

1960

Troy A. Nance and Thomas B. Hanley v. Sheet
Metal Workers International Association :
Appendix to Brief of Plaintiffs and Respondents
and Cross-Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

James P. McCune; A. M. Dreyer; Attorneys for Plaintiffs and Respondents and Cross-Appellants;

Recommended Citation

Brief of Respondent, *Nance v. Sheet Metal Workers*, No. 9111 (Utah Supreme Court, 1960).
https://digitalcommons.law.byu.edu/uofu_sc1/3438

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT

of the

STATE OF UTAH

FILED

SEP 12 1960

TROY O. NANCE, and
THOMAS B. HANLEY,

*Plaintiffs and Respondents
and Cross-Appellants,*

vs.

SHEET METAL WORKERS
INTERNATIONAL
ASSOCIATION, an
unincorporated association,

Defendant and Appellant.

Supreme Court, Utah

Case No. 9111

APPENDIX TO BRIEF OF PLAINTIFFS AND
RESPONDENTS AND CROSS-APPELLANTS

JAMES P. McCUNE

53 North Main Street
Nephi, Utah

A. M. DREYER

109 South Third Street
Las Vegas, Nevada

*Attorneys for Plaintiffs and
Respondents and Cross-Appellants*

TABLE OF CONTENTS

	Page
DECISIONS AND ORDER OF TRIAL COURT:	
Memorandum of Decision dated December 30, 1958, (Record, pages 347 to 353)	1
Supplemental Memorandum of Decision dated January 9, 1959, (Record, page 354)	11
Order as to Issues to be Submitted to Jury dated January 21, 1959, (Record, pages 367 to 369)	13
Second Supplemental Memorandum of Decision dated May 2, 1959, (Record, pages 600 to 614)	18

IN THE SUPREME COURT
of the
STATE OF UTAH

TROY O. NANCE, and
THOMAS B. HANLEY,

*Plaintiffs and Respondents
and Cross-Appellants,*

vs.

SHEET METAL WORKERS
INTERNATIONAL
ASSOCIATION, an
unincorporated association,

Defendant and Appellant.

Case No. 9111

APPENDIX TO BRIEF OF PLAINTIFFS AND
RESPONDENTS AND CROSS-APPELLANTS

MEMORANDUM OF DECISION

This cause having been tried before the court
upon the issues as to whether the petitioner and

the intervenor had been unlawfully deprived of membership in the respondent association and as to whether the general president and general officers of the respondent association acted maliciously and in bad faith in bringing about the expulsion of the petitioner and intervenor, and the court having duly considered the pleadings, evidence and the arguments and briefs of counsel for the respective parties now finds as follows:

1. That on 15 May 1954, Robert Byron, general president of respondent association, signed and filed with respondent association separate written charges directed against Troy O. Nance, Thomas B. Hanley, Carl A. Nichols and John E. Fuller and on 15 May 1954 caused to be mailed by registered mail copies of such charges addressed to said accused persons respectively. Said charges and notice of trial thereon are shown in Exhibit P-20 at pages 21-28. (Note: Should be Exhibit P-30).

2. That the petitioner Nance received on the 18th day of May, 1954, a copy of the charges preferred against him and was thereby given notice that the trial board would convene at the Statler Hotel in Los Angeles, California, at 10 a.m. on 4 June 1954 for trial of such charges. That the intervenor Hanley did not receive the copy of charges mailed to him but on or about May 18, 1954, he was

informed by long distance telephone by C. A. Nichols that charges had been preferred against him; that on or about May 28, 1954 he received and read a copy of such charges attached to certain court papers of which Exhibit P-16 herein is a copy. That in said charges notice was given that a trial board would convene at 10 a.m. on 3 June 1954 at the Statler Hotel in Los Angeles for trial of same.

3. That Robert Byron as general president appointed a trial committee consisting of Moe Rosen, Rene Schroeder and G. Joseph Fitzgerald, to hear such charges. That each of these was a general vice-president of the respondent association and had been originally appointed as such by said Robert Byron.

4. That the trial committee convened at Room 784 of the Statler Hotel in Los Angeles on June 3, 1954, June 4, 1954, and June 7, 1954 as shown by Exhibits D-4, D-5, and D-6 herein.

5. That the petitioner and intervenor were each present at each of the sessions of the trial board on said days as shown in said exhibits and proceedings were had as shown in said exhibits.

6. That neither the petitioner nor the intervenor at any time refused to stand trial upon the said charges preferred against them. That neither of them at any time either by words or conduct consented to trial of said charges in his absence, but

on the contrary each of them informed the trial board of his desire to be present and to present evidence in refutation of such charges.

7. That neither the petitioner nor the intervenor nor any person authorized to speak or act for them or either of them conducted himself in such a way as to justify the trial committee in trying them or either of them in absentia. That the evidence presented as to conduct of the petitioner and intervenor and other persons at open hearings conducted by the trial committee on June 3, 4 and 7, 1954, does not show any violence or threat of violence or any disturbance of the peace at said sessions of the trial committee. That police officers were present in the hearing room at each of said sessions and the court believes that they were ready and able to prevent any violence or disturbance of the peace. That protests and objections made by the petitioner and intervenor at said open hearings were not so lacking in merit as to constitute or be construed as a refusal to stand trial or as a waiver of trial or to justify the trial board in ordering them or either of them to be tried in absentia.

8. That the trial committee wrongfully and without reasonable justification or excuse and without giving either the petitioner or intervenor opportunity to be present or to hear the evidence against them or cross-examine witnesses or to present evi-

dence in their own behalf, proceeded to hear witnesses and to receive evidence produced by the General President and his counsel and thereafter rendered decisions declaring that each and all of the charges preferred against the petitioner and intervenor respectively by the General President were true and that the petitioner and intervenor should each be expelled from membership in the respondent association.

9. That a purported trial of the charges against the petitioner Nance was held in Room 1003 of the Statler Hotel in Los Angeles on Thursday, June 10, 1954. That petitioner was not present and had no notice or knowledge of the room where said trial was held nor any notice or knowledge of the time of said trial except by the notice shown at page 4 of Exhibit D-6 which was read at the session of the trial committee on June 7, 1954. That at said session and subsequent to the reading of said notice the chairman of the trial committee announced that the petitioner and intervenor would be tried in absentia.

10. That a purported trial of the charges against the intervenor Hanley was had by the trial committee on Tuesday, June 8, 1954, as shown by Exhibit D-7 herein. That the intervenor had no notice of such trial but had been notified by the trial committee as shown at page 3 of said Exhibit D-7

and at page 4 of Exhibit D-6 that his trial would be held Wednesday, June 9, 1954 or as soon thereafter as the trial of petitioner Nance was completed. That the purported trial of the charges against the intervenor was held on the day prior to the time specified in the notice read to him, and the intervenor had no notice or knowledge as to the time when or place where said trial was held except the notice above mentioned. That subsequent to the reading of said notice on June 7, 1954 the chairman of the trial committee announced that the petitioner and intervenor would be tried in absentia.

11. That the petitioner and intervenor each duly appealed from said decision as permitted by the constitution of the respondent association. That copies of the appeal papers are identified herein as Exhibits P-27 and P-49. That such appeals were referred by the General President and Executive Council of respondent to the Grievances and Appeals Committee of the General Convention of the respondent. That the members of said committee were appointed by Robert Byron, the General President. That the petitioner and intervenor requested opportunity to present evidence before the Grievance and Appeals Committee to refute the charges preferred against them but were denied such privilege and were informed that no evidence would or could be received by such committee or by the Gen-

eral Convention of the respondent other than the evidence shown by the record of proceedings of the trial committee and documentary evidence if any attached to the appeal papers. That the Grievances and Appeals Committee approved and affirmed the decisions of the trial committee, except for one minor item, and recommended to the general convention of the respondent that the petitioner and intervenor should each be expelled from membership. That such recommendation was approved by the General Convention by standing vote without roll call. That no opportunity was given either the petitioner or intervenor at any time to cross-examine the witnesses who had testified against them before the trial committee.

12. That Exhibit P-53 is a true copy of the Constitution and Ritual of the respondent association in force and effect at all times involved herein.

13. That continuously since the decision of the trial committee hereinabove mentioned the petitioner and intervenor have been prevented by respondent from exercising or enjoying any membership rights in respondent association.

CONCLUSIONS

From the foregoing facts the court concludes:

1. That the court should not herein determine the truth or falsity of charges preferred against

petitioner or intervenor except for the purpose of ascertaining whether there was malice or lack of good faith on the part of the general president or officers of respondent association in preferring said charges or in the conduct or trials thereof or appeals therefrom.

2. That the action of the trial committee in hearing and receiving evidence in the absence of the petitioner and intervenor and without giving them an opportunity to confront and cross-examine witnesses against them was a violation of their rights under the Constitution and Ritual of the respondent association and a violation of their rights under the law forbidding deprivation of property without due process of law.

3. That the remedy of appeal provided for under the constitution and ritual of the respondent association was insufficient as a remedy for the violations referred to since it did not provide for opportunity to the petitioner or respondent to confront or cross-examine witnesses testifying against them.

4. That the actions and proceedings of the Grievances and Appeals Committee and of the General Convention of the respondent association in connection with appeals taken by the petitioner and intervenor did not cure the defects in proceedings

of the trial committee in conducting trials in the absence of petitioner and intervenor.

5. That the expulsion of the petitioner and intervenor from membership in the respondent association was a violation of their rights under the constitution and ritual of the respondent association and a violation of their rights under the law forbidding deprivation of property without due process of law.

6. That the petitioner and intervenor are each entitled to an order and judgment of this court declaring the purported expulsion of them from membership in respondent association to be null and void and requiring respondent to reinstate them as members. That the petitioner and intervenor are also entitled to judgment for damages if any have been sustained by them as a result of such purported expulsion.

7. The court reserves for further consideration findings and conclusions upon the question of malice or lack of good faith on the part of the general president and officers of the respondent association in connection with charges preferred against petitioner and intervenor and the trial of such charges. Upon decision of such issues a further memorandum will be filed and copies sent to respective counsel.

8. The court is of the opinion that before commencement of trial before a jury upon the issue of damages a further pre-trial should be had to consider documentary evidence and other exhibits proposed to be offered, and appropriate procedure in connection with presentation of issues to the jury. The court requests counsel for the respective parties to consider this and to advise whether Tuesday, January 13, 1959 at 10 a.m. will be a convenient time for such further pre-trial; also to advise whether February 9, 1959 will be a convenient time for trial of issues as to damages. Upon pre-trial of the issue of damages the court will request counsel to be prepared with documentary and other exhibits proposed to be presented in evidence, also with copies of proposed requests for jury instructions insofar as same can be foreseen in advance of trial.

Dated this 30 day of December 1958.

/s/ Will L. Hoyt

Judge

Copies of above memorandum mailed 30 December 1958 to:

James P. McCune, Attorney, Nephi, Utah

A. W. Sandack, Attorney, Continental Bank
Building, Salt Lake City, Utah.

(TITLE OF COURT AND CAUSE)

SUPPLEMENTAL MEMORANDUM OF DECISION

In this case the court has heretofore announced its findings and conclusions that the attempted expulsion of the petitioner and intervenor from membership in the respondent association without giving them an opportunity to confront and cross-examine witnesses against them and was and is null and void in that it was a violation of their rights under the respondent's constitution and under the law forbidding deprivation of property without due process of law. The court reserved for further consideration a decision upon the question as to whether the expulsion of petitioner and intervenor was also null and void because of alleged malice and bad faith on the part of the officers of respondent association in the preferment of charges or in the conduct of trial or disposition of the appeals taken by the petitioner and intervenor. After further consideration of this issue it appears to the court proper to withhold decision of the issue at this time since the petitioner and intervenor have demanded both compensatory damages and exemplary damages and have demanded a jury trial of the issue or damages.

The case will be called for further pre-trial on

Tuesday, January 13, 1959, at 10 a.m. and counsel will be expected to be present and have for inspection documentary evidence and other exhibits if any proposed to be presented upon trial before the jury, also proposed requests for instructions insofar as same can be foreseen in advance of trial.

Dated this 9 January 1959.

/s/ Will L. Hoyt

Judge

Copies mailed 9 Jan. 1959, to:
James P. McCune, Nephi,
A. W. Sandack, Salt Lake City

(TITLE OF COURT AND CAUSE)

ORDER AS TO ISSUES TO BE SUBMITTED TO JURY

In this case the petitioner and intervenor allege that they were wrongfully expelled from the respondent association and that since such expulsion they have suffered damage by being unable to obtain or maintain employment because of non-membership in the association. They pray for a writ of mandate to have their membership restored and also pray for compensatory and exemplary damages. They allege that the purported expulsion was induced by malicious conduct on the part of the officers of the respondent association (a) in procuring their expulsion and (b) in preventing them from obtaining or maintaining employment subsequent to the expulsion. They pray for exemplary damages on that account.

Prior to commencement of trial the petitioner and intervenor requested trial by jury. A stipulation, however, was entered into between the parties that the issue as to whether the expulsion of the petitioner and intervenor from respondent association was or was not wrongful should be determined by the court without a jury. Trial was had upon that issue, occupying more than ten weeks, and involving the examination of many witnesses and 145

documentary exhibits, many of them lengthy and complicated as to their effect in this case. The court thereafter announced its decision that it found that the expulsion of the petitioner and intervenor was invalid and void for lack of a legal trial. The court reserved its decision as to whether or not the officers of the respondent were guilty of malice or bad faith in procuring the expulsion, and ruled that an nouncement of decision of that question should be reserved until after trial of the issue of damages by the jury. The court then suggested to counsel that, in order to avoid repetition before the jury of evidence heretofore presented before the court, the parties should consider a stipulation that the court and not the jury should decide the issue as to whether exemplary damages should be awarded for alleged malice or bad faith on the part of respondent's officers in procuring the expulsion, and if so the amount of such exemplary damages.

Counsel for the petitioner and intervenor have now informed the court of their election to submit such issues to the court for determination. Counsel for the respondent, however, have refused to so stipulate, and have further declined to state their position as to whether the jury to be called for trial of the remaining issues as to damages shall be considered an advisory jury or a jury whose verdict shall be binding upon the court.

The situation thus presented calls for a ruling by the court as to whether the respondent is entitled to have a jury trial of the issues (a) as to alleged malice or bad faith on the part of respondent's officers in bringing about the expulsion, and (b) as to whether exemplary damages should be awarded for such conduct and if so the amount of same.

In considering this question the court finds:

1. That counsel for respondent have not previously made any request for jury trial of any issue in this case.

2. That counsel for respondent have heretofore contended that a jury trial is not a matter of right in this case and that the verdict of a jury will be advisory only.

3. That in now refusing to stipulate that the court and not the jury shall decide the two issues above referred to, respondent's counsel have declined to answer the court's inquiry as to their position upon the question whether the jury's verdict upon other issues to be submitted to it shall be considered to be an advisory verdict or a verdict binding upon the court.

4. That if the issue as to alleged malice and bad faith of respondent's officers prior to the expulsion is to be tried before a jury it will probably require many weeks of time and the introduction of

many documents requiring interpretations by the court.

CONCLUSIONS AND ORDER

From the foregoing facts the court concludes and ORDERS as follows:

1. That the respondent is not now entitled to demand a jury trial of the issue as to amount of malice or bad faith on the part of respondent or its officers in procuring the expulsion of the petitioner and intervener.

2. That the respondent is not now entitled to demand a jury trial of the issue as to amount of exemplary damages, if any, to be awarded petitioner or intervener on account of alleged malice or bad faith of respondent or its officers or agents in procuring the expulsion of petitioner or intervener.

3. That the court shall decide the aforesaid issues after evidence is completed in the case.

4. That the following issues shall be submitted to the jury, to-wit:

(a) The issue as to whether the petitioner and/or intervener suffered actual damages as a result of their expulsion from the respondent association, and, if so, what amount of money will constitute just and reasonable compensation for such actual damages.

(b) Whether the respondent or its officers or agents were guilty of malice or bad faith in preventing or hindering the petitioner and/or intervener from obtaining employment subsequent to the date of the decision of the trial board declaring the expulsion, towit June 29, 1954, and if so, whether the petitioner or intervener are entitled to exemplary damages for the same, and if so the amount of such damages.

IT IS FURTHER ORDERED that this case be set for further pre-trial discussion on Monday, February 2, 1959 at 10 a.m. and that counsel then submit for identification documents and other exhibits which they intend or expect to introduce in evidence at trial and also submit their requests for jury instructions insofar as they can be foreseen, unless theretofore submitted to the court.

Done this 21 day of January 1959.

/s/

Will L. Hoyt

Judge

Copies of above order mailed 1-21-59 to:

James P. McCune, Esq. Nephi, Utah
A. W. Sandack, Esq. Continental Bank Bldg.
S.L.C.

TITLE OF COURT AND CAUSE

SECOND SUPPLEMENTAL MEMORANDUM OF DECISION

This cause was heretofore tried before the court without a jury upon the issues as to whether the petitioner and intervenor had been wrongfully deprived of membership in the respondent association and as to whether respondent's officers acted maliciously and in bad faith in bringing about the expulsion of petitioner and intervenor. The Court heretofore on 30 December 1958 announced in a Memorandum of Decision that it found that the expulsion of petitioner and intervenor was in each case wrongful and in violation of their rights under the constitution and ritual of the respondent association and a violation of their rights under the law forbidding deprivation of property without due process of law, also that the petitioner and intervenor were entitled to recover damages if any had been sustained by them as a result of such wrongful expulsion. The petitioner and intervenor having requested trial before a jury upon the issue as to damages suffered by them as a result of such expulsion, the court ordered a jury trial of such issues. The court reserved for further consideration its findings and conclusions upon the issue as to malice and bad faith on the part of respondent's officers in bring-

ing about the expulsion referred to. Trial of the issue as to damages claimed to have been suffered by petitioner and intervenor as a result of their expulsion was had before a jury, beginning 9 February 1959 and ending 14 March 1959, and the jury rendered its verdict that it found that neither the petitioner nor the intervenor had suffered damage as a result of their expulsion from membership in the respondent association nor as a result of acts of the respondent or its officers or agents subsequent to such expulsion. The court having now considered all the evidence submitted in the case and the arguments and briefs of counsel, and the verdict of the jury and its answers to special interrogatories, now announces by way of this Supplemental Memorandum of Decision its additional findings and conclusions upon issues not covered by the former memorandum, including the issue as to alleged malice and bad faith of respondent's officers in bringing about the expulsion of petitioner and intervenor from membership in respondent association.

The court finds as follows:

1. That at all of the times herein mentioned respondent was, and now is, an unincorporated association or labor organization doing business in the State of Utah. The members of respondent are organized in various local unions affiliated with and

chartered by respondent throughout the United States and Canada.

2. That Sheet Metal Workers International Asociation Local Union 371, hereinafter sometimes referred to as Local 371, was at all times material herein an unincorporated local labor organization chartered by and affiliated with respondent.

3. That the reciprocal rights and obligations of the members of respondent to each other and to respondent, as well as the reciprocal rights and obligations of respondent and its various local unions were at all times material herein up to 20 August 1954 governed by a constitution identified herein as Plaintiff's Exhibit 53 and thereafter by a revised or amended constitution identified as plaintiff's Exhibit 179.

4. That from the year 1948 until his expulsion herein complained of the petitioner Nance had been a member in good standing of the respondent association.

5. That ever since the year 1939 or early in 1940, until the expulsion herein complained of, the intervenor Thomas B. Hanley had been a member in good standing of the respondent association.

6. That from March, 1953, until April 18, 1954, the petitioner Nance was business agent of Local 371 of the respondent association.

7. That from the year 1943 or early 1944 until about March 1951 the intervenor Hanley was business agent of Local 88 of the respondent association and from about March 1951 until March 29, 1954, he was International Representative of the respondent association, having been appointed by the General President, Robert Byron, with authority to supervise under direction of the General President, respondent's locals in Nevada, Arizona and southern California.

8. That prior to the time Robert Byron filed charges against Hanley and Nance upon which their expulsion was based, said Hanley and Nance and certain other members of respondent association in the southern Nevada and southern California area were actively promoting a movement to accomplish the retirement of Byron as general president of the respondent association and were also promoting a plan to change the constitution of the association so as to require election of members of the general executive council from designated districts instead of being selected without regard to place of residence. That such latter plan, if carried into effect, would have resulted in retirement of several incumbent members of the general executive council and would have given the western part of the country greater representation upon said council.

9. That Byron had knowledge of these acti-

vities by Hanley and Nance prior to the time he filed the charges against them. That he was opposed to and resented such movements and plans and desired to prevent Hanley and Nance and their associates from continuing such activities among members of the association and particularly in the general convention which was to be held in August of that year.

10. That Byron was informed as early as December 11, 1953, that sheet metal contractors in the Las Vegas and southern California areas were complaining of serious labor troubles in that area and were accusing officers of sheet metal worker unions of calling unwarranted strikes and work stoppages. That on or about February 16, 1954, Byron received letters and affidavits identified herein as Defendant's Exhibits 44 and 45 making further complaints of work stoppages and attempted extortions. That on February 24, 25 and 26, 1954, representatives of sheet metal contractors in that area met with Byron and other International officers at Chicago and presented their grievances. That at this meeting they represented to Byron that Carl A. Nichols, Business Agent of Local 108, and Thomas B. Hanley, International Representative, were causing great losses to contractors by calling unlawful strikes and work stoppages and resorting to extortion and shake-down activities.

11. That thereafter on March 29, 1954, Byron discharged Hanley from his position as International Representative. That he did not file charges against Hanley or Nance until May 15, 1954, at which time Byron had knowledge of their activities in promoting the plan to retire Byron as general president and to amend the union constitution so as to give greater representation on the general executive council to locals in the western part of the country.

12. That in preferring charges against Nance and Hanley, Byron was motivated in part at least, by a wrongful desire to prevent them from promoting said plans for Byron's retirement and for amendment of the union constitution. The fact that he allowed Hanley to continue in office as International Representative for a considerable length of time after he had received complaints from sheet metal contractors as to wrongful activities on the part of Hanley is in striking contrast with his haste in initiating and expediting expulsion proceedings after he learned of the activities of Hanley and Nance in promoting plans for his retirement and for amendment of the union constitution. The court finds, however that at the time Byron filed the charges he had received reports and information which, if assumed to be true, would have given him probable cause to believe that the charges which he preferred, or at least some of them, were true.

13. That the Trial Committee which conducted the trial of Hanley and Nance was appointed by Byron and consisted of three members of the general executive council. That they, at the time of the trial, had knowledge that Hanley and Nance were actively promoting plans to retire Byron and to amend the union constitution. That they were opposed to such plans.

14. That Hanley and Nance each filed timely objections to the membership of the Trial Committee upon the ground of bias and prejudice. That they also timely requested bills of particulars and postponement of trial to give time for preparation. That each of these objections and motions were overruled and denied.

15. That during the days occupied by the trial proceedings, the members of the Trial Committee were in daily association with Byron and the men appointed by him to handle prosecution of the charges against Hanley and Nance and the court believes that they were unduly influenced in the conduct of the trial proceedings and in their decision by a desire to cooperate with Byron in his efforts to expel Hanley and Nance.

15. The court further finds that the actions of the general president, Robert Byron, in connection with the expulsion proceedings, were unreasonable and arbitrary in the following particulars:

(a) In requiring Nance and Hanley to stand trial on June 3, 1954, upon charges involving their membership in the union when such charges were not delivered to or served upon them until May 18, 1954 or thereafter.

(b) In failing and refusing to furnish a bill of particulars after demand made therefor. The court finds that the charges preferred were so lacking in specifications as to acts charged and as to times, places and persons involved, that it was arbitrary and unreasonable to refuse to furnish bills of particulars.

(c) In failing and refusing to grant a postponement of trial after demand made therefor. The court believes that the nature of the charges and the fact that they involved rights of union membership, the loss of which might seriously interfere with or deprive the accused of the privilege of carrying on their accustomed trade, required the granting of a reasonable time to prepare their defenses.

16. The court further finds that the actions of the Trial Committee was unreasonable and arbitrary in the following particulars:

(a) In refusing, after demand made therefor, to require the furnishing of bills of particulars or more specific statements of charges.

(b) In refusing to grant a continuance or postponement of trial.

(c) In ordering and conducting trials of the petitioner and intervenor in absentia, without their consent and against their expressed demand for opportunity to defend against the charges.

(d) In adjudging and declaring the petitioner and intervenor guilty of the charges filed against them without giving them a hearing and opportunity to confront the witnesses against them and to cross-examine such witnesses and to present their evidence in defense.

17. The court further finds that the actions of the General President and the Grievances and Appeals Committee appointed by him and of the General Convention of the respondent, in connection with the appeals taken by the petitioner and intervenor from the decision of the Trial Committee, were in each case unreasonable and arbitrary in the following particulars:

(a) In failing and refusing to set aside the decision of the Trial Committee when the record on appeal showed that the petitioner and intervenor had been tried in absentia without their consent and in violation of their right to be heard and to hear and cross-examine witnesses against them.

(b) In failing and refusing to set aside the decision of the Trial Committee when the record on appeal showed that the petitioner and intervenor

had each been unreasonably and arbitrarily denied bills of particulars and a reasonable time to prepare for trial.

(c) In ordering the petitioner and intervenor expelled from membership in the respondent association.

17. The court further finds that, pursuant to the former Memorandum of Decision herein, trial has now been had before a jury upon issues as to whether the petitioner and intervenor suffered damages as a result of their expulsion from respondent association or by reason of subsequent acts of the officers or agents of respondent. That Special Interrogatories were submitted to said jury and it made answers thereto as follows:

1. Do you find from a preponderance of the evidence that the plaintiff Troy O. Nance suffered loss of income between July 1, 1954, and the date hereof as a proximate result of having been expelled on or about July 1, 1954, from membership in Sheet Metal Workers International Association.

Answer: No.

3. Do you find from a preponderance of the evidence that Troy O. Nance suffered humiliation or mental suffering as a proximate result of his expulsion from the defendant union?

Answer: No.

5. Do you find from a preponderance of the evidence that any of the officers or authorized agents of the defendant Sheet Metal Workers International

Association wilfully and wrongfully prevented Troy O. Nance from obtaining or retaining employment as a sheet metal worker or willfully and wrongfully induced employers of sheet metal workers to discharge Nance or refuse employment to him?

Answer: No.

18. That similar Special Interrogatories were submitted to said jury relative to the intervenor Thomas B. Hanley and it answered each of such interrogatories with a similar answer "No".

19. That said jury also returned general verdicts that neither the petitioner nor intervenor was entitled to recover damages from the respondent.

20. After due consideration of the evidence presented before the jury and the answers of the jury to Special Interrogatories, the court believes that the answers of the jury to Special Interrogatories Nos. 1, 3, 7 and 9 are in each case opposed to the weight of the evidence and that in each case the answer should have been "yes", also that the jury should have awarded actual damages to the petitioner and intervenor. The court believes from the evidence that both the petitioner and intervenor suffered substantial loss of income by reason of having been expelled from the union and also suffered embarrassment and humiliation by reason of such expulsion and being deprived of privileges and benefits of union membership. The court finds however that there was irreconcilable conflict in the testi-

mony of witnesses and believes that there was false and evasive testimony from witnesses on each side.

21. The court further finds that petitioner and intervenor were compelled to employ counsel for the prosecution of this action; that they employed James P. McCune, Esq., and Albert M. Dreyer, Esq., as their attorneys. That trial of this action before the court on the issue of wrongful expulsion occupied 51 days. That pre-trial hearings and hearings upon motions and objections prior to trial occupied not less than 7 additional days of appearance by counsel before this court. That in addition thereto counsel for petitioner and intervenor appeared twice before the Supreme Court of Utah in response to intermediate appeals instituted by respondent. That counsel for petitioner and intervenor were also occupied at least 7 days in attendance at the taking of depositions of petitioner and intervenor by the respondent and have been occupied many additional days in preparation for trial and writing of briefs. That a reasonable attorney fee for services rendered to this date by counsel for petitioner and intervenor in this action and including said intermediate appeals but not including trial before the jury upon the issue of damages in the sum of \$14,000.00.

CONCLUSIONS

From the foregoing facts the court concludes:

1. That the expulsion of the petitioner and in-

tervenor from membership in the respondent association was a violation of their rights under the constitution and ritual of the respondent association and under the law forbidding deprivation of property without due process of law.

2. That neither the petitioner nor the intervenor is barred from bringing this action by any applicable statute of limitation.

3. That the petitioner and intervenor are each entitled to judgment against respondent for nominal damages notwithstanding the finding of the jury that they had not, up to the time of trial, suffered actual damages as a result of their expulsion from the respondent association.

4. That the actions of the respondent association in expelling petitioner and intervenor, under the circumstances herein set forth, was in each case unreasonable, arbitrary and malicious and that the petitioner and intervenor are therefore each entitled to recover exemplary damages from the respondent.

5. In determining the amount of exemplary damages the following matters are entitled to consideration:

- (a) That trial in absentia, where there has been no consent or waiver, is abhorrent to the principles of justice and fairplay.
- (b) That in this case the wealth and power of an international union was arrayed

against individual union members with meager resources.

- (c) That appeals were timely taken. That respondent's officers and its Grievances and Appeals Committee refused to reverse the action of the Trial Committee despite the fact that the transcript of the trial proceedings unmistakably showed that the trials had been had in the absence of the accused and without their consent and obviously over their objections.
- (d) That continuously since on or about July 1, 1954, the petitioner and intervenor have been known and referred to as expelled members and have been deprived of benefits and privileges of union membership.
- (e) That petitioner and intervenor have been put to the expense of a costly and very prolonged trial, over constant objections of respondent and two intermediate appeals, in order to obtain redress in the court.
- (f) That taxpayers have been burdened with the expense of a greatly prolonged trial despite the fact that respondent's officers and its Trial Committee and appellate tribunal had full knowledge that trials of petitioner and intervenor upon the charges herein involved had been held in their absence, without their consent and over their obvious objections.
- (g) That the respondent in upholding the action of its officers and Trial Committee

is attempting to defend trial in absentia
— a hateful thing in any civilized society.

6. That under the circumstances shown by the record herein the sum of \$20,000.00 is a just and reasonable sum to be awarded to the petitioner Troy O. Nance as exemplary damages, to be recovered from the respondent.

7. That under the circumstances shown by the record herein the sum of \$20,000.00 is a just and reasonable sum to be awarded to the intervenor Thomas B. Hanley as exemplary damages, to be recovered from the respondent.

8. That judgment should be entered herein adjudging and declaring the purported expulsion of the petitioner and intervenor from membership in the respondent association to be null and void and requiring respondent to reinstate each of them to membership. That such judgment should also provide that the petitioner and intervenor shall each recover from the respondent actual damages in the sum of one dollar and exemplary damages in the sum of \$20,000.00.

9. That petitioner and intervenor are also entitled to recover their costs herein and a reasonable allowance for services of their attorneys in the trial of the issues as to wrongful expulsion. That the sum of \$14,000.00 is a reasonable allowance for the services of attorneys for petitioner and intervenor up

to this date in the trial of the issues as to wrongful expulsion. That one-half of said amount should be included in judgment to be awarded to petitioner and one-half in judgment to be awarded to intervenor.

11. That this judgment shall not constitute any adjudication of the truth or falsity of the charges preferred against the petitioner or intervenor and shall not operate as a bar to trial of the charges preferred against the petitioner or intervenor before a union tribunal provided such trial is conducted in accordance with the respondent's constitution and the requirements of law relating to due notice and specification of charges, reasonable time and opportunity to prepare for trial, trial before a disinterested and impartial tribunal, and reasonable opportunity to present evidence and to confront and cross-examine opposing witnesses.

11. The court further concludes that issues tried and determined in this case dispose of issues raised in Civil Case No. 3784 entitled Troy O. Nance, plaintiff, vs. Sheet Metal Workers International Association, defendant, and that upon entry of judgment in this case in accordance with this decision said case No. 3784 should be dismissed.

Counsel for petitioner and intervenor may prepare and submit findings of fact, conclusions of law

and judgment and decree in conformity to this memorandum and the previous memorandum of decision herein.

Dated this 2 May 1959.

/s/ Will L. Hoyt

Judge

Copies of above memorandum mailed 2 May 1959 to:

James P. McCune, Attorney, Nephi, Utah.

A. W. Sandack, Attorney,
405 Executive Building,
Salt Lake City, Utah.

Respectfully submitted,

JAMES P. McCUNE
53 North Main Street
Nephi, Utah

A. M. DREYER
109 South Third Street
Las Vegas, Nevada
*Attorneys for Plaintiffs and
Respondents and Cross-Appellants*