions. For more extensive legal service an employee would be referred to outside counsel. Outside counsel would be selected by the employee, but possibly with the assistance of referral lists prepared by the company and union, and with the possibility of obtaining financial assistance for certain kinds of legal work or for particular situations.

Undoubtedly even more imaginative and workable approaches will suggest themselves to attorneys and to union and company representatives once serious thought is given to the possibility of bargaining over legal services for a particular group of employees. Equally applicable to the problem of providing adequate legal care for the family of moderate income is the statement of Dean Charles E. Ares (quoted by Justice Douglas in dissent in *Hackin v. Arizona*[30]) in connection with providing legal care for the indigent:

> [T]he *structure* of the legal profession is middle class in its assumptions. We assume that the lawyer can sit quietly in his office awaiting the knock on the door by a client who has discovered that he has a legal problem and has found the way to the lawyer's office. . . . This assumption is not valid for the great mass of people who live in poverty in the United States. . . . The ways in which this structure can be changed open exciting and interesting prospects.[31]

Much the same needs, and much the same interest and excitement, confront the legal profession in connection with providing adequate legal care for the average man. Collective bargaining may offer one means of reaching a solution.

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mize any possibility that any plan administered jointly by union and company representatives would run afoul of the federal act which restricts employer payments to unions or union representatives. Labor Management Relations Act of 1947 § 302, 29 U.S.C. § 186 (1964). Payment into qualified health and pension trusts are exempted, but there is no exemption for legal-care trusts. However, although section 302 should be considered as it might affect any particular plan, possible problems should be easy to avoid in most cases by arranging for any payments to be made either to employee associations or other independent entities.

30 389 U.S. 143 (1967).

31 *Id.* at 149-50.