BANKRUPTCY—A LABOR UNION IS A *PERSON* WHO MAY FILE A PETITION FOR VOLUNTARY BANKRUPTCY UNDER § 4(A) OF THE BANKRUPTCY ACT—*Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc.*, 576 F.2d 1285 (8th Cir. 1978).

INTRODUCTION

The Bankruptcy Act[1] was enacted for the dual purpose of (1) discharging the indebtedness of the honest debtor so that he may be afforded an unburdened opportunity to start afresh in his economic pursuits,[2] and (2) providing a speedy, efficient, and equitable means of distributing his assets among his creditors.[3] The National Labor Relations Act,[4] on the other hand, was established to secure equal bargaining power and rights for workingmen, and to promote collective bargaining for employees through representatives of their own free choice.[5] The relationship between these two acts was examined by the Eighth Circuit Court of Appeals in *Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc.*[6] There the court was presented with a difficult question of first impression: can a labor union, saddled with a heavy judgment arising from its violation of a collective bargaining agreement, file a petition for voluntary bankruptcy as a *person* under section 4(a) of the Bankruptcy Act?[7] Since the Act itself is silent as to this question, the Eighth Circuit Court of Appeals was compelled to examine the legislative intent and prior judicial construction of the Act's pertinent provisions.[8] As a result of this examination, the court held that a labor union is indeed a person capable of filing for voluntary bankruptcy.[9]

The decision in *Highway & City Freight Drivers* represents a

1. 11 U.S.C. §§ 1-1200 (1976).
2. Williams v. United States Fidelity & Guar. Co., 236 U.S. 549, 554-55 (1915).
3. Straton v. New, 283 U.S. 318, 320-21 (1931).
4. 29 U.S.C. §§ 1-1381 (1976).
5. H.K. Porter Co., Inc. v. NLRB, 397 U.S. 99, 102-06 (1970); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937).
6. 576 F.2d 1285 (8th Cir. 1978).
7. *Id.* at 1286. Section 4(a) of the Bankruptcy Act provides that "[a]ny person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt." 11 U.S.C. § 22(a)(1976).
8. Section 4(a) states that any "person" may file a voluntary bankruptcy petition, *see* note 7 *supra*; § 1(23) expands the definition of "persons" to include "corporations"; §1(8) includes within the definition of a "corporation" all "unincorporated companies and associations." 11 U.S.C. §§ 1(8), 1(23), 22(a)(1976). *See* note 17 *infra*. The court's examination focused upon these provisions. 576 F.2d at 1287.
9. 576 F.2d at 1292.

significant expansion of the class of persons entitled to the protection of the Bankruptcy Act and creates significant ramifications in the area of labor-management relations.[10] This article will examine the Eighth Circuit's decision in light of the legislative history of the Bankruptcy Act, the judicial interpretation of that Act, and the legal definition of a labor union under federal case law and under the National Labor Relations Act.

FACTS AND HOLDING

In 1970, Local 600 of the Highway and City Freight Drivers, Dockmen and Helpers, engaged in an unlawful strike in violation of its existing collective bargaining agreement.[11] A judgment totaling approximately six million dollars was obtained against the local union[12] by more than sixty motor freight companies[13] in a suit under section 301 of the Labor Management Relations Act.[14] As a result of this judgment the union filed a petition for voluntary bankruptcy and was adjudged a bankrupt.[15] At the bankruptcy hearing, Gordon Transports, Inc. moved to have the adjudication vacated and the petition dismissed, arguing that a labor union is not a person who may file a petition for voluntary bankruptcy under section 4(a) of the Bankruptcy Act.[16] The bankruptcy court ruled that the union was an association that came within the Bankruptcy Act's definition of corporation and was, as such, a person who could file a petition for voluntary bankruptcy.[17]

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10. *See* note 70 and accompanying text *infra*.

11. *In re* Highway & City Freight Drivers, 432 F. Supp. 1326, 1327 (E.D. Mo. 1977), *rev'd*, Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc., 576 F.2d 1285, 1286 (8th Cir. 1978).

12. The International Brotherhood of Teamsters, Local Union 600's affiliated parent organization, was not named as a defendant in the suit. On appeal, Gordon Transports, Inc. argued that the union was not a separate entity independent from the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, and that, therefore, the bankruptcy proceedings were improper without the joinder of the parent organization. Judge Lay summarily dismissed this contention, noting that "the local [union] has an adequately autonomous legal existence to allow it to file separately under § 4(a)." 576 F.2d at 1292.

13. *Id.* at 1286.

14. Section 301 allows a labor union to sue or be sued for breach of a collective bargaining agreement. 29 U.S.C. § 185 (1976).

The issues of liability and damages arising from Local 600's breach of its bargaining agreement were determined in prior separate decisions. *See* Motor Carriers Council of St. Louis, Inc. v. Local Union 600, 384 F. Supp. 214 (E.D. Mo. 1974), *aff'd*, 516 F.2d 316 (8th Cir. 1975) (damages determined); Motor Carriers Council of St. Louis, Inc. v. Local Union 600, 370 F. Supp. 461, *aff'd*, 486 F.2d 650 (8th Cir. 1972) (local union found liable).

15. 576 F.2d at 1287.

16. *Id.* at 1287.

17. *Id.* Section 1(23) of the Act provides:

On review, the federal district court reversed the bankruptcy court's ruling, and found that a labor union was not a "business oriented entity with powers similar to corporations," and was thus neither a corporation nor a person under the Bankruptcy Act.[18] On appeal from the district court decision, the Eighth Circuit Court of Appeals reversed and held that a union is indeed a person under the Bankruptcy Act.[19] In reaching its decision, the court first determined that a labor union was an association, and was therefore suable as a distinct entity in federal court.[20] The court further analyzed the characteristics of a labor union to find that unions possess some of the unique powers and privileges of a private corporation:[21] (1) a union's existence is as perpetual as that of any corporation; (2) a union operates under its own constitution, rules and by-laws; and (3) a union owns real and personal property.[22] Accordingly, since a union was found to be an association which is included in the Act's definition of a corporation, and is thereby encompassed by the statutory definition of person, the court concluded that a union is thus a person capable of filing a voluntary petition of bankruptcy under section 4(a) of the Bankruptcy Act.[23]

> *Persons* shall include *corporations*, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this title shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations.

11 U.S.C. § 1(23)(1976)(emphasis added).

A "corporation," specifically included in the definition of a "person" by section 1(23), is defined by the Act as follows:

> *Corporation* shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and *associations*, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument.

Id. § 1(8)(emphasis added).

18. *In re* Highway & City Freight Drivers, 432 F. Supp. 1326, 1330 (E.D. Mo. 1977), *rev'd*, Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc., 576 F.2d 1285, 1287 (8th Cir. 1978).

19. 576 F.2d at 1292.

20. *Id.* at 1288.

21. *Id.* at 1289.

22. *Id.* at 1288-89.

23. *Id.* at 1292.

BACKGROUND

PERSONS, CORPORATIONS AND ASSOCIATIONS UNDER THE BANKRUPTCY ACT

The current Bankruptcy Act[24] provides that corporations are persons capable of filing for voluntary bankruptcy in federal court.[25] The original Bankruptcy Act of 1898,[26] however, made no provision for the filing of voluntary bankruptcy by corporations,[27] and it was not until 1910 that the Act was amended to allow certain corporations to become voluntary bankrupts.[28] Under the terms of this amendment, all persons except municipal, railroad, insurance or banking corporations could file voluntary bankruptcy.[29]

In 1926, the Act's definition of corporation was expanded to include: "joint stock companies, unincorporated companies and associations and any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument."[30] By classifying unincorporated associations as corporations, this amendment clearly raised the possibility of extending the right to file for voluntary bankruptcy to unincorporated labor unions.[31]

The last significant change in the definition of a corporation was made by the passage of the 1938 amendments. The restrictive introductory phrase "[c]orporation shall *mean*"[32] was replaced by

24. 11 U.S.C. §§ 1-1200 (1976), *as amended by* Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2549 (1978).

25. *See* notes 8 and 17 *supra*.

26. Act of July 1, 1898, ch. 541, 30 Stat. 544. For a legislative history of the Act of 1898, see 1 W. COLLIER, COLLIER ON BANKRUPTCY ¶¶ 0.06-.07 (14th ed. 1974).

27. The Act stated: "Any person who owes debts, *except a corporation*, shall be entitled to the benefits of this Act as a voluntary bankrupt." Act of July 1, 1898, ch. 541, § 4(a), 30 Stat. 544, 547 (emphasis added).

28. Act of June 25, 1910, ch. 412, § 4(a), 36 Stat. 838, 839.

29. *Id.* The Bankruptcy Act of 1898 defined "persons" to include corporations, except where otherwise specified. Act of July 1, 1898, ch. 541 § 1(19), 30 Stat. 544, 545. Furthermore, the Act stated that corporations "shall mean all bodies having any of the powers and privileges of private ocrporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association." *Id.* § 1(6), at 544.

30. Act of May 27, 1926, ch. 406, § 1(a)(6), 44 Stat. 662.

31. *See* S. WRIGHTINGTON, THE LAW OF UNINCORPORATED ASSOCIATIONS AND SIMILAR RELATIONS § 2 (1916) (including a trade union in the list of unincorporated associations); McLaughlin, *Amendment of the Bankruptcy Act*, 40 HARV. L. REV. 341, 360-61 (1927) (discussing the significance of including unincorporated associations in the definition of a corporation). *See generally* Colin, *An Analysis of the 1926 Amendments to the Bankruptcy Act*, 26 COLUM. L. REV. 789, 790 (1926) (generallly discussing the effect of the 1926 amendment in expanding the scope of persons eligible to file voluntary bankruptcy).

32. Act of July 1, 1898, ch. 541, 30 Stat. 544 (emphasis added).

the more flexible introduction, "[c]orporation shall *include*,"[33] thus making corporation a more comprehensive statutory term.[34]

The expansive nature of the class of corporations authorized to file voluntary bankruptcy is further demonstrated by the absence of any requirement that the voluntary bankrupt be a "moneyed, business, or commercial corporation"—a restrictive requirement found in the Act's *involuntary* bankruptcy provisions.[35] The following examination of the legal character of labor unions as developed by case law and federal labor legislation lends further support to the classification of labor unions as persons under the Bankruptcy Act.

THE LEGAL CHARACTER OF LABOR UNIONS UNDER FEDERAL LAW

In *United Mine Workers v. Coronado Coal Co.*[36] the United States Supreme Court held that unincorporated labor unions were distinct legal entities suable in their own name.[37] The Court reasoned that

> [u]ndoubtedly at common law, an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done, and it could only sue or be sued in the names of its members, and their liability had to be enforced against each member. . . . But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary.[38]

This conclusion was subsequently reinforced in *United States v. White*,[39] wherein the Court noted that the structural, functional,

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33. Act of June 22, 1938, ch. 575, 52 Stat. 840 (emphasis added).

34. 1 W. COLLIER, *supra* note 26, at ¶ 1.08.

35. The Bankruptcy Act provides for both involuntary and voluntary bankruptcy proceedings. 11 U.S.C. § 22 (1976). Although the definitional terms such as "persons," "corporations," and "associations" are equally applicable to both types of proceedings, § 4(b) of the Act restricts the class of involuntary bankrupts to "[a]ny natural person, except a wage earner or farmer, and any *moneyed, business, or commercial corporation*, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over." *Id.* § 22(b)(emphasis added). However, the restrictions imposed by § 4(b) are not applicable to *voluntary* bankruptcy proceedings such as those involved in the instant case. 576 F.2d at 1291.

For an analysis of the distinction between the statutory requirements of §§ 4(a) and 4(b), see *In re* Philadelphia Consistory Scottish Rite, 40 F. Supp. 645, 649 (E.D. Pa. 1941).

36. 259 U.S. 344 (1922).

37. *Id.* at 392. *See* notes 51-52 and accompanying text *infra*.

38. 259 U.S. at 385-86.

39. 322 U.S. 694 (1944).

and legal characteristics of a labor union resemble those of a private corporation.[40]

The legal status of labor unions has further been defined by federal labor legislation. Under section 301 of the Taft-Hartley Act,[41] a labor organization is granted the right to sue or be sued in federal court as a distinct entity, or on behalf of the employees whom it represents, for breach of collective bargaining agreements.[42] In this particular respect, labor unions were granted the same legal status as corporations.[43] The corporation-like legal character of a labor union is also implicit in section 201 of the Landrum-Griffin Act,[44] which requires every labor union to follow filing and reporting procedures analogous to those required for the incorporation of a business.[45]

The modern labor union has thus been recognized by federal law, both explicitly and implicitly, as a distinct legal entity having many legal characteristics identical to those possessed by a private corporation. This recognition of a labor union's quasi-corporate legal character has been coupled with the progressive broadening of the Bankruptcy Act's definition of corporation to include unincorporated associations within the scope of its voluntary bankruptcy provisions.

ANALYSIS OF THE COURT'S OPINION

In *Highway & City Freight Drivers* the Eighth Circuit Court of Appeals was asked to decide whether a labor union was a person who may file a petition for voluntary bankruptcy under section

40. *Id.* at 701-02. *See* note 53 *infra.*

41. 29 U.S.C. § 185(b)(1976).

42. Section 301(b) provides in pertinent part that "[a]ny . . . labor organization may sue or be sued as an entity and on behalf of the employees whom it represents in the courts of the United States." *Id.* § 301(b).

43. In the congressional debates which preceded the passage of § 301, Senator Taft explained that

> title III of the bill . . . makes unions suable in the Federal Courts for violation of contract. As a matter of law unions, of course, are liable in theory on their contracts today, but as a practical matter it is difficult to sue them. They are not incorporated; they have many members; in some States all the members must be served; it is difficult to know who is to be served. But *the pending bill provides they can be sued as if they were corporations* and if a judgment is found against a labor organization, even though it is an unincorporated association, the liability is on the labor union and the labor-union funds, and it is not on the individual members of the union, where it has fallen in some famous cases to the great financial distress of the individual members of labor unions.

93 CONG. REC. 3839 (1947)(emphasis added).

44. 29 U.S.C. § 431(a).

45. *Compare id.* § 431 *with* MODEL BUSINESS CORPORATION ACT §§ 54, 55, 125, 126.

4(a) of the Bankruptcy Act.[46] Noting that the Act's definition of person includes a corporation, and that the statutory definition of corporation embraces unincorporated associations,[47] the court focused its inquiry upon the question of "whether the Union is an association which has any of the powers and privileges of private corporations not possessed by individuals or partnerships within the meaning of the Act."[48]

In deciding this issue, the court relied heavily upon the decisions in *United Mine Workers v. Coronado Coal Co.*[49] and *United States v. White*.[50] In *Coronado Coal*, the United States Supreme Court recognized labor unions to be lawfully organized associations suable as distinct legal entities in federal court under the Sherman Act.[51] Like the Bankruptcy Act, the Sherman Act included corporations and associations within its authorized class of suable persons.[52] The quasi-corporate character of modern labor unions noted by the Court in *White*[53] provided further support for the Eighth Circuit's conclusion that "under federal law, a union undeniably possesses some of the unique powers or privileges of a

46. 576 F.2d at 1286.
47. *See* notes 8 and 17 *supra*.
48. 576 F.2d at 1287.
49. 259 U.S. 344 (1922).
50. 322 U.S. 694 (1944). It is important to note that neither *Coronado Coal* nor *White* were actions under the Bankruptcy Act. However, in both cases the Supreme Court sought to determine the legal status and rights of a labor union.
51. 259 U.S. 344, 392 (1922). The Court in *Coronado Coal* felt that its decision, a departure from the common law position, was warranted to a large degree by the growth and necessities of the large labor organizations; these developments brought about the affirmative legal recognition of the unions' existence and usefulness as well as provisions for their protection. *Id.* at 385-86.
52. *Compare* the Sherman Act, 15 U.S.C. §§ 7, 8 (1976) *with* the Bankruptcy Act, 11 U.S.C. §§ 1(8), 1(23), 22 (1976).
53. The Court in *White* elaborated upon the characteristics of a labor union as follows:

> Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity . . . The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any members. It normally operates under its own constitution, rules and by-laws which, in controversies between member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members. Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees.

322 U.S. 694, 701-02 (1944).

private corporation."[54] Accordingly, a labor union was found to be a corporation subject to the protection of the Bankruptcy Act.[55]

The court in *Highway & City Freight Drivers* drew upon sound principles of statutory construction to buttress this conclusion. First, the court urged an expansive reading of statutory coverage as implied by the Act's broadly inclusive definition of corporation.[56] Second, it was observed that a labor union was not among those entities expressly excluded from filing voluntary bankruptcy by the literal language of section 4(a).[57] The express exception of certain entities under section 4(a) evolved from considerations not applicable to labor unions,[58] and such exceptions should be narrowly confined to the designated entities.[59]

The legislative history of the Bankruptcy Act further supports the court's classification of a union as a corporation. From its inception, the Act's definition of corporation has been subject to "a broad interpretation, enabling entities which were not typical businesses to file for voluntary bankruptcy."[60] Moreover, the 1926

54. 576 F.2d at 1289.

55. *Id.* at 1287.

56. *Id.* at 1289. *See* text at notes 32-34 *supra.*

57. 576 F.2d at 1289. *See* note 59 *infra.*

58. Section 4(a) excepts "a municipal, railroad, insurance, or banking corporation or a building and loan association" from the protection of voluntary bankruptcy. 11 U.S.C. § 22(a) (1976). The basis for these exceptions was explained as follows:

> There has been excepted out of the law *always* certain corporations—for instance, municipal, railroad, insurance, or banking corporations—on the theory that all of these corporations partook either of a public or quasi-public nature that did not warrant their estates being adjudicated through bankruptcy proceedings, and that it was wiser to hold them exempt from the law than to permit them to be thrown into bankruptcy by either voluntary or involuntary proceedings.

Hearings on H.R. 18694 Before Subcomm. No. 1 of the House Comm. on the Judiciary, 60th Cong., 2d Sess. — (1909), *reprinted in* 576 F.2d at 1289 n.6.

59. *Cf.* Israel-British Bank (London) Ltd. v. Federal Deposit Ins. Corp., 536 F.2d 509, 512-13 (2d Cir. 1976), *cert. denied*, 429 U.S. 978 (1976) (words of exception should be strictly construed to limit the exception); Colorado Pub. Interest Research Group, Inc. v. Train, 507 F.2d 743 (10th Cir. 1974), wherein the court explained:

> Another cardinal rule of statutory construction is that where the legislature has acted to except certain categories from the operation of a particular law, it is to be presumed that the legislature in its exceptions intended to go only as far as it did, and that additional exceptions are not warranted. In other words, where there be express exceptions to a statute, additional exceptions by implication are not favored.

Id. at 747.

60. *See, e.g., In re* Carthage Lodge, No. 365, I.O.O.F., 230 F. 694 (N.D.N.Y. 1916). In allowing an Odd Fellows lodge to file for voluntary bankruptcy, the court noted:

> The bankruptcy law has prescribed what "bodies" or associations of persons shall be deemed a corporation within its meaning, and this law is paramount. That an association of a considerable number of men under a common name, with a constitution and bylaws, and with power to elect governing trustees, and recognized by the statutes of the state as a single body

amendments to the Act have expanded the statutory meaning of corporation to include entities beyond its ordinary definition.[61] Viewed against the background of these amendments, the court properly held that a labor union was an unincorporated association embraced by the Act's definition of corporation.[62] The fact that a labor union is not a "business organized for profit," while it may determine the union's right to *involuntary* bankruptcy,[63] is irrelevant in the case of *voluntary* bankruptcy and cannot control the union's right to file a petition under section 4(a).[64]

In its decision, the court in *Highway & City Freight Drivers* refused to address any pertinent policy arguments, stating that

> [u]nless some overriding principle of public policy is shown to exist which demonstrates that the legislative purpose of the Act would be circumvented by our interpretation of the Act, these arguments are not germane to the court's statutory interpretation. We are aware of none here. Arguments addressed to the wisdom of a policy which would exclude unions from the Act are better made to Congress so a specific exemption could be created if so desired.[65]

Despite the court's refusal to entertain any policy arguments, important policy considerations do underly the extension of voluntary bankruptcy protection to labor unions.

The characterization of a union local as a person under the Bankruptcy Act furthers the Act's twofold purpose of (1) avoiding preferences among creditors through the equitable and expeditious distribution of the bankrupt's assets,[66] and (2) providing a debtor a fresh start through the discharge of his obligations.[67] These vital protections cannot be effectively obtained under state law, since state insolvency proceedings, which extend only to intrastate debts, are largely inadequate to relieve a bankrupt union

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> or "entity," and given power to own real and personal property and sue and be sued, and act by its trustees duly elected as a single body, is a *body* having some of the powers and privileges of private corporations not possessed by individuals or partnerships, cannot be doubted.

Id. at 701.

61. 576 F.2d at 1290. One noted author states that the 1926 amendments were "meant to enlarge the statutory meaning of 'corporation' beyond its ordinary meaning" and calls for "a broad, inclusive construction of the language used." 1 W. COLLIER, *supra* note 26, at ¶ 1.08.

62. 576 F.2d at 1291. In defining a union as an "unincorporated association," the court rejected the notion that a union is a "partnership." *Id.*

63. *See* note 35 *supra.*

64. 576 F.2d at 1291.

65. *Id.* at 1292.

66. *In re* Leslie, 119 F. 406, 410 (N.D.N.Y. 1903).

67. H. REMINGTON, 1 A TREATISE ON THE BANKRUPTCY LAW OF THE UNITED STATES § 1 (5th ed. 1950).

of its debts.[68]

The benefits of federal bankruptcy protection, however, must be viewed against a cardinal policy of federal labor legislation: the promotion of collective bargaining between employers and employees aimed at effecting the peaceful resolution of labor disputes.[69] A potential policy conflict might arise, however, in the labor union's use of voluntary bankruptcy to evade the consequences of breaching a collective bargaining agreement.[70] However, such a misuse of bankruptcy proceedings by labor organizations is unlikely, owing to certain built-in safeguards in the Bankruptcy Act[71] which operate "to deter bad faith breaches of collective bargaining agreements if the haven of the Bankruptcy Act was thought to shield a labor organization from the results of bad faith."[72]

Societal interests in maintaining the viability and effectiveness of labor organizations further warrant the extension of bankruptcy protection to unions. Federal bankruptcy proceedings do not exist solely for the personal relief of the debtor, but serve the ends of social and economic rehabilitation as well.[73] A primary purpose of the Bankruptcy Act is to permit the debtor a "fresh start, a new opportunity in life, and a clean field for future effort, unhampered by the pressure and discouragement of pre-existing debts."[74] If a labor union were not allowed to file voluntary bankruptcy, its very existence would be threatened, and the financial noose of bankruptcy would "be tightened until the labor union loses its life, and ceases to exist."[75] The attrition of labor organizations through financial ruin would leave workers without a bargaining representative, and would place them at a great

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68. *Compare* T. KHEEL, 1 LABOR LAW § 3.03[2] (1978) *and* 5 H. REMINGTON, *supra* note 67, at § 2112.

69. H.K. Porter Co., Inc. v. NLRB, 397 U.S. 99, 102-06 (1970); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 23 n.2 (1937). *See also* R. KORETZ, STATUTORY HISTORY OF THE UNITED STATES LABOR ORGANIZATION 280 (1970).

70. 576 F.2d at 1291-92 n.10.

71. These safeguards include 11 U.S.C. § 32 (1976) (general provisions regarding denial of bankruptcy discharge) and 11 U.S.C. § 35 (1976) (non-dischargeability of debts in certain cases).

72. 576 F.2d at 1291-92 n.10.

73. 1 H. REMINGTON, *supra* note 67, at § 17.

74. Reply Brief of Appellant at 11, Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc., 576 F.2d 1285 (8th Cir. 1978). *See* 1 H. REMINGTON, *supra* note 67, at § 17.

75. Reply Brief of Appellant at 11, Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc., 576 F.2d 1285 (8th Cir. 1978); *Cf. In re* Carthage Lodge, No. 365, I.O.O.F., 230 F. 694, 701 (N.D.N.Y. 1916) (court recognized the ruinous threat of bankruptcy to those corporations not entitled to protection of voluntary bankruptcy).

disadvantage in dealing with their employers in matters of grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The federal labor acts strike a delicate balance between employer and employee interests by fostering collective bargaining,[76] and collective bargaining assumes equal bargaining positions between union and management; without the strength of a labor union, this balance would be upset.[77] Public policy would dictate, therefore, that labor unions be accorded the protection of voluntary bankruptcy to guarantee their continued viability as effective bargaining agents.

CONCLUSION

In *Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc.*,[78] the Eighth Circuit Court of Appeals held that a labor union has the right to file a voluntary petition for bankruptcy under section 4(a) of the Bankruptcy Act. As there was no clear congressional intent expressed on this issue, the court relied upon principles of statutory construction and an examination of legislative history to conclude that the union was an association which had many of the powers and privileges of private corporations not possessed by individuals or partnerships, and was therefore a person entitled to file a petition for voluntary bankruptcy under section 4(a). This extension of voluntary bankruptcy protection to labor organizations is further warranted by societal and policy considerations; to deny such protection would undermine the policy of fostering collective bargaining—a fundamental policy underlying the federal labor acts.

It should be noted that Congress itself appears to support the decision in *Highway & City Freight Drivers*. The congressional committee reports which preceded the Bankruptcy Reform Act of 1978[79] reveal that both the House and Senate interpreted the term unincorporated association as specifically intended to include a labor union within the purview of the Act.[80] Thus, the decision in *Highway & City Freight Drivers* is clearly consonant with the in-

76. *See* H.K. Porter Co., Inc. v. NLRB, 397 U.S. 99, 102-06 (1970); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937).
77. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33 (1937).
78. 576 F.2d 1285 (8th Cir. 1978).
79. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (amending 11 U.S.C. §§ 1-1200 (1976)).
80. *See* S. REP. NO. 95-989, 95th Cong., 2d Sess. 22 (1978); H. R. REP. NO. 95-595, 95th Cong., 1st Sess. 309 (1977).

tent of the newly-revised Bankruptcy Act.[81]

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81. As the House Report expressly states, the new Bankruptcy Act is intended to *overrule* the district court's decision in *In re* Freight Drivers Local 600, 432 F. Supp. 1326 (E.D. Mo. 1977), *rev'd*, Highway & City Freight Drivers Local 600 v. Gordon Transports, Inc., 576 F.2d 1285 (8th Cir. 1978). In effect, Congress has approved the Eighth Circuit's decision in the instant case. *See* H.R. REP. NO. 95-595, 95th Cong., 1st Sess. 309 (1977).