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## The Limited Reach of *Delcostello v. International Brotherhood of Teamsters*: A Statute of Limitations Analysis of LMRDA Title I Actions

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THE LIMITED REACH OF *DELCOSTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS*: A STATUTE OF LIMITATIONS ANALYSIS IN LMRDA TITLE I ACTIONS

INTRODUCTION

In 1959, Congress enacted the Labor-Management Reporting and Disclosure Act ("LMRDA")<sup>1</sup> to regulate internal union affairs. In response to reported abuses of power by union leadership,<sup>2</sup> Congress placed power in the hands of union members,<sup>3</sup> thus ensuring internal union democracy.<sup>4</sup>

The goal of promoting union democracy could not be fully achieved unless the LMRDA left union members free to discuss union practices

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1. Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended at 29 U.S.C. §§ 401-531 (1982 & Supp. III 1985)). The passage of such regulatory legislation became inevitable when Congress enacted the National Labor Relations Act ("NLRA"), ch. 372, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1982)), which, by granting unions the power to act as exclusive collective bargaining representatives, deprives employees of the right to negotiate terms of employment individually with their employers. By granting such power, Congress assumed the obligation of preventing abuse of that power. See S. Rep. No. 187, 86th Cong., 1st Sess. 20 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 416 (1985) [hereinafter NLRB]; Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 819-20 (1960); see also 105 Cong. Rec. 6472 (1959), reprinted in 2 NLRB, *supra*, at 1098 (statement of Sen. McClellan) (the justification for unionization and collective bargaining "becomes meaningless when the individual worker is just as helpless within his union as he was within his industry, when the tyranny of the all-powerful corporate employer is replaced by the tyranny of the all-powerful labor boss").

2. *Finnegan v. Leu*, 456 U.S. 431, 435 (1982). The hearings of the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, provided the impetus for the legislation. See *Wirtz v. Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, 497 (1968). The McClellan Committee uncovered evidence of misappropriation of union funds and of denial of basic rights of union members. See Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess. 4-7 (1958); see also *Wirtz*, 391 U.S. at 497; 29 U.S.C. § 401(b) (1982); H.R. Rep. No. 741, 86th Cong., 1st Sess. 6 (1959), reprinted in 1 NLRB, *supra* note 1, at 764; Cox, *supra* note 1, at 820. Entrenched, corrupt leaders controlled some unions and maintained power through violence, intimidation, and other autocratic practices. See *United Steelworkers v. Sadlowski*, 457 U.S. 102, 122 (1982) (White, J., dissenting); see also *Sadlowski v. United Steelworkers*, 645 F.2d 1114, 1124 (D.C. Cir. 1981) (discussing corruption in the International Brotherhood of Teamsters, the Bakery and Confectionery Workers' International Union of America, United Textile Workers of America, and the International Union of Operating Engineers), *rev'd*, *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982). Fear was such that "a rank and file member dare[d] not risk any opposition to a corrupt or autocratic leadership." 105 Cong. Rec. 6472 (1959), reprinted in 2 NLRB, *supra* note 1, at 1098 (statement of Sen. McClellan).

3. See 105 Cong. Rec. 6472 (1959), reprinted in 2 NLRB, *supra* note 1, at 1099 (statement of Sen. McClellan).

4. See *Finnegan v. Leu*, 456 U.S. 431, 441 (1982); *Wirtz v. Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, 497 (1968); S. Rep. No. 187, 86th Cong., 1st Sess. 20 (1959), reprinted in 1 NLRB, *supra* note 1, at 416.

openly and to criticize union leaders without fear of sanctions.<sup>5</sup> Therefore, Congress included Title I of the LMRDA<sup>6</sup> to provide a statutory "bill of rights"<sup>7</sup> for union members, according them guarantees such as equal rights and privileges,<sup>8</sup> freedom of speech and assembly,<sup>9</sup> and protection from discipline without due process.<sup>10</sup>

The LMRDA does not contain a statute of limitations applicable to actions brought for violations of Title I.<sup>11</sup> Generally, when federal statutes do not provide limitations periods,<sup>12</sup> the rule is to borrow an appropriate statute of limitations from state law.<sup>13</sup> In *DelCostello v. International Brotherhood of Teamsters*,<sup>14</sup> the Supreme Court departed from the traditional borrowing rule by applying the limitations period found in section 10(b) of the National Labor Relations Act ("NLRA")<sup>15</sup> to a Labor-Management Relations Act ("LMRA") section 301/duty of fair representation ("hybrid") claim.<sup>16</sup> The federal courts of appeals are divided whether to extend the *DelCostello* holding to cover a union member's LMRDA Title I claims against his union.<sup>17</sup>

Part I of this Note discusses the traditional practice of borrowing state

5. See *United Steelworkers v. Sadlowski*, 457 U.S. 102, 112 (1982); *Finnegan v. Leu*, 456 U.S. 431, 435-36 (1982).

6. 29 U.S.C. §§ 411-415 (1982).

7. *Id.* (Title I is entitled "Bill of Rights Of Members of Labor Organizations").

8. See 29 U.S.C. § 411(a)(1).

9. See *id.* § 411(a)(2).

10. See *id.* § 411(a)(5) (requiring notice and a hearing before imposition of discipline).

11. See *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 976 (2d Cir. 1987); *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 182 (3d Cir. 1984). See generally 29 U.S.C. §§ 411-415 (1982).

12. Federal statutes frequently do not contain a statute of limitations. See, e.g., *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 158 (1983) (29 U.S.C. § 185 (1982)); *Board of Regents v. Tomanio*, 446 U.S. 478, 483 (1980) (42 U.S.C. § 1983 (1982)).

13. See *Wilson v. Garcia*, 471 U.S. 261, 268 (1985) (Civil Rights Act of 1871); *Runyon v. McCrary*, 427 U.S. 160, 180 (1976) (Civil Rights Act of 1866); *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 (1975) (Title VII of the Civil Rights Act of 1964); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 703-04 (1966) (LMRA § 301); *O'Sullivan v. Felix*, 233 U.S. 318, 322 (1914) (Civil Rights Act of 1870); *Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U.S. 390, 397 (1906) (Sherman Act); *Campbell v. Haverhill*, 155 U.S. 610, 616-17 (1895) (Patent Act).

14. 462 U.S. 151 (1983).

15. 29 U.S.C. § 160(b) (1982). This limitations period governs charges of unfair labor practices as defined in § 8 of the NLRA, 29 U.S.C. § 158 (1982).

16. *DelCostello*, 462 U.S. at 154-55; see also *infra* notes 40-43 and accompanying text (definition and discussion of hybrid actions).

17. The Courts of Appeals for the Third, Fourth, Sixth, Seventh, and Eleventh Circuits hold that courts should extend the *DelCostello* holding by applying the section 10(b) NLRA statute of limitations to LMRDA Title I actions. See *Reed v. United Transp. Union*, 828 F.2d 1066, 1067 (4th Cir. 1987), cert. granted, 56 U.S.L.W. 3608 (U.S. Mar. 8, 1988) (No. 87-1031); *Adkins v. International Union of Elec., Radio & Machine Workers*, 769 F.2d 330, 335 (6th Cir. 1985); *Davis v. UAW*, 765 F.2d 1510, 1514-15 (11th Cir. 1985), cert. denied, 475 U.S. 1057 (1986); *Vallone v. Local Union 705, Int'l Bhd. of Teamsters*, 755 F.2d 520, 521-22 (7th Cir. 1984); *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 182-83 (3d Cir. 1984). The Courts of Appeals for the First and Second Circuits hold that *DelCostello* should not be extended to Title I

limitations periods and the circumstances under which the Court has departed from it. Part II examines the particular application of borrowing principles in *DelCostello*. Part III analyzes whether the Court's reasons for turning to federal law in *DelCostello* are equally valid in the context of an LMRDA Title I claim and finds that they are not. This Note concludes that the concerns underlying civil rights claims closely resemble the concerns addressed by the Title I cause of action and, therefore, courts should apply state limitations periods applicable to civil rights claims to Title I suits.

## I. BORROWING LIMITATIONS PERIODS

When federal statutes lack limitations periods, the settled practice is to infer that Congress intended the courts to apply the most closely analogous state law statute of limitations.<sup>18</sup> The prevailing view holds that the practice of borrowing state limitations periods relies on a presumption that Congress' awareness of the long and consistent judicial practice of borrowing state law indicates that Congress, when silent, intends application of state statutes.<sup>19</sup> The fact that Congress has amended statutes to

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claims. *See* *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 977 (2d Cir. 1987); *Doty v. Sewall*, 784 F.2d 1, 11 (1st Cir. 1986).

In *Doty*, the court reaffirmed its prior decision in *Linder v. Berge*, 739 F.2d 686 (1st Cir. 1984), where the court applied the six-month § 10(b) NLRA period to a hybrid suit to which LMRDA claims were appended. *Doty*, 784 F.2d at 4. The *Doty* court distinguished that situation from the freestanding LMRDA claim before it. *Id.* The *Linder* court, however, had given little consideration to the LMRDA claim and simply applied section 10(b). *See Linder*, 739 F.2d at 690.

18. *See supra* note 13.

19. *See* *Agency Holding Corp. v. Malley-Duff & Associates.*, 107 S. Ct. 2759, 2771 (1987) (Scalia, J., concurring); *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 158-59 & nn.12-13 (1983); *Holmberg v. Armbrrecht*, 327 U.S. 392, 395 (1946) ("The implied absorption of State statutes of limitation within the interstices of the federal enactments is a phase of fashioning remedial details where Congress has not spoken but left matters for judicial determination within the general framework of familiar legal principles.").

Two other rationales have been offered to justify the practice of applying state statutes of limitations. One view contends that the Rules of Decision Act, 28 U.S.C. § 1652 (1982), requires application of state law when a federal statute is silent on the limitations issue. *See DelCostello*, 462 U.S. at 172-73 & n.1 (Stevens, J., dissenting). The second view posits that the practice of applying state limitations periods involves no "borrowing" at all; "state statutes appl[y] of their own force, unless pre-empted by federal law." *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2768 (1987) (Scalia, J., concurring); *cf.* *Campbell v. Haverhill*, 155 U.S. 610, 616 (1895) (Congress intended to subject federal actions without a limitations provision "to the general laws of the state applicable to actions of a similar nature"); *McCluny v. Silliman*, 28 U.S. (3 Pet.) 269, 275 (1830) ("a statute of limitations is the law of the *forum*, and operates upon all who submit themselves to its jurisdiction"). Under Justice Scalia's view, federal courts can never "borrow" a limitations period from federal law because the practice does not involve borrowing. *Malley-Duff*, 107 S. Ct. at 2771 (Scalia, J., concurring). If the terms or purposes of the federal statute pre-empt state law, then no limitations period governs the action. *Id.*

The prevailing view treats the federal statute as the source of the obligation to apply state law; Congress' silence directs courts to follow their previous borrowing practice. *Id.*

provide for limitations periods when it disagrees with this interpretation of its silence bolsters this presumption.<sup>20</sup>

Because state legislatures do not take federal interests into account when establishing limitations periods, however, federal courts have an obligation to ensure that the use of state law will neither frustrate nor interfere with the implementation of federal policies.<sup>21</sup> Courts, therefore, should not borrow local statutes of limitations when their application would conflict with the policies underlying the federal statute.<sup>22</sup> Employing this principle, the Court has sometimes declined to borrow state statutes.<sup>23</sup>

In *DelCostello v. International Brotherhood of Teamsters*,<sup>24</sup> the Supreme Court reaffirmed the traditional rule that courts should adopt analogous state law unless the state law interferes with federal policy.<sup>25</sup> The Court, however, modified the rule, stating that courts should turn away from state law when "federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make [federal law] a significantly more appropriate vehicle for interstitial lawmaking."<sup>26</sup>

With its decision in *DelCostello*, the Court embarked on a new course in the history of borrowing. The decision marks the first time the Court

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at 2768. Under Justice Scalia's view, the duty to apply state law "does not spring from" the federal statute. *Id.* at 2770. Rather, the federal statute is relevant only for the purposes of determining whether the terms or purposes of the statute pre-empt the state limitations period. *Id.* Both the majority approach, see *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 159 n.13 (1983), and Justice Scalia's view, see *Malley-Duff*, 107 S. Ct. at 2770 (Scalia, J., concurring), agree that the Rules of Decision Act does not mandate application of state limitations periods because the Act merely begs the question, authorizing federal courts to use state laws "in cases where they apply." *Id.* (quoting 28 U.S.C. § 1652 (1982)).

20. *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704 (1966); see, e.g., 15 U.S.C. § 15b (1982) (amending Clayton Act to include limitations period); 35 U.S.C. § 286 (1982) (amending Patent Act to provide statute of limitations).

21. *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977); see *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 161 (1983) ("In some circumstances . . . state statutes of limitations can be unsatisfactory vehicles for the enforcement of federal law.").

22. *Occidental*, 432 U.S. at 367; see *Johnson v. Railway Express Agency*, 421 U.S. 454, 465 (1975).

23. See, e.g., *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2765-66 (1987) (applying Clayton Act statute of limitations to civil RICO claim because of lack of any satisfactory state law analogy to RICO and need for uniform national limitations period); *Occidental*, 432 U.S. at 368 (applying no limitations period to EEOC Title VII enforcement suit because application of state period would interfere with congressional intent to delay judicial action while EEOC performs its administrative responsibilities).

24. 462 U.S. 151 (1983).

25. See *id.* at 158-61.

26. *Id.* at 171-72. The majority of the Court reaffirmed this modification of the traditional borrowing rule in *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759 (1987).

borrowed a limitations period from another federal statute.<sup>27</sup> Previously, when faced with inconsistent state law analogies, the Court had concluded that no time limit governed the action.<sup>28</sup> Furthermore, before it would turn away from state law, the Court had always required that the state limitations period be inconsistent with the policies of the federal statute.<sup>29</sup>

Although the Court in *DelCostello* declared that courts should not reject state law anytime it "fails to provide a perfect analogy,"<sup>30</sup> courts may apply a federal limitations period if that period is more "appropriate."<sup>31</sup> This language implies that courts need not find actual inconsistency with federal policies before turning away from state law.<sup>32</sup>

To determine whether departure from the longstanding borrowing rule is justified in the LMRDA Title I context, available state law analogies and section 10(b) of the NLRA<sup>33</sup> must be examined.<sup>34</sup> Such an examination requires an understanding of the Court's reasoning in *DelCostello*.

27. See *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2768 (1987) (Scalia, J., concurring).

In *DelCostello*, the Court relied on *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221 (1958), for the proposition that federal courts may borrow limitations periods from federal law. *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 162 (1983). In *McAllister*, however, the Court merely held that a state statute of limitations of less than three years, applied to a federal unseaworthiness claim, was inconsistent with federal policy. 357 U.S. at 224-26. The Court left open the possibility that a state period of three years or more might be appropriate. *Id.* Indeed, the Court expressly declined to decide what limitations period should govern, but indicated state law or the admiralty doctrine of laches as the only alternatives. *Id.* at 224. The Court therefore did not even consider that a federal statute of limitations might apply. See *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704 n.6 (1966) (*McAllister* represents no departure from the tradition of applying state limitations periods to federal causes of action).

28. See *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977).

29. See *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2768 (1987) (Scalia, J., concurring); *Johnson v. Railway Express Agency*, 421 U.S. 454, 465 (1975); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 706-07 (1966); see, e.g., *Occidental*, 432 U.S. at 367.

30. *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 171 (1983).

31. *Id.* at 171-72.

32. This modification has "reformulat[ed] the rule, transforming it from a presumption that congressional silence means that [courts] should apply the appropriate state limitations period into a presumption that . . . [courts] should apply the appropriate limitations period, state or federal." *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2772 (1987) (Scalia, J., concurring).

33. Section 10(b) is the only federal limitations period that the federal courts of appeals have considered when choosing the appropriate statute of limitations for an LMRDA Title I action in terms of the *DelCostello* rule. See cases cited *supra* note 17.

34. See *Local Union 1397, United Steelworkers v. United Steelworkers*, 580 F. Supp. 866, 868 (W.D. Pa. 1984) (considering the federal policies at stake, court must "find the state or federal action most closely analogous to an LMRDA claim"), *aff'd*, 748 F.2d 180 (3d Cir. 1984); *International Union of Elevator Constructors v. Home Elevator Co.*, 798 F.2d 222, 228 (7th Cir. 1986) (despite close state law analogy, if federal policy makes the federal limitations period significantly more appropriate, court should apply the federal period).

## II. *DELCASTELLO V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS*

In *DelCostello v. International Brotherhood of Teamsters*,<sup>35</sup> the Supreme Court applied the six-month limitations period found in section 10(b) of the NLRA<sup>36</sup> to an LMRA section 301/duty of fair representation claim.<sup>37</sup> The Court rejected the use of state limitations periods because state statutes neither closely parallel the hybrid action nor serve the federal policies and the practicalities of litigation involved in the hybrid action.<sup>38</sup>

The Court began its analysis by noting that the hybrid action has no close state law analogy.<sup>39</sup> A hybrid action combines a union member's LMRA section 301 claim against his employer for breach of the collective bargaining agreement<sup>40</sup> with his claim against his union for breach of its implied duty of fair representation in its handling of the ensuing grievance and arbitration proceeding.<sup>41</sup> This unusual amalgam,<sup>42</sup> a creature peculiar to federal labor law, arises out of the federal labor policy of exclusive representation.<sup>43</sup> The practicalities of litigation in a hybrid claim convinced the Court that state law analogies would prove inadequate to

35. 462 U.S. 151 (1983).

36. 29 U.S.C. § 160(b) (1982).

37. 462 U.S. at 155. See *infra* notes 40-43 and accompanying text.

38. *Id.* at 165.

39. *Id.*

40. See 29 U.S.C. § 185(a) (1982) ("Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.").

41. See *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976); *Vaca v. Sipes*, 386 U.S. 171, 186-87 (1967). The Supreme Court has held the duty of fair representation to be implicit in the NLRA. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 164 & n.14 (1983); *Humphrey v. Moore*, 375 U.S. 335, 342 (1964). The duty exists because the NLRA makes labor unions the exclusive bargaining representative of all employees in a bargaining unit. See *supra* note 1. The reduction in individual rights resulting from this policy of exclusive representation imposes on the union the duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. at 177.

42. The employee's claim against the employer and his claim against the union are "inextricably interdependent. 'To prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.'" *United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 66-67 (1981) (quoting *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976)). The employee must prove the same case whether he sues the employer, the union, or both. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 165 (1983).

43. See *Garcia v. Eidal Int'l Corp.*, 808 F.2d 717, 720 (10th Cir. 1986), *cert. denied*, 108 S. Ct. 94 (1987); *Central States S.E. & S.W. Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1107 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 1291 (1987); *Merk v. Jewel Food Stores Div.*, 641 F. Supp. 1024, 1033 (N.D. Ill. 1986); *Papianni v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 11*, 622 F. Supp. 1559, 1574 (D.N.J. 1985).

effectuate the purposes of federal labor law.<sup>44</sup> State statutes<sup>45</sup> could not satisfy both the federal interest in rapid resolution of labor disputes<sup>46</sup> and the desire to provide an employee with a satisfactory opportunity to vindicate his rights.<sup>47</sup>

The Court, however, found a close analogy between the hybrid action and complaints of unfair labor practices, in terms of both the substantive rights asserted and the federal labor policies underlying the two actions.<sup>48</sup> The Court noted that a substantial overlap exists between the claims because many fair representation actions include charges of discrimination based on membership status or dissident views, which qualify as unfair labor practices.<sup>49</sup>

Furthermore, the Court found a close similarity between the federal policy considerations relevant to the choice of a limitations period for both hybrid and unfair labor practice claims.<sup>50</sup> The federal policy reflected by national labor laws seeks to promote stability in industrial relations through use of collective bargaining agreements.<sup>51</sup> Complete effectuation of the federal policy occurs when the collective bargaining agreement contains both a provision for the arbitration of grievances and an absolute agreement not to strike.<sup>52</sup> The arbitration agreement is considered the quid pro quo for the agreement prohibiting strikes.<sup>53</sup> Federal labor policy promotes arbitration as a substitute for industrial strife,<sup>54</sup> thus furthering the parties' mutual objective of uninterrupted operation

44. *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 165-68 (1983).

45. The Court considered and rejected state actions to vacate arbitration awards, *id.* at 165-66, and state actions for legal malpractice, *id.* at 167-68, as not sufficiently analogous.

46. *Id.* at 168. According to the Court, the relatively long state statutes of limitations governing malpractice actions—in one state, as long as 10 years, *see id.* at 168 n.18—would interfere with the goal of expeditious resolution of labor disputes. *Id.* at 168.

47. *Id.* at 166. Although state limitations on actions to vacate a commercial arbitration award are short enough to fulfill the federal goal of rapid resolution of labor disputes (most states require filing within 90 days, *see id.* at 166 n.15), they do not provide an employee with a satisfactory opportunity to vindicate his rights. *Id.* at 166. Unlike an action to vacate a commercial arbitration award, the plaintiff in a hybrid action, often unsophisticated in labor matters, must evaluate the adequacy of the union's representation, retain counsel, and investigate substantial matters that were not at issue in the initial arbitration. *Id.*

48. *Id.* at 169-71.

49. *Id.* at 170. The NLRB has consistently held that all breaches of a union's duty of fair representation qualify as unfair labor practices. *Id.*; *see, e.g., Miranda Fuel Co.*, 140 N.L.R.B. 181 (1962), *enf. denied*, 326 F.2d 172 (2d Cir. 1963). Although the Court declined to decide the correctness of the Board's position, it did find the "family resemblance" between the claims to be "undeniable." *DelCostello*, 462 U.S. at 170.

50. *See DelCostello*, 462 U.S. at 170-71; *see also infra* notes 74-75 and accompanying text.

51. *See Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453-54 (1957).

52. *See United Steelworkers*, 363 U.S. at 578 n.4.

53. *See Lincoln Mills*, 353 U.S. at 455.

54. *See Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 105 (1962).



during the term of the agreement.<sup>55</sup>

The arbitral system forms "part of the continuous collective bargaining process."<sup>56</sup> A collective bargaining agreement cannot possibly foresee and provide for every problem that may arise.<sup>57</sup> Accordingly, a collective bargaining agreement establishes a system of industrial self-government,<sup>58</sup> of which the grievance machinery forms the core.<sup>59</sup> Arbitration decisions interpret critical terms in the collective bargaining agreement,<sup>60</sup> giving "meaning and content" to the agreement.<sup>61</sup>

The central importance of the contractual grievance resolution system to the objective of promoting stable labor-management relations enhances the federal goal of rapid, final resolution of labor disputes<sup>62</sup> in suits that implicate the grievance machinery.<sup>63</sup> Allowing arbitration decisions that interpret important terms of the collective bargaining agreement to be called into question years later could render the whole system of industrial self-government unworkable.<sup>64</sup> The integrity of the grievance resolution system, therefore, must be protected by according arbitration decisions finality and certainty.<sup>65</sup>

Application of uniform law also constitutes an important federal concern in some labor actions.<sup>66</sup> The need for uniformity arises when the possible application of conflicting laws would exert a disruptive influence on the negotiation of collective agreements<sup>67</sup> and would tend to create and prolong disputes as to their interpretation.<sup>68</sup> In other words, the need for uniformity is greatest where its absence would jeopardize the smooth operation of those "consensual processes that federal labor law is

55. See *United Steelworkers*, 363 U.S. at 582.

56. *Id.* at 581.

57. See Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1498-99 (1959).

58. See *United Steelworkers*, 363 U.S. at 580.

59. See *id.* at 581.

60. See *United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 64 (1981).

61. *United Steelworkers*, 363 U.S. at 581.

62. See *Mitchell*, 451 U.S. at 63; *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 707 (1966).

63. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 168-69 (1983); *Mitchell*, 451 U.S. at 63-64; *Badon v. General Motors Corp.*, 679 F.2d 93, 98 (6th Cir. 1982); *Papianni v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 11*, 622 F. Supp. 1559, 1575 n.10 (D.N.J. 1985).

64. See *United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 64 (1981); see also *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 706-07 (1966) (discussing the federal goal of rapid resolution of labor disputes); *Local Lodge No. 1424, Int'l Assoc. of Machinists v. NLRB*, 362 U.S. 411, 425 (1960) (discussing the importance of 10(b)'s six-month period to stability of bargaining relationships).

65. See *Mitchell*, 451 U.S. at 72 (Stevens, J., concurring in part); *Badon v. General Motors Corp.*, 679 F.2d 93, 98 (6th Cir. 1982).

66. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 162-63 (1983).

67. See *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962) ("the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law").

68. *Id.* at 103-04.

chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it.”<sup>69</sup>

The hybrid suits in *DelCostello* implicated these important federal policy concerns. The suits involved direct challenges to arbitration decisions<sup>70</sup> that gave meaning and content to the collective bargaining contracts,<sup>71</sup> raising the concern for protecting the grievance machinery from delayed attack.<sup>72</sup> Furthermore, application of uniform law constituted an important consideration because the suit directly implicated the private settlement of disputes under the collective bargaining agreement.<sup>73</sup>

The Court in *DelCostello* applied the six-month limitations period of section 10(b) of the NLRA because Congress designed that period to accommodate the same balance of interests that arises in a hybrid action:<sup>74</sup> “the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employee’s interest in setting aside what he views as an unjust settlement under the collective-bargaining system.”<sup>75</sup> The limitations period was designed to strengthen and safeguard the continuing collective bargaining process from “delayed attack.”<sup>76</sup>

### III. APPLICABILITY OF *DELCASTELLO* TO LMRDA TITLE I CLAIMS

The majority of the federal courts of appeals that have addressed the

69. *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 702 (1966).

70. *See DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 165 (1983). *DelCostello* involved two consolidated cases. In each case, the arbitration process had found the grievance of the employee to be without merit. *Id.* at 155, 157. Each employee then brought suit seeking to set aside the arbitration decision, claiming that the employer had breached a provision of the collective bargaining agreement and that the union had represented him in the arbitration proceeding in a “capricious,” “arbitrary,” “discriminatory,” and “perfunctory” manner. *Id.* at 156, 157.

71. *See id.* at 168-69. In one of the two cases the *DelCostello* Court had before it, the employee had been relieved of his duties after he had refused to drive a tractor-trailer which he believed to be unsafe. *Id.* at 155. The arbitration procedure interpreted the collective bargaining agreement to determine whether termination of employment in this way constituted a “voluntary quit[ting]” or a wrongful discharge. *Id.* at 155 n.3. In the other case, the arbitration proceeding determined whether the employer’s job assignments were permitted under the collective bargaining agreement. *Id.* at 157.

72. *See id.* at 168-69 (citing *United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 63-64 (1981)).

73. *See id.* at 171.

74. *See id.* at 169.

75. *Id.* at 171 (quoting *United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 70 (1981) (Stewart, J., concurring)). *See Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 182 (3d Cir. 1984); *see also Central States S.E. & S.W. Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1107 (6th Cir. 1986) (policy behind *DelCostello* was that rapid resolution of labor disputes is desired when the collective bargaining process is threatened), *cert. denied*, 107 S. Ct. 1291 (1987); *Rector v. Local Union No. 10, Int’l Union of Elevator Constructors*, 625 F. Supp. 174, 180 (D. Md. 1985) (same).

76. *See United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 68 (1981) (Stewart, J., concurring).

issue hold that *DelCostello* should be extended to LMRDA Title I claims.<sup>77</sup> These courts purport to find the same collective bargaining concerns at stake in a Title I action that the hybrid suit in *DelCostello* implicated.<sup>78</sup> Accordingly, they hold the *DelCostello* Court's reasons for applying section 10(b) to the hybrid suit equally valid in the Title I context.<sup>79</sup> These courts, however, fail to perceive the important differences between the interests present in the hybrid suit and those interests sought to be fostered in an LMRDA Title I action.<sup>80</sup> *DelCostello* represents an exception to the general borrowing rule, and a closer examination of the *DelCostello* exception demonstrates that an LMRDA Title I action falls within the general rule, not within the *DelCostello* exception.

The Court in *DelCostello* did not create an all-embracing, new statute of limitations to be applied in all labor actions, or even in the subset consisting of all LMRA section 301 suits.<sup>81</sup> The *DelCostello* Court departed from the traditional borrowing practice in the face of the unusual

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77. See *supra* note 17.

78. These courts speculate that unresolved union disputes may undermine the confidence of union members in their leaders and create dissension within the union, thereby weakening the union and its bargaining effectiveness. See, e.g., *Reed v. United Transp. Union*, 828 F.2d 1066, 1070 (4th Cir. 1987), *cert. granted*, 56 U.S.L.W. 3608 (U.S. Mar. 8, 1988) (No. 87-1031); *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 184 (3d Cir. 1984). In addition to the policy considerations underlying the two actions, they also rely on the "family resemblance" between Title I actions and unfair labor practices. See *infra* notes 116-19 and accompanying text. These courts reject any distinction between the intra-union nature of LMRDA Title I disputes and the external concerns of section 8(b) of the NLRA, 29 U.S.C. § 158 (1982), see, e.g., *Reed*, 828 F.2d at 1069 (citing *Local Union 1397*, 748 F.2d at 183), and view each individual member dispute as having an impact on the federal labor scheme, *id.*

79. See *Reed*, 828 F.2d at 1070; *Adkins v. International Union of Elec., Radio & Machine Workers*, 769 F.2d 330, 335 (6th Cir. 1985); *Vallone v. Local Union No. 705, Int'l Bhd. of Teamsters*, 755 F.2d 520, 521-22 (7th Cir. 1984); *Local Union 1397*, 748 F.2d at 183.

In *Davis v. UAW*, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986), the court applied section 10(b) to a Title I action. Despite recognizing important policy distinctions between Title I and hybrid claims, *id.* at 1514, the Court of Appeals for the Eleventh Circuit still felt bound to find a "connection between labor peace and an action based on a union's alleged mistreatment of its members by the denial of statutorily protected rights" because of the *DelCostello* Court's finding of a strong connection between labor peace and an action based on a union's duty of fair representation. *Id.*

The conclusion of the *Davis* court has met with strong criticism. In fact, another panel of the Court of Appeals for the Eleventh Circuit has questioned the "soundness" of the *Davis* holding. See *Hechler v. International Bhd. of Elec. Workers*, 834 F.2d 942, 945-46 & n.1, 948 (11th Cir. 1987); see also *Doty v. Sewall*, 784 F.2d 1, 10 (1st Cir. 1986) (unable to understand the *Davis* court's "precipitate jump" from its "deadly" analysis to its conclusion); *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 180-81 (D. Md. 1985) (*DelCostello* does not support the "broad reading and sweeping application" given to it by *Davis* and other courts).

80. See *infra* notes 101-123 and accompanying text.

81. See *Doty v. Sewall*, 784 F.2d 1, 6 (1st Cir. 1986); *Carruthers Ready-Mix, Inc. v. Cement Masons Local Union*, 779 F.2d 320, 327 (6th Cir. 1985); *Robinson v. Pan American World Airways*, 777 F.2d 84, 86 (2d Cir. 1985); *Monarch Long Beach Corp. v. Soft Drink Workers, Local 812*, 762 F.2d 228, 231 (2d Cir.), *cert. denied*, 474 U.S. 1020 (1985); *Merk v. Jewel Food Stores Div.*, 641 F. Supp. 1024, 1034 (N.D. Ill. 1986).

combination of interests involved in the unique hybrid action. The Court expressly cautioned that its holding "should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, *in labor law* or elsewhere."<sup>82</sup> Borrowing limitations periods from state law "remains the norm."<sup>83</sup> Emphasizing this point, the Court expressly reaffirmed its decision<sup>84</sup> in *UAW v. Hoosier Cardinal Corp.*,<sup>85</sup> where, adhering to the traditional borrowing rule, it applied a state limitations period to a straightforward LMRA section 301<sup>86</sup> action for breach of a collective bargaining agreement by an employer.<sup>87</sup>

The collective bargaining agreement in *Hoosier* lacked a provision to submit disputes to arbitration,<sup>88</sup> and, therefore, the case did not raise the need to protect from delayed attack arbitration decisions that place into effect crucial interpretations of the collective bargaining agreement.<sup>89</sup> Because the case did not implicate the consensual processes with which federal labor law is primarily concerned,<sup>90</sup> the Court rejected application of a uniform time limitation<sup>91</sup> and, instead, relied heavily on the close analogy between the straightforward section 301 claim and an ordinary state law breach of contract action.<sup>92</sup>

Comparison of *Hoosier* with *DelCostello* illustrates the importance of a close state law analogy to the determination of the appropriate statute of limitations to apply to a federal statute that has no limitations provision. The proper gauge for determining whether a state limitations period comports with a federal statute is whether the state and federal legislatures contemplated the same interests in establishing their respective causes of action.<sup>93</sup> The *DelCostello* holding turns on the duty of fair representation,<sup>94</sup> an element foreign to ordinary state law actions for breach

82. *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 171 (1983) (emphasis added).

83. *Id.* at 171.

84. *Id.* at 162-63.

85. 383 U.S. 696 (1966).

86. 29 U.S.C. § 185 (1982).

87. *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 707 (1966).

88. *See DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 162 (1983).

89. *See supra* notes 62-65 and accompanying text.

90. *See Hoosier*, 383 U.S. at 702-03.

91. *Id.* at 701-02.

92. *Id.* at 705 n.7. The Court applied Indiana's six-year statute governing contracts not in writing. *Id.* at 707.

93. *See Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980).

94. *See O'Hare v. General Marine Transp.*, 740 F.2d 160, 168 (2d Cir. 1984), *cert. denied*, 469 U.S. 1212 (1985); *United Bhd. of Carpenters v. FMC Corp.*, 724 F.2d 815, 817 (9th Cir. 1984); *Merk v. Jewel Food Stores Div.*, 641 F. Supp. 1024, 1035 (N.D. Ill. 1986).

The Court in *DelCostello* borrowed a federal statute "that was arguably applicable by its own terms." *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2773 n.4 (1987) (Scalia, J., concurring). The hybrid claim is a combination of section 301 of the LMRA (breach of the collective bargaining agreement), which has no limitations provision, and the NLRA (breach of the implied duty of fair representation), which does have a limitations period (section 10(b)). *United Parcel Serv., Inc. v. Mitchell*, 451 U.S.

of contract<sup>95</sup> or actions to vacate arbitration awards.<sup>96</sup> In contrast, the claim in *Hoosier* did not involve any element unique to the federal labor law scheme.<sup>97</sup> Thus, the action and the interests underlying it could be matched closely to a state action,<sup>98</sup> making appropriate the borrowing of the state's limitations period.<sup>99</sup>

In determining whether section 10(b) of the NLRA should be applied to LMRDA Title I actions, it must be determined whether those factors that distinguish *DelCostello* from *Hoosier* are relevant in the context of a Title I action.<sup>100</sup>

### A. Federal Policies Factor

Section 10(b) of the NLRA balances the national interests in stable bargaining relationships and finality of private settlements against the interests of the individual employee in vindicating his rights.<sup>101</sup> An LMRDA Title I action implicates an entirely different balance of interests.<sup>102</sup>

LMRDA Title I claims, at most, have only an attenuated impact on

56, 67 (1981) (Stewart, J., concurring). Because the section 301 claim necessarily depends on proving the implied NLRA claim, both are "logically subject to" the six-month limitations period governing claims under the NLRA. *Papianni v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 11*, 622 F. Supp. 1559, 1574 (D.N.J. 1985).

95. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 165 (1983).

96. See *id.* at 165-66.

97. See, e.g., *DelCostello*, 462 U.S. at 162 (*Hoosier* involved "straightforward" breach of contract action); *Mitchell*, 451 U.S. at 65 (Stewart, J., concurring) (same). See generally *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

98. See *International Union of Elevator Constructors v. Home Elevator Co.*, 798 F.2d 222, 226 (7th Cir. 1986); *Merk v. Jewel Food Stores Div.*, 641 F. Supp. 1024, 1035 (N.D. Ill. 1986); see also *Papianni v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 11*, 622 F. Supp. 1559, 1574 (D.N.J. 1985) (in actions to enforce labor contracts, analogous state statute will always be available because "[c]laims sounding in contract are as old as common law jurisprudence itself").

99. The Court applied the state limitations period for actions on unwritten contracts. See *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 706-07 (1966). Comparison of *Hoosier* with *DelCostello* also demonstrates that the need for uniformity is greatest when the dual consensual processes are threatened. See *supra* notes 90-91 and accompanying text. Furthermore, when arbitration of collective bargaining agreement disputes is not implicated, the federal goal of rapid resolution of labor disputes loses importance and, therefore, may be satisfied by a time period greatly exceeding the six-month period the *DelCostello* Court applied. See *supra* note 92.

100. For discussion of the *DelCostello* factors, see *supra* note 26 and accompanying text. If these factors are not present, then the rule of *Hoosier* applies. See *International Union of Elevator Constructors v. Home Elevator Co.*, 798 F.2d 222, 225-26 (7th Cir. 1986); *Plumbers' Pension Fund, Local 130 v. Domas Mechanical Contractors, Inc.*, 778 F.2d 1266, 1268-69 (7th Cir. 1985).

101. See *supra* notes 75-76 and accompanying text.

102. See *Doty v. Sewall*, 784 F.2d 1, 7 (1st Cir. 1986); *Davis v. UAW*, 765 F.2d 1510, 1514 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); see also Note, *The Controversy Over What Statute of Limitations Period Should Be Applied to Claims Arising Under the Labor-Management Reporting and Disclosure Act of 1959*, 4 Hofstra Lab. L.J. 325, 343-45 (1987).

the labor-management relationship. Although the majority of the courts of appeals examining the issue rely on this impact in finding the *DelCostello* holding applicable to Title I claims,<sup>103</sup> the proper inquiry is whether the effect on labor-management relations is immediate and direct.<sup>104</sup>

A Title I claim does not directly implicate stable labor-management relations and finality of private settlements. An action brought pursuant to Title I of the LMRDA is brought only against the union.<sup>105</sup> The dis-

103. See *supra* note 78 and accompanying text.

104. *Monarch Long Beach Corp. v. Soft Drink Workers, Local 812*, 762 F.2d 228, 231 (2d Cir.), *cert. denied*, 474 U.S. 1020 (1985). The majority position emphasizes the indirect, long-term effect of unresolved union disputes on union morale, and the resulting dissension that undermines the union's effectiveness at the bargaining table. See *supra* note 78; see, e.g., *Reed v. United Transp. Union*, 828 F.2d 1066, 1070 (4th Cir. 1987) ("Internal union disputes, if allowed to fester, may erode the confidence of union members in their leaders and possibly cause a disaffection with the union, thus weakening the union and its ability to bargain for its members."), *cert. granted*, 56 U.S.L.W. 3608 (U.S. Mar. 8, 1988) (No. 87-1031).

The impact on which the majority position relies is "certainly not of the direct nature found controlling in *DelCostello*." *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 977 (2d Cir. 1987); see *supra* notes 70-73 and accompanying text (discussing the manner in which the action in *DelCostello* directly challenged the grievance mechanism that is central to the federal goal of stable labor-management relations); see also *Davis v. UAW*, 765 F.2d 1510, 1514 n.11 (11th Cir. 1985) (although court applied § 10(b) to Title I action, it found the link between dissension within the union and stable bargaining relationships "rather tenuous in the situation of a single dispute between an individual union member and the union"), *cert. denied*, 475 U.S. 1057 (1986); *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 178 (D. Md. 1985) (because Title I claims cannot, for example, overturn the results of union elections, they "rarely affect the viability of a union as a bargaining unit"); *Testa v. Gallagher*, 621 F. Supp. 476, 478 (S.D.N.Y. 1985) (citing *Monarch Long Beach Corp. v. Soft Drink Workers, Local 812*, 762 F.2d 228, 231 (2d Cir.), *cert. denied*, 474 U.S. 1020 (1985)).

In addition, it should be noted that, although it still applied section 10(b) to the LMRDA claims before it, the *Davis* court, in fact, readily admitted that major differences in the policies underlying the hybrid suit and the Title I action existed, and it expressly found the collective bargaining concerns of *DelCostello* to be entirely absent in the Title I context. See *Davis*, 765 F.2d at 1514; *supra* note 79.

The rejection by the majority of the courts of appeals of the distinction between the intra-union nature of Title I disputes and the external concerns of the NLRA does not properly account for the fact that Congress enacted the LMRDA because it recognized that "vital non-economic interests of employees were not being adequately protected under existing legislation." *Doty v. Sewall*, 784 F.2d 1, 4 (1st Cir. 1986). Unions not only further the economic interests of employees, but also offer them the chance to take part "in decisions that affect the quality of their working lives." *Rector*, 625 F. Supp. at 178. Title I protects rights of participation, which have a value of their own. *Id.*

Other courts that have applied section 10(b) to Title I claims only briefly considered the link between Title I actions and the collective bargaining process and did not provide much support for their holdings. See, e.g., *Adkins v. International Union of Elec., Radio & Machine Workers*, 769 F.2d 330, 335 (6th Cir. 1985) (undertaking no analysis of its own, the court simply cites to *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180 (3d Cir. 1984); *Vallone v. Local Union No. 705, Int'l Bhd. of Teamsters*, 755 F.2d 520, 521-22 (7th Cir. 1984) (without further explanation, court states that "the interests balanced by Congress in establishing the statute of limitations in section 10(b) are the same interests at issue in [a Title I claim]").

105. See *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 977 (2d Cir. 1987); *Davis v. UAW*, 765 F.2d 1510, 1514 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057

pute is not a collective bargaining dispute, arising in the context of a labor-management relationship.<sup>106</sup> Furthermore, union democracy claims do not threaten the finality of private settlements under the grievance machinery.<sup>107</sup> They do not affect any interpretation of the collective bargaining agreement.<sup>108</sup> Intra-union disputes therefore have only a tangential effect on the collective bargaining process.<sup>109</sup> Because an LMRDA Title I dispute does not implicate either of the dual consensual processes with which federal labor law primarily concerns itself, neither the need for rapid resolution of the dispute nor the need for application of uniform law is particularly compelling.

On the other side of the balancing process, the fact that Congress created a specific statute modeled after the Bill of Rights<sup>110</sup> "qualitatively enhance[s]" the union member's interest in protection from arbitrary actions by his union.<sup>111</sup> No such specifically identifiable rights exist under the hybrid claim.<sup>112</sup> The interest of a union member in protecting his rights rises to a national interest,<sup>113</sup> however, and therefore commands greater importance than the interest of a plaintiff in a hybrid action in setting aside an individual arbitration decision.<sup>114</sup> The importance of these Title I rights tilts the balance in favor of a longer limitations period.<sup>115</sup>

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(1986); *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 177 (D. Md. 1985); *Testa v. Gallagher*, 621 F. Supp. 476, 479 (S.D.N.Y. 1985); 29 U.S.C. § 412 (1982).

106. See *Rodonich*, 817 F.2d at 977; *Doty v. Sewall*, 784 F.2d 1, 7 (1st Cir. 1986); *Testa*, 621 F. Supp. at 478-79.

107. Intra-union claims do not seek to overturn arbitration decisions. Such claims "concern disruption of internal union democracy" and "do not attack the compromise reached between a union and an employer." *Rodonich*, 817 F. 2d at 977; *accord Doty*, 784 F.2d at 7; *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 177 (D. Md. 1985).

108. See *supra* note 107.

109. *Rodonich v. House Wreckers Union Local 95*, 624 F. Supp. 678, 682 (S.D.N.Y. 1985); see *Doty*, 784 F.2d at 7; *Testa v. Gallagher*, 621 F. Supp. 476, 479 (S.D.N.Y. 1985); see also *supra* note 104.

110. See *infra* notes 131-33 and accompanying text.

111. *Doty v. Sewall*, 784 F.2d 1, 7 (1st Cir. 1986); see *Davis v. UAW*, 765 F.2d 1510, 1514 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 178 (D. Md. 1985).

112. *Doty*, 784 F.2d at 7.

113. See *Hechler v. International Bhd. of Elec. Workers*, 834 F.2d 942, 946 (11th Cir. 1987); *Doty*, 784 F.2d at 7; *Davis v. UAW*, 765 F.2d 1510, 1514 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

114. See *Hechler*, 834 F.2d at 946; *Davis*, 765 F.2d at 1514.

115. See *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 178 (D. Md. 1985); *Rodonich v. House Wreckers Union Local 95*, 624 F. Supp. 678, 682 (S.D.N.Y. 1985).

Although prompt resolution of labor disputes is a general concern, what is considered prompt may differ from one labor dispute to the next. See *International Union of Elevator Constructors v. Home Elevator Co.*, 798 F.2d 222, 228 (7th Cir. 1986) ("Different degrees of dispatch are necessary or appropriate in different industrial relations contexts."). Compare *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 707 (1966) (goal of rapid resolution satisfied by application of six-year statute of limitations to LMRA sec-

B. *Closer Analogy Factor*

Although it is true that Title I claims display a certain "family resemblance"<sup>116</sup> to unfair labor practice claims,<sup>117</sup> the overlap between the claims bears little consequence.<sup>118</sup> A focus on the family resemblance argument addresses only the closer analogy prong of the Supreme Court's holding in *DelCostello*.<sup>119</sup> The similarity in policies underlying both the hybrid action and the congressional choice of the six-month period holds a place of importance equal to, if not greater than, the closer analogy prong.<sup>120</sup> The policies underlying the majority of unfair labor practice claims differ from those underlying LMRDA Title I claims.<sup>121</sup> Discrimination in a Title I context affects an employee's civil and political rights,<sup>122</sup> whereas discrimination alleged in the majority of unfair labor practice claims affects the worker's employment status and his economic rights.<sup>123</sup>

Furthermore, a Title I claim, unlike a hybrid LMRA section 301/duty of fair representation action, does not defy comparison with state law.

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tion 301 claim) with *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 155 (1983) (goal satisfied by application of six-month limitations period to hybrid claim).

116. See *supra* note 49.

117. See *Davis v. UAW*, 765 F.2d 1510, 1514 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 183 (3d Cir. 1984). The NLRB has recognized that the same union misconduct may give rise to both an LMRDA Title I claim and an unfair labor practice charge under § 8(b)(1) of the NLRA, 29 U.S.C. § 158(b)(1). See *Local Union 1397*, 748 F.2d at 183 n.3.

118. See *Hechler v. International Bhd. of Elec. Workers*, 834 F.2d 942, 946 (11th Cir. 1987); *Doty v. Sewall*, 784 F.2d 1, 6-7, 10 (1st Cir. 1986); *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 179 (D. Md. 1985).

119. See *Rector*, 625 F. Supp. at 178. Several courts that have applied the NLRA § 10(b) six-month period to LMRDA claims have emphasized the family resemblance argument. See *McConnell v. Chauffeurs, Teamsters & Helpers Local 445*, 606 F. Supp. 460, 463-64 (S.D.N.Y. 1985); *Turco v. Local Lodge 5, Int'l Bhd. of Boilermakers*, 592 F. Supp. 1293, 1294 n.1 (E.D.N.Y. 1984); *Local Union 1397, United Steelworkers v. United Steelworkers*, 580 F. Supp. 866, 868 (W.D. Pa.), *aff'd*, 748 F.2d 180 (3d Cir. 1984).

120. See *Rector v. Local Union No. 10, Int'l Union of Elevator Constructors*, 625 F. Supp. 174, 179 (D. Md. 1985); *Rodonich v. House Wreckers Union Local 95*, 624 F. Supp. 678, 681 (S.D.N.Y. 1985); *Testa v. Gallagher*, 621 F. Supp. 476, 477 (S.D.N.Y. 1985).

121. See *Doty v. Sewall*, 784 F.2d 1, 6-7 (1st Cir. 1986); *Rector*, 625 F. Supp. at 179; see also *infra* notes 122-23 and accompanying text.

122. *E.g.*, 29 U.S.C. § 401(b) (1982) (revelations of corruption and disregard of the rights of individual employees required "legislation that will afford necessary protection of the rights and interests of employees"); see *Doty*, 784 F.2d at 4; see, *e.g.*, 29 U.S.C. § 411(a)(1) (guaranteeing equal rights and privileges); 29 U.S.C. § 411(a)(2) (guaranteeing freedom of speech and assembly); see also *infra* notes 130-136 and accompanying text.

Internal discrimination includes, for example, "depriving some individuals of the right to vote on certain union matters, disciplining without due process or in retaliation for speech, or refusing access to books and records." *Doty*, 784 F.2d at 7.

123. See *Doty*, 784 F.2d at 6. See generally R. Gorman, *Basic Text on Labor Law: Unionization and Collective Bargaining* 699 (1976) (protection under the NLRA includes "freedom from unfair, irrelevant or invidious treatment at the hands of the statutory bargaining representative in matters affecting the employment relationship").



The breach of the duty of fair representation that makes the hybrid claim a peculiar amalgam foreign to state law<sup>124</sup> does not complicate the practicalities of litigation of Title I claims.<sup>125</sup> Moreover, application of state law is unlikely to undermine achievement of any significant goals of federal labor policy because central federal labor concerns are not directly implicated in an LMRDA Title I action.

There is, therefore, no reason under the *DelCostello* analysis to depart from the traditional borrowing rule. Federal law provides neither a "closer analogy" nor a "significantly more appropriate vehicle for interstitial lawmaking" in view of the federal policies at issue and the practicalities of litigation in a Title I action.

### C. *The Applicable Statute of Limitations*

Having decided that courts should borrow a state statute of limitations, the essential nature of an LMRDA Title I action must be characterized and the most appropriate state statute of limitations must be selected.<sup>126</sup> Characterization is the act of classifying a federal cause of action as a particular type of claim to determine the most appropriate state statute of limitations to apply.<sup>127</sup> The characterization of a federal statute for the purpose of borrowing a state limitations period is generally a matter of federal law.<sup>128</sup>

Claims asserted under Title I of the LMRDA closely resemble civil rights violations.<sup>129</sup> A Title I action protects an individual union member from deprivation of his civil and political rights by his union.<sup>130</sup> Congress, by modeling Title I after the Bill of Rights,<sup>131</sup> desired to confer on

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124. See *supra* notes 42-43 and accompanying text.

125. See *Doty*, 784 F.2d at 6.

126. See *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2762 (1987); *Wilson v. Garcia*, 471 U.S. 261, 268 (1985).

127. See Note, *Statute of Limitations in Civil RICO Actions After Wilson v. Garcia*, 55 *Fordham L. Rev.* 529, 533 (1987); see, e.g., *Wilson*, 471 U.S. at 279-80 (characterizing § 1983 actions).

128. See *Agency Holding Corp. v. Malley-Duff & Assocs.*, 107 S. Ct. 2759, 2762 (1987); *Wilson v. Garcia*, 471 U.S. 261, 269-70 (1985); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 706 (1966).

129. See *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 977 (2d Cir. 1987); *Doty v. Sewall*, 784 F.2d 1, 11 (1st Cir. 1986); *Testa v. Gallagher*, 621 F. Supp. 476, 479 (S.D.N.Y. 1985); *Bernard v. Delivery Drivers*, 587 F. Supp. 524, 525 (D. Colo. 1984); *Berard v. General Motors Corp.*, 493 F. Supp. 1035, 1043 (D. Mass.), *aff'd*, 657 F.2d 261 (1st Cir. 1980), *cert. denied* 451 U.S. 987 (1981); see also Note, *supra* note 102, at 347. *But see Reed v. United Transp. Union*, 828 F.2d 1066, 1070 (4th Cir. 1987) ("plaintiff's claims, though they be akin to civil rights claims, cannot be divorced from the federal labor policy favoring stable labor-management relations"), *cert. granted*, 56 U.S.L.W. 3608 (U.S. Mar. 8, 1988) (No. 87-1031); *Local Union 1397, United Steelworkers v. United Steelworkers*, 748 F.2d 180, 183 (3d Cir. 1984) (although Title I contains union members' bill of rights, "the purpose and operation of such rights cannot be divorced from general principles governing our federal labor policy").

130. See *supra* note 122.

131. See *United Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982); *Finnegan v. Leu*, 456 U.S. 431, 435 (1982).

union members some of the freedoms granted to citizens of the United States by virtue of the Constitution.<sup>132</sup> Therefore, Title I was drafted to delineate the rights of union members just as the rights of American citizens are defined in the Bill of Rights.<sup>133</sup> An action protecting union members from deprivation of rights similar to those secured for United States citizens by the Constitution<sup>134</sup> closely resembles an action protecting citizens of the United States from deprivation under color of state law of any rights secured by the Constitution.<sup>135</sup> In fact, the legislative history of the LMRDA demonstrates that Congress viewed Title I's provisions primarily as addressing civil rights concerns—not labor issues.<sup>136</sup>

The Supreme Court has determined that civil rights violations are best characterized as personal injury actions.<sup>137</sup> Such a characterization is

132. See 105 Cong. Rec. 6472 (1959), reprinted in 2 NLRB, *supra* note 1, at 1098 (statement of Sen. McClellan).

133. See 105 Cong. Rec. 6478 (1959), reprinted in 2 NLRB, *supra* note 1, at 1104 (statement of Sen. McClellan). Compare 29 U.S.C. § 411(a)(2) (1982) (providing union members with rights to freedom of speech and assembly) and 29 U.S.C. § 411(a)(5) (affording union members procedural safeguards of notice and a hearing before imposing discipline) with U.S. Const. amend. I (guaranteeing free speech and right to assemble) and U.S. Const. amend. V (guaranteeing right to due process of law). Congress, however, did not intend the scope of Title I's provisions to be identical to that of the Bill of Rights' protections. See, e.g., 29 U.S.C. § 411(a)(1) (subjecting guarantee of equal rights and privileges to "reasonable rules and regulations in [labor] organization's constitution and bylaws"); 29 U.S.C. § 411(a)(2) (reserving "right of a labor organization to adopt and enforce reasonable rules" regulating members' rights to speech and assembly); see also *United Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982) (union rules under § 411(a)(2) need only be reasonable; they need not pass strict scrutiny tests applied in first amendment context).

134. See 105 Cong. Rec. 6478 (1959), reprinted in 2 NLRB, *supra* note 1, at 1105 (statement of Sen. McClellan) ("Such rights are basic. They ought to be basic to every person, and they are, under the Constitution of the United States."); 105 Cong. Rec. 15530 (1959), reprinted in 2 NLRB, *supra* note 1, at 1566 (statement of Rep. Griffin quoting Sen. McClellan) ("There is no reason why a union man should be required to leave the rights guaranteed to him by the Constitution of the United States at the door when he goes into a union meeting.').

135. See Civil Rights Act of 1871 (Ku Klux Klan Act), § 1, ch. 22, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. § 1983 (1982)).

136. See *Doty v. Sewall*, 784 F.2d 1, 7-8 (1st Cir. 1986). The legislative history reveals repeated references to Title I as a "bill of rights" similar to that in the federal constitution. See *Doty*, 784 F.2d at 7; see, e.g., 105 Cong. Rec. 6472, 6479 (1959), reprinted in 2 NLRB, *supra* note 1, at 1098, 1106 (statements of Sen. McClellan); see also 105 Cong. Rec. 6476 (1959), reprinted in 2 NLRB, *supra* note 1, at 1103 (statement of Sen. McClellan) ("inherent constitutional rights"); 105 Cong. Rec. 6480 (1959), reprinted in 2 NLRB, *supra* note 1, at 1106 (statement of Sen. McClellan) (rights "which are basic, and which every citizen of the country is entitled to"); 105 Cong. Rec. 6472 (1959), reprinted in 2 NLRB, *supra* note 1, at 1098 (statement of Sen. McClellan) (bill would bring to union members some of the freedoms of the Constitution, "which incidentally does not make an exception for union members").

137. See *Wilson v. Garcia*, 471 U.S. 261, 279 (1985). The Court found that the historical atrocities prompting Congress to enact the Civil Rights Act of 1871 "plainly sounded in tort." *Id.* at 277. Moreover, the language of the fourteenth amendment indicates that tort claims for personal injuries are more analogous to § 1983 actions than other types of tort claims. *Id.* ("no person shall be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws"). In addition, a personal

appropriate for Title I claims as well because of the strong similarity between Title I claims and civil rights violations.<sup>138</sup> Hence, it is appropriate to borrow state personal injury limitations periods for Title I actions.<sup>139</sup>

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injury characterization minimizes the risk that the selection of a state limitations period would not fairly serve federal interests. *Id.* at 279. Because personal injury claims have always constituted a large part of civil litigation in the state courts, it is unlikely that the limitations period for such claims "ever was, or ever would be, fixed in a way that would discriminate against federal claims." *Id.*

138. *See, e.g.,* *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967, 977 (2d Cir. 1987) (applying to Title I claims three-year New York period governing personal injury actions which is applicable to federal civil rights claims); *Doty v. Sewall*, 784 F.2d 1, 11 (1st Cir. 1986) (applying to Title I claims Massachusetts' three-year tort statute of limitations applicable to civil rights claim); *Testa v. Gallagher*, 621 F. Supp. 476, 479 (S.D.N.Y. 1985) (applying New York's three-year personal injury statute of limitations); *Bernard v. Delivery Drivers*, 587 F. Supp. 524, 525 (D. Colo. 1984) (applying to Title I claims Colorado statute of limitations applicable to civil rights claim); *Berard v. General Motors Corp.*, 493 F. Supp. 1035, 1043 (D. Mass.) (applying to Title I claims Massachusetts' three-year tort statute of limitations governing civil rights action), *aff'd*, 657 F.2d 261 (1st Cir. 1980), *cert. denied*, 451 U.S. 987 (1981).

139. *See* Ala. Code § 6-2-38 (Supp. 1987); Alaska Stat. § 09.10.070 (1983) (two years); Ariz. Rev. Stat. Ann. § 12-542 (Supp. 1987) (two years); Ark. Stat. Ann. § 16-56-105 (1987) (three years); Cal. Civ. Proc. Code § 340 (West Supp. 1988) (one year); Colo. Rev. Stat. § 13-80-102 (1974) (one year); Conn. Gen. Stat. Ann. § 52-584 (West Supp. 1987) (two years); Del. Code Ann. tit. 10, § 8119 (1975) (two years); Fla. Stat. Ann. § 95.11 (West Supp. 1987) (four years); Ga. Code Ann. § 9-3-33 (1982) (two years); Haw. Rev. Stat. § 657-7 (1985) (two years); Idaho Code § 5-219 (1979) (two years); Ill. Rev. Stat. ch. 110, para. 13-202 (Supp. 1987) (two years); Ind. Code Ann. § 34-1-2-2(1) (Burns Supp. 1986) (two years); Iowa Code Ann. § 614.1(2) (West Supp. 1987) (two years); Kan. Stat. Ann. § 60-513(a)(4) (1984) (two years); Ky. Rev. Stat. Ann. § 413.140 (Michie/Bobbs-Merrill Supp. 1986) (one year); La. Civ. Code Ann. art. 3492 (West Supp. 1987) (one year); Me. Rev. Stat. Ann. tit. 14, § 752 (1980) (six years); Md. Cts & Jud. Proc. Code Ann. § 5-101 (1984) (three years); Mass. Ann. Laws ch. 260, § 2A (Law. Co-op. 1980) (three years); Mich. Comp. Laws Ann. § 600.5805(8) (West 1987) (three years); Minn. Stat. Ann. § 541.07(1) (West Supp. 1988) (two years); Miss. Code Ann. § 15-1-35 (Supp. 1987) (one year); Mo. Ann. Stat. § 516.120 (Vernon 1952) (five years); Mont. Code Ann. § 27-2-204 (1987) (two years); Neb. Rev. Stat. § 25-207 (1985) (four years); Nev. Rev. Stat. Ann. § 11.190(4) (Michie Supp. 1987) (two years); N.H. Rev. Stat. Ann. § 508:4 (Supp. 1987) (three years); N.J. Stat. Ann. § 2A:14-2 (West 1987) (two years); N.M. Stat. Ann. § 37-1-8 (1978) (three years); N.Y. Civ. Prac. L. & R. 214(5) (McKinney Supp. 1988) (three years); N.C. Gen. Stat. § 1-52 (1983) (three years); N.D. Cent. Code § 28-01-16 (Supp. 1987) (six years); Ohio Rev. Code Ann. § 2305.11 (Anderson Supp. 1986) (one year); Okla. Stat. Ann. tit. 12, § 95 (West Supp. 1988) (two years); Or. Rev. Stat. § 12.110 (1985) (two years); Pa. Stat. Ann. tit. 42, § 5524 (Purdon Supp. 1987) (two years); R.I. Gen. Laws § 9-1-14 (1985) (three years); S.C. Code Ann. § 15-3-530(5) (Law. Co-op. Supp. 1987) (six years); S.D. Codified Laws Ann. § 15-2-14 (1984) (three years); Tenn. Code Ann. § 28-3-104(a) (1980) (one year); Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Vernon 1986) (two years); Utah Code Ann. § 78-12-28(3) (1987) (two years); Vt. Stat. Ann. tit. 12, § 512 (1973 & Supp. 1987) (three years); Va. Code Ann. § 8.01-243 (Supp. 1987) (two years); Wash. Rev. Code Ann. § 4.16.080 (1962) (three years); W. Va. Code § 55-2-12(b) (1981) (two years); Wis. Stat. Ann. § 893.53 (West 1983) (six years); Wyo. Stat. § 1-3-105(a)(iv)(c) (1977) (four years).

## CONCLUSION

In *UAW v. Hoosier Cardinal Corp.*,<sup>140</sup> the Court laid down the general rule of borrowing state limitations periods when a federal labor statute provides none. In *DelCostello v. International Brotherhood of Teamsters*,<sup>141</sup> the Court modified this rule to allow for the borrowing of a federal statute of limitations when the application of federal law is more appropriate than that of state law in view of underlying federal policies. In the LMRDA Title I context, the rule of *Hoosier* applies. A close state law analogy to an LMRDA Title I action exists. The interests sought to be fostered by a state legislature in enacting the limitations period applicable to a civil rights action closely resemble those at stake in a union member's claim against his union for violation of his rights.

*DelCostello's* modification of the *Hoosier* rule is inapposite because application of state law is more appropriate than the use of section 10(b) of the NLRA and is not inconsistent with federal policy. Section 10(b) provides an inappropriate limitations period because the interests balanced by Congress in enacting section 10(b) differ from those involved in an LMRDA Title I suit. Consequently, there is no reason under the *DelCostello* framework to depart from state law. The traditional rule instructing courts to borrow analogous state law limitations periods applies to LMRDA Title I actions.

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140. 383 U.S. 696 (1966).

141. 462 U.S. 151 (1983).

