# IMPARTIAL PUBLIC REVIEW OF INTERNAL UNION DISPUTES: EXPERIMENT IN DEMOCRATIC SELF-DISCIPLINE

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On April 8, 1957, President Walter P. Reuther of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW), speaking to some 2700 delegates to the Sixteenth Constitutional Convention of the union, advocated that they adopt amendments to the UAW constitution which, under proper circumstances, would empower an outside group to remove Reuther or any other international union officer from office. The delegates heeded his request and voted overwhelmingly in favor of creating the international union's Public Review Board (PRB).[1] It is doubtful that any other private association of individuals of comparable size and power has ever voluntarily relinquished power of this magnitude to another group.

The initial press reaction to the UAW's action making impartial public review available to its membership was varied: to some it was a panacea; to others, a palliative or, worse yet, mere window dressing; most maintained a wait-and-see attitude.[2]

Especially in the past twenty-five years, American unions have experienced significant developments both internally and in relation to society in general. This paper will examine certain of these developments in respect to the parts they have played in creating the conditions which have given birth to impartial public review of internal union disputes. The paper will also examine the structure of the UAW's Public Review Board and its activities during the three and one-half years of its existence.[3]

## I

## THE CHANGING ROLE OF LABOR ORGANIZATIONS IN AMERICAN SOCIETY

### *A. Pre-Wagner Act Conditions*

Until the present generation, American unions and their members experienced a turbulent existence. As exemplified by the *Philadelphia*

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1 Proceedings Sixteenth Constitutional Convention, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW) 108.

2 See, *e.g.*, editorials in Providence, R.I., Labor News, April, 1957; Washington Post, April 10, 1957, § A, p. 13, col. 2; Cleveland News, April 9, 1957, p. 14, cols. 3-5; Shreveport Times, March 27, 1957, § A, p. 6.

3 As discussed in this paper at IV, A, *infra*, to an extent more limited than the UAW, two other unions have also adopted impartial public review.

*Cordwainers'* case,[4] when working men in this country first began to engage in concerted efforts to improve their employment conditions, the very existence of an organization which had the purpose of representing and bargaining on behalf of employees constituted a criminal conspiracy. Until 1937, when the Wagner Act[5] was declared constitutional by the United States Supreme Court,[6] the external threats to the existence of unions overshadowed all other of their problems. Prior to the Wagner Act, many, if not most, employers openly coerced and restrained their employees from joining labor organizations, often discharging them on the spot for showing sympathy for the union cause. Labor historians reveal that it was commonplace for judicial, legislative, and executive officers at various levels of government to adopt measures intended to suppress union organizational efforts.[7]

Collective bargaining agreements containing provisions for a union shop or other forms of union security whereby membership in a union is compulsory were comparatively rare until recent years. Prior to the Wagner Act, any workman who joined a union was fully aware that exposure of his action might result in his summary discharge and, as sometimes happened, it might also cause him to be blacklisted from employment elsewhere in the community or the industry. The workmen and their unions affected by such drastic employer action rarely, if ever, had any legal remedy.

Under such circumstances, the act of an ordinary workman, with a family to feed, in joining a union was truly voluntary and his union's objective was basic: recognition by the employer of the employee's organization as the bargaining agent on behalf of the bargaining group.[8]

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[4] Commonwealth v. Pullis (1806), as reported in 3 Commons & Gilmore, Documentary History of American Industrial Society, 59-236.

[5] National Labor Relations Act, 49 Stat. 449-457 (1935), 29 U.S.C. § 151 (1958).

[6] Jones & Laughlin Steel Corp. v. NLRB, 301 U.S. 1 (1937).

[7] See, *e.g.*, Chamberlain, Labor 16-31 (1958); Cummins & DeVyver, The Labor Problem in the United States 422-52 (3d ed. 1947); Faulkner & Starr, Labor in America 164-84 (1944).

[8] It is not to be implied that, prior to the Wagner Act era, every industry, employer, and government official openly engaged in anti-union activities. But there is little doubt that the above depicts one of the dominant attitudes of certain segments of the American society of those times. Nor is it to be implied that employer threats and reprisals against unions and their members completely disappeared with the advent of the 1935 Wagner Act, which made it an unfair labor practice for employers engaged in interstate commerce to interfere with their employees' organizational and other concerted activities pertaining to conditions of employment. During the fiscal year ending June 30, 1959, there were 8266 charges filed with the NLRB which alleged employer unfair labor practices. 24 N.L.R.B. Ann. Rep. 163, Table 2 (1959). It should be understood that many of these charges ultimately were determined to be without merit and others involved unlawful favoritism by employers to particular labor organizations.

### *B. Post-Wagner Act Conditions*

In the years immediately preceding the enactment of the Wagner Act, the principle of union representation of workers gained increased acceptance; since the passage of the act, the increase in union size, strength, and scope of activity has been truly phenomenal. An abundance of legislation favorable to unions vigorously enforced by a body of court decisions is on the books. Sympathetic treatment by public officials has become the rule and not the exception in many localities. As a result, great changes have been wrought, many of which affect the relationship of the member to the union vis-à-vis the internal affairs of the organization. It is submitted that there are four such changes or developments which are especially germane to our inquiry.

First is the principle of majority representation.[9] The fundamental theory of representation as expressed in the Wagner Act and repeated verbatim in section 9(a) of the National Labor Relations Act, as amended,[10] is that:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . .

A union which is recognized as the exclusive bargaining representative has the right to act effectively in relation to the pay, hours, and other conditions of employment of all employees of the employer involved. Such a representative need not solicit (or heed) the desires of the employees it represents, by election or otherwise, concerning strikes it calls or other action it deems appropriate to take in connection with conditions of employment.[11]

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[9] Some of the debate which went on within the inner circles of the New Deal in the early days of President Franklin D. Roosevelt's regime in respect to this principle is most interestingly revealed in 2 Schlesinger, The Coming of the New Deal—The Age of Roosevelt 147, 397-400 (1959).

[10] 61 Stat. 136-52 (1947), 29 U.S.C. §§ 151-168 (1952). The NLRA, in the form in which it existed prior to its substantial amendment in 1947, is popularly known as the Wagner Act; in the form in which it was amended in 1947 and at subsequent dates, it is often called the Taft-Hartley Act. The Taft-Hartley Act (61 Stat. 136-62 (1947), 29 U.S.C. §§ 141-197 (1952)), which according to its § (1) (61 Stat. 136-37 (1947), 29 U.S.C. § 141(a) (1952)) may be cited as the "Labor Management Relations Act, 1947," contains five titles, only title I of which comprises the NLRA, as amended. The NLRB is empowered to enforce title I only. Other federal agencies are concerned with the remaining titles.

[11] NLRB v. Borg-Warner Corp., 356 U.S. 342 (1958). The right of the collective bargaining agent to act independently of the expressed or unexpressed wishes of its members may be limited by its constitution. An example of this is contained in article

At the instant recognition is accorded a union by an employer, any number of employees affected, short of a majority, may desire not to be represented by the union or any union; they may be, in fact, antagonistic to unions. Additionally, any number of the employees, whether they desire or do not desire to be represented by their collective bargaining agent, may take a position opposite to it when a particular issue arises. Finally, any number—large or small—of the employees constituting the majority which originally selected the union may thereafter have changed their desires. However, if the exclusive bargaining representative has been selected pursuant to a National Labor Relations Board (NLRB) election, absent unusual conditions, the representative retains its right to bargain on behalf of all the employees for at least a year after the certification following the election.[12] Also, if the employer and the union have executed a collective bargaining agreement which by its terms runs in excess of one year, irrespective of whether recognition was accorded the union pursuant to an election, NLRB contract bar rules may preclude the decertification[13] or other elimination of the union as the bargaining agent until the contract expires or until it has been in effect for two years, whichever occurs earlier.[14]

Secondly, the great majority of collective bargaining agreements now in existence contain some form of union security clause. Such clauses are found especially in the industries in which the giant corporations exist, each employing thousands of employees. Most union security clauses provide for a union shop, whereby attainment of membership in the union within a certain number of days after employment commences is a condition of continued employment. It is this type of arrangement which is suggested by the proviso to section 8(a)(3)[15] of the National Labor Relations Act, as amended, which in pertinent part states:

> [N]othing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later. . . .

50, §§ 1-2 of the constitution of the UAW, pertaining to strike authorization. The right also may be limited by the terms of the collective bargaining agreement.

[12] NLRB v. Brooks, 348 U.S. 96 (1954).

[13] Section 9(c)(1)(a)(ii) of the NLRA, as amended (61 Stat. 144 (1947), 29 U.S.C. § 159(c)(1)(a)(ii) (1952)).

[14] Pacific Coast Ass'n. of Pulp & Paper Mfrs., 121 N.L.R.B. 990, 992 (1958).

[15] 61 Stat. 140-41 (1947), as amended, 65 Stat. 601 (1951), 29 U.S.C. § 158(a)(3) (1952).

The prevalence of union security clauses results in union membership of hundreds of thousands of employees who, given their choice, undoubtedly would not have joined in the first place, or having joined, would withdraw their memberships. Labor organizations are frequently referred to as voluntary organizations and in respect to the bulk of their activities they are properly so defined. For many members of American labor organizations, their membership is voluntary in the full sense of the word but for many others it undoubtedly is not.[16]

Next, the concept of mandatory and permissive subjects of collective bargaining has expanded considerably since the passage of the Wagner Act in 1935. Employers must bargain collectively within the meaning of sections 8(a)(5)[17] and 9(a)[18] of the National Labor Relations Act, as amended, concerning rates of pay, wages, hours of employment, or other conditions of employment. Rest and lunch periods,[19] seniority plans,[20] vacation plans,[21] pension plans,[22] merit increases,[23] group insurance,[24] Christmas bonuses customarily granted,[25] and plans for employee acquisition of the employer's capital stock wherein the employer contributes part of the purchase money[26] are indicative of the breadth of the mandatory subject matters about which employers must bargain when so requested by the collective bargaining agent. Beyond the areas of subject matters about which bargaining is mandatory, although neither of the parties is required to do so, they may voluntarily bargain about any subject matter they choose, provided public policy is not violated. The area in which the employee is free to bargain individually with his employer[27] and to otherwise

16 Union Starch & Ref. Co., 87 N.L.R.B. 779 (1949) sets out the NLRB's narrow interpretation of "membership" as the term is used in the proviso to § 8(a)(3) of the NLRA, as amended.

17 61 Stat. 141 (1947), 29 U.S.C. § 158(a)(5) (1952).

18 61 Stat. 143 (1947), 29 U.S.C. § 159(a) (1952).

19 National Grinding Wheel Co., 75 N.L.R.B. 905, 906 (1948).

20 NLRB v. Proof Co., 242 F.2d 560 (7th Cir. 1957).

21 Singer Mfg. Co., 24 N.L.R.B. 444, 470 (1940).

22 Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), *cert. denied,* 336 U.S. 960 (1949).

23 NLRB v. Allison & Co., 165 F.2d 766 (6th Cir. 1948), *cert. denied,* 335 U.S. 814 (1948).

24 Cross & Co. v. NLRB, 174 F.2d 875 (1st Cir. 1949).

25 NLRB v. Niles Bement-Pond Co., 199 F.2d 713 (2d Cir. 1952).

26 Richfield Oil Corp. v. NLRB, 231 F.2d 717 (D.C. Cir. 1956), *cert. denied,* 351 U.S. 909 (1956).

27 The provisos to § 9(a) of the NLRA, as amended, (61 Stat. 143 (1947), 29 U.S.C. § 159(a) (1952)) state: *"Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining

determine his conditions of employment diminishes proportionately as the area in which his collective bargaining agent successfully bargains with the employer expands. Without doubt, it is because of practical necessity that many employees "voluntarily" join unions which have attained majority status. Even in the absence of a union security clause, the power a strong union possesses to affect the employees' working lives is so great it is often foolhardy not to join.

Finally, unions, employers, and communities in which heavy concentrations of unions and their members are to be found have in many instances greatly increased in size and complexity in the past few decades.[28] The size of the membership of many international unions has expanded greatly in the past few decades. Local unions, as a result, have increased in size and number and in many instances have been chartered in geographical areas located thousands of miles from the central headquarters of their internationals. Unions have won bargaining rights in industries newly created in the past few decades and in industries which were unorganized previously. This expansion has resulted, in the case of many unions, in a more complex development and arrangement of their internal structures. Regions, districts, councils, conferences, and executive boards are illustrative of the different and overlapping levels of organization of the internal government of unions.

At the same time, corporations with thousands of employees on their payrolls and with installations scattered among the several states of the United States have become commonplace. In some instances, employers in the same field have grouped together and bargained collectively with the union or unions involved on an industry-wide basis. In other instances, two or more unions with related interests have combined or closely coordinated their efforts while bargaining with an employer or group of employers.

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contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment."

[28] By 1956, membership of the Teamsters union had reached 1,368,082, that of the UAW, 1,320,513, and the Steelworkers, 1,250,000. There were six unions in the United States in 1956 whose membership exceeded one-half million. U. S. Dep't. of Labor, Bureau of Labor Statistics, Directory of National & International Unions in the United States, 1957. (BLS Bull. 1222) at 11. The total complement of employees of General Motors Corporation working in the United States reached 312,013 in 1959 (G.M. Ann. Rep. 1959 at 15). During the same period, United States Steel Corporation had an average of 200,329 employees (U.S. Steel Corp. Ann. Rep. 1959). By 1960 the population of metropolitan Chicago had expanded to 6,171,517, metropolitan Detroit to 3,743,447, metropolitan Los Angeles to 6,668,975, and metropolitan New York to 10,602,382. This represents increases of 19.2%, 24.1%, 52.7%, and 11%, respectively, for those areas over 1950. U.S. Dept. of Commerce, Bureau of the Census, Preliminary Reports-Population Summaries 10-12 Table 3. (P.C. at 3-4 (Oct. 1960)).

The development of the intricate and competitive order in which we find ourselves today, including the expansion of the federal, state, and local governments into new fields of activity and control, has greatly increased the impact on each of us of the social, political, and economic decisions made by others. Because of their diverse membership, unions are especially interested in, and affected by, such decisions. If the community tacitly engages in discriminatory housing practices which adversely affect certain religious, ethnic or racial groups, the membership of the union is affected; if the community's business climate either encourages or discourages the movement to or from the community of new businesses, the members are affected. The attitudes and positions of political parties and candidates for public office may vary considerably concerning workmen's compensation, unemployment compensation, social security, and the myriad other laws which affect the union and other members of the community with varying degrees of directness and intensity.

The day has passed in most industries for employees effectively to bargain individually and directly with their employers concerning their conditions of employment. The individual employee has become more and more dependent upon his bargaining agent to protect and improve his conditions of employment and general station in life. And since his bargaining agent's activities have expanded with our changing times to the point that the direct wages earned and the number of hours worked have become but a small part of the total area of such activities, the result is frequent and natural conflict within the union structure concerning narrow issues and broad ideologies. It appears that as society becomes more complex, increasingly divergent opinions develop within the union concerning the best solutions to issues and problems in which the membership is interested, especially when broad social, political, and economic implications exist. Issues and problems before the union must be resolved in the manner which is of greatest benefit to the membership as a whole. This means that the individual whose narrower interests lose out will often feel he has been abused by his union leaders. This problem is not uniquely labor's. Today, almost all action which has a significant impact upon the community is taken by groups or associations of individuals. It is through our political organizations, schools, churches, corporations, unions, professional societies, and other associations that, to a material degree, we determine our way of life. Disgruntled individuals, both with and without just cause, can be found in all these organizations. One of the challenges we face in our increasingly pluralistic society is to provide adequate machinery within these organizations to enable the non-conforming member to exercise his rights. This is especially

important when unions are involved because, as we have seen, they possess powers, granted by law, to make binding determinations which vitally affect the employment conditions of their members, many of whom are affiliated with their unions only because of contractual compulsion or practical necessity. In such circumstances, there can be no internal union democracy unless adequate machinery exists to resolve internal disputes with justice for all involved. In this context, it is the writer's observation that by far most challenges to the decisional activities of union officials concerning internal union matters properly go only to the soundness of the judgments exercised and not to the integrity of the officials involved.

## II

### The Branches of Government Within the Union

Democracy, as most Americans define it, is prevalent in those governments where the executive, legislative, and judicial functions reside in three separate branches, each of which acts independently of the others. Conversely, in those governments where one of these branches overwhelmingly dominates the others, the American brand of democracy is scanty or non-existent. As we have seen, the concept of exclusive bargaining representation whereby the majority determines for everyone in the unit who the bargaining agent shall be has been firmly implanted into American labor law, and the union security clause has become an integral part of most collective bargaining agreements. These two factors have made unions governing—if not quasi-governmental—bodies with respect to the broad field of activities directly and indirectly involved in the employment relationship.

The legislative functions of unions are usually performed at the international level by their constitutional conventions and executive boards and at the local level by the memberships at their general meetings. The executive functions are performed at the international and local levels by the officers, executive boards, and councils. The imbalance exists in respect to the judicial functions. In many instances the very decision or action the aggrieved member desires to appeal has been promulgated by the official or officials who will sit in judgment on the appeal. This is hardly the separate judicial branch of government contemplated for rendering decisions in a democratic way.

At the local union level, the judicial process ordinarily involves either trials of members by local trial tribunals or appeals from actions and decisions of local officials. Of the seventy unions examined by Bromwich,[29] he found that constitutional provisions governing the

[29] Bromwich, Union Constitutions, A Report to The Fund for the Republic 33 (1959).

selection of the tribunals which conduct trials of members accused of misconduct were as follows:

| *Trial Tribunal* | *Number of Unions* | *Membership* |
|---|---|---|
| Local executive board | 26 | 5,516,052 |
| Appointed by president of the local | 8 | 2,135,763 |
| Elected by membership | 18 | 4,367,929 |
| Local meeting is trial board | 6 | 533,784 |
| Trial board arrangements left to locals | 9 | 3,075,614 |
| No provisions | 3 | 222,052 |

Local union memberships tend to divide into incumbent and opposition factions. Not infrequently the basis of charges that a member has violated union rules stems from such factionalism. The member against whom charges have been filed (and who is in the disfavor of local union officials because he is in the opposing faction) finds little solace in the procedures used to select those who sit in judgment on the charges against him: the tribunal which tries him is either constituted of those with whom he is in disfavor or else selected or elected by them.

In this respect, it is significant that the UAW amended its constitution in 1957, when its Public Review Board was created, to overcome objectionable local trial procedures whereby the majority of those in attendance at a general membership meeting *elected* the trial committee which acted as judge and jury in the case. The 1957 amendment provided for the *selection* of the trial tribunal by drawing at random a given number of names of the members attending the first local meeting held at least five days after the member has been notified of the charges against him. This is done by placing cards bearing the names of the members attending that meeting into a container. The order in which the names are drawn, by chance, from the container determines the composition of the tribunal. Provision for peremptory challenge is made.[30]

In most unions, the member who wishes to appeal the decision of the tribunal which rendered a judgment against him or who wishes to appeal a local action or decision unconnected with the trial of charges may find himself with the unhappy prospect suggested above: depending upon the particular union constitution involved and the level at which the dispute arose, his appeal must address local or international officials or, ultimately, both. Thus, his complaint will be re-

[30] Art. 30, § 7 of 1959 constitution of the UAW. Unless otherwise indicated, references herein are to the 1959 edition of that document.

viewed by those who may be in political or other factional alliance with the individuals whose action or decision is being appealed.

In some unions the tribunal of last resort within the union's internal appeal structure is the international executive board. More often, the constitutional convention serves this function. Neither body is an ideally neutral and impartial tribunal for this purpose, especially when the issues involved have a background of union politics. In the case of the international executive board, political alliances often exist between local and international officials just as they do, for instance, between state and local government officials. Experience also reveals that international executive board members are often hand-picked by the international president to run for office. Each may be aware when he passes judgment on an appeal that he needs the support of the other.

The convention, the supreme authority in almost every American international union, also falls far short of being an ideal reviewing tribunal. Of the seventy unions sampled by Bromwich,[31] thirty-four held their conventions at intervals exceeding two years. Depending upon when it arises, the appeal thus may be inordinately prolonged. Among the larger unions, the delegates who attend constitutional conventions number in the thousands. This necessitates many of the conventions' activities being handled by committees at all stages except the final, formalized one. This is especially true in the handling of appeals, because more often than not they involve thousands of words of evidence and arguments, and voluminous documents. The convention committees which deal with various matters, including appeals, in forty-nine of the seventy unions Bromwich sampled were appointed by the international president, and in eleven by the international executive board.[32] Thus, in sixty of the seventy sampled cases the international president or executive board, through the power of selection of the appeals committee of the convention, controlled to some degree the ultimate review the convention accorded appeals.

## III.

### External Review of Internal Union Affairs

The question arises whether a member who is dissatisfied with the internal review his union offers may successfully seek relief from the courts in lieu of using the internal procedures. There are several hurdles which the member desiring to do so must first surmount. In some jurisdictions, unions cannot be sued as entities although the nature of the relief sought often makes them indispensable parties to

31 Bromwich, *op. cit. supra* note 29, at 9.

32 *Id.* at 13.

the action. This entails the use of a class suit, at best a difficult procedure.[33] In some circumstances, the member who brings his union into court may also encounter the common law rule prohibiting a member from suing an unincorporated association for damages because one can't sue oneself.[34] The member also may be required in his court action to show that a property right he possesses has been invaded.[35] These, and other rules which make it difficult for a member to sue his union in court, are of local or limited application, depending upon the nature of the cause and the jurisdiction in which the court is located.

The most formidable hurdle facing the member who wishes to go directly into court to enforce his rights vis-à-vis his union is the rule in most jurisdictions requiring that he exhaust the appeal procedures within the union's structure before initiating court action, where the union constitution so requires.[36] Almost all international constitutions contain some such requirement. Exception to the exhaustion rule is made where the internal remedy would be "futile, illusory or vain, or amount to a practical denial of justice."[37]

In the Labor-Management Reporting and Disclosure Act of 1959,[38] Congress created a significant change in the relationship of the courts to the internal affairs of labor organizations which represent employees of employers engaged in industries affecting interstate commerce. The basic policy of the United States Government prior to 1959 was to refrain from interfering with union affairs unless the affairs involved or affected the employment relationship of a member or members with a particular employer or group of employers, or, independent of their union setting, unless the affairs were in violation of the criminal or civil law. The 1935 Wagner Act represented an effort by

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[33] See Eads v. Sayen, 281 F.2d 791 (7th Cir. 1960).

[34] *Cf.*, Wright v. Local 501, UAW, PRB Case No. 29 (Dec. 10, 1959). For purposes of suit for damages an expelled member probably is in a more formidable position than the unexpelled member. See, *e.g.*, IAM v. Gonzales, 356 U.S. 617 (1958); Taylor v. Plumbers Union, 337 S.W.2d 421 (Tex. Civ. App. 1960).

[35] Annot., 168 A.L.R. 1479 (1947) cites and discusses cases which have applied this rule.

[36] Duffy v. Kelly, 353 Mich. 682, 689, 91 N.W.2d 916, 920 (1958). The 6th Circuit appears to follow the rule. See Gray v. Reuther, 201 F.2d 54 (6th Cir. 1952), citing Reigel v. Harrison, 157 F.2d 140 (6th Cir. 1946). Annot., 168 A.L.R. 1462 (1947) discusses the exhaustion rule as it is applied to cases involving the suspension and expulsion of members.

[37] Anderson v. Painters Local 318, 338 S.W.2d 148 (Tex. Sup. Ct. 1960). Summers, "Legal Limitations on Union Discipline," 64 Harv. L. Rev. 1049 (1951), states the principles and cites cases involving the exceptions to the exhaustion rule as they apply to disciplinary cases.

[38] Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act), 73 Stat. 519-546 (1959), 29 U.S.C. §§ 401-531 (Supp. I, 1959).

Congress to set out fair rules of conduct for employers to follow with respect to the declared right of their employees to self-organization and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The 1947 amendments to the Wagner Act, as set out in title I of the Taft-Hartley Act, constituted a change of direction by Congress whereby effort was made to establish fair rules of conduct for labor organizations also. The rules of fair conduct Congress imposed upon unions in 1947 pertain to their relationships with employers and employees with whom they are concerned. In the case of their own members, however, it is only action by unions which affects the members' employment relationship which Congress undertook to regulate. Section 8(b)(1)(A)[39] of the National Labor Relations Act, as amended, makes it an unfair labor practice for labor organizations or their agents to restrain or coerce employees in the exercise of the right guaranteed in section 7 to engage in, or to refrain from engaging in, concerted activity as defined therein. The proviso to section 8(b)(1)(A), however, states its restrictions "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ."[40]

Among other things provided for in the omnibus Labor-Management Reporting and Disclosure Act of 1959 is protection, including judicial relief, for union members concerning certain aspects of their membership relationship with their unions even though their employment relationship is not involved. In this act, Congress has sought to police many of the internal activities of unions. In this significant endeavor, Congress, in title I of the 1959 act, established a Bill of Rights providing for equal privileges for all members to participate in membership meetings and elections (section 101(a)(1)); freedom to meet and assemble freely with other members and to express views and opinions at union meetings without reprisals (section 101(a)(2)); limitations upon the circumstances in which dues, initiation fees, and assessments may be increased (section 101(a)(3)) and fines levied (section 101(a)(5)). Additionally, section 101(a)(4) provides:

> Protection of the Right To Sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness

[39] 61 Stat. 141 (1947), 29 U.S.C. § 158(b)(1)(A) (1952).

[40] This right of labor organizations is fully recognized by NLRB decisions. Minneapolis Star & Tribune Co., 109 N.L.R.B. 727 (1954), is frequently cited in support of this proposition.

> in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

District courts of the United States have been given jurisdiction in section 102 to grant relief in instances where title I rights have been infringed. Title II pertains to the reporting duties of unions and employers and their representatives. In title III Congress provided safeguards pertaining to the establishment of trusteeships whereby control and operation of subordinate bodies is assumed by the parent labor organization. Federal district courts have been granted jurisdiction to entertain actions filed either by the Secretary of Labor[41] or by members of unions in instances where it is alleged that certain sections of title III have been violated. Section 401 of title IV outlines certain standards of conduct for union elections and provides relief in sub-section (h) where union constitutional provisions pertaining to the removal of elected officials are inadequate. A member may file a complaint with the Secretary of Labor that section 401 has been violated provided he:

> . . . has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
> . . . has invoked such available remedies without obtaining a final decision within three calendar months after their invocation . . . .[42]

Title V provides safeguards pertaining to the fiduciary responsibilities and bonding of certain classes of representatives of labor organizations and the lending of money by labor organizations to their officers and employees, and prohibits the payment by such organizations of fines levied against officers and employees upon conviction of any wilful violation of the act.

As discussed herein, the UAW constitution grants jurisdiction to its Public Review Board to act as the tribunal of last resort in respect to appeals of certain types of actions, decisions, and penalties affecting members and subordinate bodies. It seems clear that the "reasonable hearing procedures" contemplated by section 101(a)(4) of the 1959 act, quoted above in its entirety, include, in the case of a UAW mem-

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41 The Secretary of Labor may take action pursuant to this title only if a written complaint by a member or subordinate body of the union has been filed with him. Section 304(a).

42 Section 402(a)(1) and (2).

ber, exhaustion of an appeal to the PRB when the UAW constitution gives that body jurisdiction over the controversy.[43]

Within certain time limits, section 402(a)(1) and (2) require exhaustion or invocation of the union's internal remedies before a complaint alleging a title IV election procedures violation may be filed with the Secretary of Labor. The language of this section makes it as clear as in the case of section 101(a)(4) that invocation of the jurisdiction of the PRB procedures, where it has jurisdiction, is contemplated as the final step in exhausting the UAW's internal remedies before complaining to the Secretary of Labor.

To date two court cases have been adjudicated in which the exhaustion requirements of the act have been considered in connection with the PRB. In *Gray v. Reuther*,[44] the complaint alleged that certain conduct of International President Reuther and other UAW officials constituted, among other things, a violation of title I of the act. The court held the pleadings lacked sufficiently specific allegations of ultimate fact to allege a cause of action pursuant to the act. In any event, the court concluded, there was insufficient showing in the complaint that reasonable hearing procedures do not exist within the UAW and plaintiff's failure to invoke them was fatal. Significantly, the court observed that a "by-pass method to [the] Public Review Board" was provided for in the constitution and the clear import of the court's remarks was that invocation of the PRB's processes was a condition precedent to the institution of the action before the court.

Substantially the same matter was relitigated before a different member of the same court in a second cause also entitled *Gray v. Reuther*.[45] This time the complaint alleged, among other things, that title I, IV, and V violations had occurred. The court stated that "it is essential in matters of this kind that the plaintiff first exhaust the intra-union administrative remedies. Mere allegation of futility is insufficient. . . . [D]efendant's counsel has offered an expedited hearing before its Public Review Board, which would seem to indicate the lack of a showing of futility." In addition to its observation pertaining to the invocation

[43] In appeals pursuant to Article 32 of the constitution of the UAW of cases over which the PRB has jurisdiction, a member in fact has a choice of invoking the PRB's jurisdiction or appealing to the next constitutional convention (Art. 32, § 9 of the constitution). He may not use both forums except in the circumstances outlined in Art. 32, § 12, of the constitution.

[44] Civil No. 20275, E.D. Mich. (Sept. 19, 1960). The decision was delivered orally from the bench by Judge Ralph M. Freeman and was later transcribed by the official court reporter at the instance of one of the parties. The transcript does not appear in the court's file of the case.

[45] Civil No. 20477, E.D. Mich. (Nov. 3, 1960). An Opinion and Order of Dismissal, as yet unreported, appears in the file of the case, decided by Judge Fred W. Kaess.

of the processes of the PRB, the court in dismissing the complaint, held the exhaustion of internal remedies requirements of the act apply not only to title I, but to title IV and V proceedings also.

Under what circumstances do sections 101(a)(4) and 402(a)(1) and (2) excuse UAW members from completely exhausting their union's internal appeals procedures, including appeal to the PRB? Section 402(a)(1) and (2) is easier to analyze in this respect than its title I counterpart, section 101(a)(4). If a violation of title IV election procedures allegedly has occurred, a member may file a complaint with the Secretary of Labor; the Secretary, in turn, files an action with an appropriate United States district court if there is probable cause to believe the complaint has merit.[46]

Before qualifying to file a complaint with the Secretary of Labor pursuant to section 402(a)(1) and (2), a member must invoke his union's internal procedures; thereafter, he must exhaust the internal remedies available, unless no final decision has been reached by the union within three months after he has invoked its procedures. Upon the expiration of the three-month period, the member may file his complaint with the Secretary. The Secretary, presumably, has both the jurisdiction and the duty to process the complaint immediately since he must commence civil court action within sixty days after the filing of a meritorious complaint by a member. The appropriate United States district court with which an action is commenced is charged with the duty to resolve the issue and take the remedial action described in section 402(c). It is clear Congress intended to give unions only three months during which they are to have the exclusive right to resolve section 401 disputes; thereafter the member may, if he chooses, seek external aid.

Section 101(a)(4), however, does not lend itself to such facile interpretation. Even before the ink was dry on the statute as finally enacted, sharp division arose among labor lawyers concerning a basic interpretation of that section's proviso that a "member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within [the union], before instituting legal or administrative proceedings against such organizations or any officer thereof."

[46] Compare § 10(b) of the NLRA, as amended, (61 Stat. 146-47 (1947), 29 U.S.C. § 160(b) (1952)), whereby any person may file a charge with that Board's general counsel that an unfair labor practice has occurred. It is solely the general counsel, or his agent, who decides whether formal action in the form of complaint before the NLRB should be instituted. Section 3(d) of the NLRA, as amended, (61 Stat. 139 (1947), 29 U.S.C. § 153(d) (1952)); Haleston Drug Stores v. NLRB, 187 F.2d 418 (9th Cir. 1951), *cert. denied,* 342 U.S. 815 (1951); Times Square Stores Corp., 79 N.L.R.B. 361, 364-65 (1948).

There appears to be unanimity of opinion that Congress intended and the proviso requires that the union be given the exclusive right for four months after invocation of its procedures to resolve the dispute. During that period, outside agencies may not interfere in the matter, provided the internal hearing procedures are reasonable. After the union has had a four-month opportunity to resolve the dispute and its appeal procedures have not been exhausted, the member may seek assistance from an outside forum.[47] Divergent opinions exist concerning the effect of the proviso once the four-month period has expired. The principal question is whether the outside forum should proceed immediately to resolve the dispute.

It may surprise some readers that John F. Kennedy, now President and then a United States Senator and chairman of the conference committee which considered and reported out the Landrum-Griffin bill, made this statement on the floor of the Senate when that body was considering section 101(a)(4):[48]

> The protection of the right to sue provision originated in the Senate bill and was adopted verbatim in the Landrum-Griffin bill except that the first proviso limiting exhaustion of internal hearing procedures was changed from 6 months to 4 months. The basic intent and purpose of the proviso was to insure the right of a union member to resort to the courts, administrative agencies, and legislatures without interference or frustration of that right by a labor organization. On the other hand, it was not, and is not, the purpose of the law to eliminate existing grievance procedures established by union constitutions for redress of alleged violation of their internal governing laws. Nor is it the intent or purpose of the provision to invalidate the considerable body of State and Federal court decisions of many years standing which require, or do not require, the exhaustion of internal remedies prior to court intervention depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case. So long as the union member is not prevented by his union from resorting to the courts, the intent and purpose of the "right to sue" provision is fulfilled, and any requirements which the court may then impose in terms of pursuing reasonable remedies within the organization to redress violation of his union constitutional rights will not conflict with the statute. The doctrine of exhaustion of reasonable internal union remedies for violation of union laws is just as firmly established as the doctrine of exhausting reasonable administrative agency provisions prior to action by the courts.

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[47] In practice it is the rare case in which a union's internal appeal procedures are exhausted within a four-month period. Even with herculean efforts by everyone involved, it is doubtful this can be accomplished within most unions' procedures if proper notice, hearing, opportunity to file briefs, to study the record, and to take other appropriate action are to exist at the different stages of the appeal.

[48] 105 Cong. Rec. 17899 (1959).

Relying heavily on this statement, one school argues strenuously that the proviso to section 101(a)(4) changed nothing concerning the exhaustion requirement except the right of a union to penalize a member for utilizing an outside forum. It is argued that those jurisdictions which have required exhaustion of internal remedies in the circumstances of a given case should continue to do so even when the cause of action is premised on a title I Bill of Rights violation. However, it is argued, the member may be penalized by his union for commencing litigation in an outside forum in violation of the constitution only in the case in which such action is taken before the union has had a four-month opportunity to resolve the dispute without outside interference.[49]

The opposing school argues an outside forum should not only assert jurisdiction but should immediately process to completion on the merits a case filed with it by a member under title I, provided only the four-month internal exhaustion period has expired. As it interprets section 101(a)(4), the language, "No labor organization shall limit the right of any member thereof to institute an action in any court," prevents the union from imposing any penalty for doing so either before or after the four-month period has expired, absent bad faith, and the proviso prevents the outside tribunal from granting relief until the internal procedures have been exhausted or the four-month period has transpired.

In support of the argument that the proviso has not altered the exhaustion rule is the principle, universally accepted by our courts, that the legislative history of any act is the proper concern of those charged with its interpretation. Since Senator Kennedy was chairman of the conference committee which dealt with the bill, his explicit utterances on the Senate floor in explanation of the meaning of the proviso ordinarily would be entitled to great weight. However, those who ultimately argue before the courts in favor of a contrary interpretation will undoubtedly observe that Senator Kennedy uttered his statement on the Senate floor in connection with the submission to that body of the report of the conference committee on the bill. The House conferees were, of course, in no position to challenge before the Senate the statement made by Senator Kennedy. House discussion of the report of the conference committee took place on September 4, 1959, the day following Senator Kennedy's remarks, but the proviso to section 101(a)(4) was not considered in detail.[50] Representative Griffin, after whom

[49] Unless the discussion herein specifically indicates to the contrary, the assumption is that the internal procedures involved are reasonable in the sense the proviso to § 101(a)(4) uses the term.

[50] The sectional index of I Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 at XVIII lists the pages of that reference which contain the congressional debate specifically directed to § 101(a)(4).

the act has in part been popularly named, appears to have come the closest to reaching the point raised by Senator Kennedy. Representative Griffin's interpretation, as inserted in the appendix to the Congressional Record,[51] apparently was contrary to Senator Kennedy's:

> Section 101(a)(4) of the bill of rights is designed to protect the right of a union member to resort to courts and administrative agencies. The proviso which limits exhaustion of internal remedies is not intended to impose restrictions on a union member which do not otherwise exist, but rather to place a maximum on the length of time which may be required to exhaust such remedies. In other words, existing decisions which require, or do not require, exhaustion of such remedies are not to be affected except as a time limit of 4 months is superimposed.

Proponents of the argument that the proviso does not change the exhaustion rule would appear to gain comfort also from the choice of language used in section 402(a)(1) and (2). As we have seen, that section states that a member who has not obtained a final decision within the union's appeal structure within three months in connection with a title IV election dispute is free thereafter to invoke the services of the Secretary of Labor and have his complaint processed without delay. The language selected by Congress to accomplish this is unequivocal; it can be argued with some force that had Congress intended a similar result to flow from the proviso to section 101(a)(4), presumably it would have used comparable language.[52]

However, Congress was aware, surely, that with few exceptions internal appeals are not, and reasonably can not be finally resolved within the four-month limitation of the proviso to section 101(a)(4). If after four months a member still must exhaust the union's internal procedures before the courts may take decisive action, notwithstanding the terms of the proviso, the effect of the proviso would appear minimal in its practical application.[53] The proviso would constitute no impetus to unions to create speedier internal appeals procedures.

Undoubtedly Congress intended to take strong remedial action when it passed the Landrum-Griffin Act. The widespread publicity given to alleged wrongdoing by certain labor leaders, as revealed by

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[51] *Id.* at 1811, 105 Cong. Rec. App. at A7915 (Sept. 9, 10, 1959).

[52] Compare § 501(b) which provides for enforcement of the fiduciary responsibilities of union representatives outlined in § 501(a). Any member of the union involved is allowed to sue the representative allegedly breaching his responsibility "within a reasonable time" after the union officers with the authority are requested and fail to sue or recover damages or secure an accounting or other appropriate relief.

[53] Statutes "must be read in the light of the mischief to be corrected and the end to be attained." Warner v. Goltra, 293 U.S. 155, 158 (1934).

the McClellan Committee,[54] whether true or false, and if true, whether representative or non-representative of actual conditions, had placed the electorate and Congress in a frame of mind which demanded effective corrective legislation. It would appear that Congress intended, when it wrote the proviso into section 101(a)(4), to offer more than the limited relief which will be granted if the interpretation suggested by the statement of Senator Kennedy on the floor of the Senate is adopted. If that interpretation is adopted, it would appear to follow that a member may with impunity file a civil action against his union without first invoking its internal procedures only if the procedures are not "reasonable." The difficulty is that the word "reasonable" is capable of no exact definition in the context in which it is used in the proviso; often the member may not know if the procedures are reasonable or unreasonable in the circumstances of his case until a court has passed on the question. He may commence his outside action without invoking the union's internal procedures upon the advice of an attorney that they are unreasonable. It is unlikely that Congress desired to place or keep the member in the awkward position of subjecting himself to severe penalty by his union for commencing outside action if it is subsequently determined that under all the circumstances of his particular case his argument, made in good faith, that the internal procedures were unreasonable cannot be sustained. As of the date of the preparation of this paper, there have been no appellate court cases which have interpreted the proviso. In the reported decisions of the United States district courts which so far have been concerned with its interpretation, the courts found it unnecessary to consider the full implications of the proviso.

Where the internal appeal procedures of a union are unreasonable because unconscionable delay is involved, or the pertinent constitutional provisions or other union rules or the manifest attitude of the union's officials who would sit in judgment preclude a fair hearing, undoubtedly most courts will continue, as they do today, to assert jurisdiction over the matter, notwithstanding the failure of the member to invoke the internal procedures. If the procedures are reasonable in the above sense, the writer suggests most courts will stress the permissive rather than the mandatory aspects of the proviso. The proviso merely describes the conditions precedent to a member's "instituting" outside proceedings against a union or any of its officers; it does not command the courts, if the conditions have been fulfilled, to process the case to completion. In this way, the danger, if it exists, of the courts

[54] The U.S. Senate Select Committee on Improper Activities in the Labor or Management Field, created by S. Res. 74, 85th Cong., 1st Sess. (1957). 103 Cong. Rec. 1264-65 (1957).

becoming inundated with title I cases can be successfully controlled by the courts themselves. At the same time, the courts will have more freedom than many decisions prior to the passage of the act permitted, to pick and choose, to enter or to refrain from entering into a field admittedly esoteric and often fraught with deep emotions and well established but subtle practices. Each case preliminarily will be examined by the court before it makes a determination of whether to resolve its merits or hold it in abeyance pending exhaustion of internal remedies. Prior invocation of the internal procedures and pursuit thereafter for four months of the remedies available will constitute but one of several factors the court will consider when deciding whether to proceed forthwith in a title I Bill of Rights case.

What effect will the proviso have on impartial public review? If the authoritative interpretation ultimately adopted is that the proviso does not change the rules concerning the exhaustion of internal remedies, obviously the advantages and disadvantages to unions of the use of a system of impartial public review will remain as before. If it is determined ultimately that the proviso guarantees the right to a member to institute title I action against his union no later than four months after invoking its internal procedures and to have the action immediately processed to completion, the role of impartial public review will have been dealt a blow, the size of which is open to speculation. Those members who would not continue to belong to their union if the collective bargaining agreement or circumstances did not necessitate it may be tempted to ignore their right to impartial public review where the union has provided it if they know they can obtain court review four months after invoking, but not exhausting, the union's internal remedies.

An ultimate determination that the courts will not proceed pursuant to the authority granted in the proviso until the union's procedures have been exhausted, if they are reasonable under all the circumstances, should make impartial public review of internal affairs more enticing to those unions in a position to adopt it. The courts will be less likely, it would appear, to interfere with the union whose procedures afford final appeal of internal disputes to a group of impartial, eminent citizens than with the union whose procedures do not.

There is a strong tradition among trade unionists against the use of outside tribunals to resolve internal union disputes. In the processing of cases before the UAW's Public Review Board this tradition has revealed itself. There have been significant instances among PRB cases in which the aggrieved member, although obviously disconsolate because of what in his opinion amounted to shabby treatment he had received from union officials, at the same time made it clear he intended

to keep the issue within the family of the union. Whatever the courts might decide concerning the effect of the proviso upon the exhaustion of remedies rule, there will be a broad area remaining in which impartial public review can play a significant role.

## IV.

## IMPARTIAL PUBLIC REVIEW IN OPERATION

### *A. Extent of Its Adoption by Unions*

In the past year the writer has had the opportunity to discuss impartial public review with labor leaders from Asia, Europe, and South America, visiting the United States under the auspices of the United States Government. Although certain of these individuals indicated their countries have bodies which perform functions somewhat similar to those of the UAW's Public Review Board, it was revealed that such functions were performed by the government or pursuant to powers granted by the government. The writer is unaware of any union which functions outside of the United States and Canada which has a system of impartial public review based solely upon authority stemming from its membership.

Of the three North American unions which have adopted impartial public review systems, the Upholsterers International Union of North America, AFL-CIO (UIU), the first to do so, created its Public Appeal Board in 1953.[55] Since its creation, the UIU Board has decided but one case and is presently considering another. The relatively limited membership of the UIU,[56] the limitation of the jurisdiction of its board to disciplinary case appeals,[57] and the replacement of the trial boards which hear the evidence and make recommendations (formerly composed of general executive board members) with outside, legally trained hearing officers who are not otherwise connected with the UIU,[58] undoubtedly have contributed to the relative scarcity of cases.[59] In any event, because the UIU's Public Appeal Board has decided but a single

[55] UIU General Laws, Art XXVI, § 6(b).

[56] The UIU had approximately 55,000 members in 1956. U.S. Dep't of Labor, Bureau of Labor Statistics, Directory of National & International Unions in the United States, 1957 (B.L.S. Bull. 1222) at 45.

[57] UIU General Laws, Art. XXVI, § 6(b)(i).

[58] UIU General Laws, Art. XXVI, § 6(j).

[59] In a letter to the writer dated Aug. 19, 1960, Arthur G. McDowell, Director, Civil, Education & Government Affairs, UIU, stated that from the small sample of experience it appears approximately one appeal case in twenty-five or thirty is taken as far as the UIU Public Appeal Board. In the UAW's experience, since its Public Review Board was created, not quite one appeal case in four reaches its PRB, according to information related to the writer by William Beckham, administrative assistant to UAW International President Reuther.

case to date, an examination of its activities would presently be most limited.

In 1960 the executive board of the United Packinghouse Workers of America, AFL-CIO (UPWA), established a committee "charged with the responsibility of examining any situation in which it is suggested, now or in the future, that a condition exists which is in violation of any of the Ethical Practices Codes."[60] The committee, which is composed of members of the executive board, investigates matters under its jurisdiction and reports its findings and recommendations to the executive board, which in turn acts on the report and recommendations. The executive board also provided for the establishment "of an Advisory Review Commission, to consist of three members, unless a larger number appears to be desirable, with power, through appropriate procedures, to review the good faith of the Board's action in such matters."[61] At the 1960 convention of the UPWA, a resolution was adopted approving the executive board's action in establishing the Commission. As of October 14, 1960, the UPWA system of impartial public review, limited to questions concerning violations of the AFL-CIO Ethical Practices Codes, was still being formed and its procedures had not been finally determined.[62]

This leaves the UAW's Public Review Board as the only body which has been sufficiently active to permit evaluation of the constitutional provisions governing its procedures and powers in the context of the activities in which it has engaged to date.

### *B. The UAW's Public Review Board*

#### 1. Its Origin and Composition

Undoubtedly three factors contributed to the decision to amend the UAW constitution in April, 1957, to create the PRB. These were the imbalance then existing in the UAW's internal appeal procedures which resulted from the absence of an impartial judiciary, the then growing unfavorable public opinion attributable to the increasing tempo of the McClellan Committee,[63] and the favorable public opinion which the

[60] AFL-CIO Codes of Ethical Practices, Publication No. 50, reissued May, 1958.

[61] It was subsequently determined that a commission of five, otherwise not connected with the union should be selected. The five selected and presently serving are: Prof. Nathan Feinsinger, Law School, Wisconsin University; Prof. Ronald Haughton, Wayne University (Detroit, Mich.); Rev. Martin Luther King, Jr.; Rt. Rev. Msgr. John O'Grady, Secretary, National Conference of Catholic Charities; Prof. W. Willard Wirtz, Law School, Northwestern University.

[62] The information pertaining to the Packinghouse Workers' activities in the field of impartial public review was furnished the writer in two letters from Ralph Helstein, that union's president, dated Sept. 28 and Oct. 14, 1960.

[63] *Supra* note 54.

UAW reasonably anticipated would flow from the bold action whereby outsiders would be empowered to sit in judgment on the internal activities of the union.

The purpose of the PRB, as stated in the international constitution,[64] is to insure ". . . a continuation of high moral and ethical standards in the administrative and operative practices of the international union and its subordinate bodies. . . ." The constitutional provisions pertaining to the selection of the PRB's membership reveal a genuine effort to man it in such a way that the salutary purposes announced in the constitution would be fulfilled. The PRB consists of seven members whose terms of office are for the period, ordinarily two years, between constitutional conventions. The international president selects the names of the candidates which, if approved by the international executive board, the supreme authority of the union between conventions,[65] are submitted to the convention for ratification. Any vacancy occurring between conventions is filled by international presidential appointment, subject to the approval of the international executive board. However, in such instances, it is the PRB which effectively controls the appointment: the international president must fill the vacancy by appointment of an individual selected from a list of names submitted to him by the remaining members of the PRB. In all instances, members of the PRB must be "impartial persons of good public repute, not working under the jurisdiction of the UAW or employed by the International Union or any of its subordinate bodies."[66]

There are no constitutional provisions whereby a member may be removed from PRB office. Until his term of office expires, the union is unable to free itself from the judgments of a PRB member who has fallen into its disfavor.

Article 31, section 8 of the UAW constitution directs the international executive board to provide the PRB with the funds necessary for its operations. Quarterly, pursuant to article 31, section 8, the PRB submits a budget to the international secretary-treasurer, who is required to deposit to the PRB's account the funds required by the budget. Presumably, if the international union were to attempt to pre-

64 Art. 31, § 1.

65 Art. 7, § 1(d).

66 Art. 31, §§ 1-2 of the constitution of the UAW set out the requirements pertaining to the selection of the members of the PRB and terms under which they serve. The members presently on the Board are: Rabbi Morris Adler, chairman, Detroit; Magistrate J. A. Hanrahan, Windsor, Ont., Canada; Rt. Rev. Msgr. George C. Higgins, Director, Social Action Dept., National Catholic Welfare Conference, Washington, D. C.; Judge Wade H. McCree, Wayne County Cir. Ct., Detroit; Dr. Jean McKelvey, Cornell University; Bishop G. Bromley Oxnam (Methodist Episcopal Church) retired; and Prof. W. Willard Wirtz, Law School, Northwestern University.

vent the PRB from operating by refusing to furnish funds to it, an interested UAW member could obtain judicial relief. Except as to the source of its funds, the PRB is entirely independent of the UAW until the succeeding convention when its members' terms of office expire. In an effort to give the PRB greater financial independence than the constitution requires, a practice has been established whereby a balance of $30,000 was created in a depository in the name of the PRB; quarterly, sufficient funds are transferred by the international secretary-treasurer to the PRB to reimburse it for its previous quarter's expenditures. In this way, the balance in the depository again approaches $30,000 at the beginning of each quarter. If for any reason the PRB's income were cut off at any given moment, it would be able to meet its financial obligations for at least a half-year at the rate it presently is expending its funds.

The PRB maintains its own, separate office at 1408 David Stott Building, Detroit 26, Michigan, a downtown Detroit office building, thus satisfying the requirement of article 31, section 8 of the constitution that its office be separate and apart from any union building. The PRB is completely autonomous concerning its professional and office clerical staff and the accounting and other professional services of which it avails itself. Its full time employees presently consist of an executive director, David Y. Klein, who is an attorney with labor law experience, and his office secretary.

From April, 1957, when it commenced its operations, through September 30, 1958, the PRB issued eight formal and five informal decisions,[67] and during the succeeding period ending September 30, 1959, it issued two formal and seven informal decisions.[68] During the past fiscal year ending September 30, 1960, the PRB issued eighteen decisions, all but one of which were formal, a marked increase of the formal type over the previous periods.[69] Although the case inflow appears to have increased in the past fiscal year, one factor accounting for the increase is that the PRB resolved five cases during that period which had been filed and carried over from the previous period. In addition to the processing of the above cases, the PRB handles perhaps a hundred inquiries a year, of which approximately fifty to sixty are classified as informal complaints, discussed in IV, B, 2(b), *infra*.

[67] 1 PRB Ann. Rep. 7-10 (1957-1958). These thirteen decisions represent twenty-one cases, more than a single case being involved in a single proceeding in some instances. Formal decisions are published and made available to the public. Informal decisions, issued to date only in cases rejected by the PRB without hearing for lack of jurisdiction, are announced in the form of a letter to the parties.

[68] 2 PRB Ann. Rep. 1 (1958-1959).

[69] 3 PRB Ann. Rep. At the time of the completion of this paper the report was in the process of being printed and hence its pagination was undetermined.

2. The Public Review Board's Jurisdiction

(*a*) *Ethical Practices Complaints.*—By far the most frequent, difficult, and substantial type of decision the PRB has been called upon to make during its three and one-half years of existence is that concerning the scope of its jurisdiction, as delineated in the UAW constitution. There are two types of matters which may reach the PRB; article 31, section 4 complaints relating to alleged violations of the AFL-CIO Codes of Ethical Practices, and article 32, sections 9(a) and (b) appeals of actions, decisions, and penalties. There are presently six ethical practices codes which were adopted by the AFL-CIO at various times during 1956-57. The codes deal with local union charters, health and welfare funds, racketeers and other undesirable elements within the labor movement, investment and business interests of union officials, financial practices and proprietary activities of unions, and internal union democratic processes. The procedures set forth in article 31, section 4, to enforce the codes, in a sense similar to those outlined in the proviso to section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, grant to the international executive board and its subordinate bodies exclusive jurisdiction initially to resolve ethical practices complaints against the union and its representatives. Thereafter, the PRB may consider the matter. The UAW appears to have attempted sincerely to place into its constitution built-in safeguards which give a full measure of assurance to members that democratic procedures will prevail. Evidence of this is found in the provisions of article 31, section 4(a) and (b) whereby the chairman of the PRB must be served with a copy of each ethical practices complaint filed with the international executive board and, thereafter, the executive board must keep him advised of the case, including its final disposition; further, the PRB is given the power in any such matter to act on its own motion in the absence of an appeal to it by a complainant if it concludes the executive board's resolution of the matter was unsatisfactory. Most meritorious ethical practices complaints would appear to transcend the immediate interests of the parties to the proceedings and affect the welfare of the entire union.[70]

Whether the PRB has authority, without a complaint having been initiated by a member, to assert jurisdiction and undertake an investiga-

[70] A power parallel to the PRB's exists among federal administrative agencies whose purposes are to effectuate public policy but whose jurisdictions to act are dependent upon charges or complaints being filed with them by the public. The NLRB is such an agency. At least after formal agency complaint has issued, the NLRB may refuse to allow a person to withdraw the charge which gave that agency jurisdiction to proceed, if the public policy would be defeated by permitting the withdrawal. Distillery Workers Local 1 (Schenley Distillers Corp.), 78 N.L.R.B. 504 (1948). See also, *supra* note 46.

tion or examination of any action or operation of the UAW which might involve an ethical practices codes violation has been a vexing question. International President Reuther has publicly stated that the PRB serves a watchdog function and is empowered to act in the field of ethical practices codes violations in any manner it deems appropriate.[71] The PRB, on the other hand, has strongly hinted it has no such power. In the early part of 1960, the international executive board requested the PRB to impartially review and report to the membership and to the public the entire matter contained in the so-called minority report containing the "Separate Views" of the four Republican members of the McClellan Committee. This report included charges of wrongdoing by the international union and certain of its officers and employees in connection with two particularly bitter strikes and a fund collected from officers and employees of the union. The fund is maintained to assist in meeting the incidental expenses incurred in connection with the activities of incumbent slates of candidates in periodic union elections. The PRB requested the union to submit a bill of particulars delineating the charges against the union and the action upon which the charges were based. This information was requested by the PRB to assist it in determining whether it had jurisdiction to act in the manner requested by the union. The PRB, in effect, dismissed the matter when the union responded that it was unable to furnish the particulars requested of it.[72] The difficulty in that situation was that the PRB was asked to extend its functions beyond those it has assumed to date of reviewing specific decisions or actions of the international executive board or an international trial committee.[73] If the PRB were empowered to act sua sponte in any area in which the AFL-CIO Ethical Practices Codes may have been violated, it would appear that it also would have some duty to police these areas to insure to the membership that violations of the codes were being kept at a minimum. However, for the PRB effectively to engage in policing an area as broad as that encompassed by the codes, a very large staff, roaming throughout the United States and Canada, would be required. To date, the PRB has indicated no propensity for undertaking such an investigatory, nonjudicial function.

(*b*) *Informal Complaints Before the Public Review Board*—As indicated in IV, B, 1, *supra,* fifty or sixty informal complaints are made to the PRB annually. UAW members, often unfamiliar with their procedural rights under the union constitution, request the PRB's office

71 UAW Press Release, March 24, 1957, p. 2.

72 No formal decision was issued and no case number given to this matter.

73 A penalty imposed by an international trial committee may be appealed directly to the PRB. Art. 30, § 23, for example, so provides.

for relief from action or inaction of the union or its representatives which has adversely affected them. The problems most frequently encountered involve seniority and/or grievance processing. Almost invariably, the member has made insufficient or no effort to process his complaint within the internal appeal procedures. In such a situation, the complainant is carefully instructed by the PRB staff representative concerning his procedural rights under the UAW constitution and the steps which must be taken under the appeal procedures before the matter is ripe for formal PRB action. In a comparatively few instances, it appears to the PRB representative that the office of the international president may be unaware of the subject matter of the complaint and that an investigation by that office, depending on what is ascertained, might result in remedial action. In such instances, for informational purposes only, an informal report of the substance of the informal complaint is made by the PRB to the office of the president.

Members are entitled, surely, to ascertain what their procedural rights are under the UAW constitution. It would appear to be a proper function for the PRB to perform this service when inquiry is made of it by members concerning their constitutional rights. Most courts will do no less for potential litigants who inquire concerning court procedures. As to whether the PRB should go farther and contact the office of the international president concerning informal complaints which it has received, great care must be exercised, in the opinion of the writer. There is always the danger that such contact, coming from a reviewing authority, will have a coercive effect on union officials no matter what the intent behind it may be. Suggestions or mere inquiries from the bench often cause lawyers to seriously re-evaluate their cases or positions. Further, unless such contacts are most carefully regulated, word quickly might spread throughout the UAW membership that instead of following the union's appeal procedures, a member might obtain faster and more dramatic relief for his problem by contact with the international union through the good offices of the PRB. Indeed, it has been the writer's experience that too frequently those who have contacted the PRB in hope of obtaining favorable action concerning their informal complaints were generally aware of the union's appeal procedures, but were desirous of short-circuiting channels or were ulteriorly motivated.

(*c*) *Article 32 Appeals*—Any UAW member may appeal *any* action, decision, or penalty of his local union to the international executive board and thereafter to the constitutional convention. The defeat by the local general membership of any motion constitutes action. Hence, any member may raise any issue before the international executive board simply by submitting it to the general membership of his

local in the form of a motion, and after its defeat, appealing to the executive board; if he is still unsuccessful, he may, as a matter of right, be heard thereafter by the constitutional convention. This is true regardless of the triviality of the subject matter which may be involved or the lack of damages, direct or indirect, to the appellant. Instead of appealing from the international executive board to the convention, the member has the alternative of appealing to the PRB in:

> Any case arising under the procedure set forth in Articles 10 (Section 13) [dual unionism], 12 (Sections 2 and 3) [trusteeships and related problems], 29, 30 [trials of members], 32 (Section 13) [limitations on members commencing court or other governmental agency action], 35 (Sections 8 and 9) [disbandment of local unions and related problems], 38 (Sections 12 and 13) [local elections], 48 (Section 5) [misappropriation of funds and related problems] of this Constitution, or in any other cases in which the International Executive Board has passed upon an appeal from the action of a subordinate body; provided that where the appeal concerns the action or inaction relative to the processing of a grievance, the jurisdiction of the Public Review Board shall be limited to those instances where the appellant has alleged before the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management.[74]

A substantial number of the cases appealed to the PRB since its inception involved the question of whether grievances were handled properly so that the jurisdictional limitations in section 9(b) came into play. In no case to date has the PRB found that fraud, discrimination, or collusion with management was involved in the handling of a grievance.

In the opinion of the writer, it is most wise that the constitution grants so narrow a review by the PRB in cases involving disputes over grievance handling. There are literally thousands of grievances every year which members in UAW shops file or request to be filed. The mass of cases which the PRB probably would be called upon to handle, if it were to have jurisdiction without limitation to review grievance handling disputes, would require a greatly increased staff and participation in decision making by the Board members on a full-time basis. More important, the lion's share of the UAW's representation is in shop units, each of which contains hundreds or thousands of production and maintenance employees. Intricate and delicate understandings, explicit and implicit, based on the contract and the customs and the practices which have developed over the years and on the personalities involved, usually exist in such shop units; this was recognized recently by the Supreme Court when reference was made to the existence of a common law of the shop governing the collective bargain-

[74] Art. 32, §§ 9(a) and (b).

ing process in the majority opinion in *Steelworkers v. Warrior & Gulf Navigation Co.*,[75] a landmark case in the field of labor arbitration law.

Pursuant to section 9(a) of the National Labor Relations Act, as amended, the majority representative is entitled to act as the exclusive representative of all the employees in an appropriate unit when bargaining with the employer. In such circumstances the union and the employer involved must be accorded freedom to dispose of grievances in any manner they deem proper, provided their action is in good faith and not discriminatorily motivated.[76] Such freedom of action can exist where the UAW is the bargaining representative only if its constitution exacts from its shop officials no greater duty in handling members' grievances than to act in good faith and in a non-discriminatory manner. Basically, this is what article 32, section 9(b) prescribes.

Article 32, section 12 of the UAW constitution further limits the jurisdiction of the PRB in cases involving appeals pursuant to article 32, section 9 of the constitution. Section 12 states in part "that in no event shall the Public Review Board have jurisdiction to review in any way an official collective bargaining policy of the International Union."[77] Again, it is difficult to quarrel with the reason behind this limitation. Collective bargaining policies involve fundamental positions which concern conditions of employment. Section 8(b)(2)[78] of the National Labor Relations Act, as amended, prohibits unions from causing or attempting to cause employers to discriminate in regard to hire or tenure or condition of employment. A member who feels his employment relationship has been affected discriminatorily by a collective bargaining policy of the UAW can file an unfair labor practice charge with the NLRB and use the machinery of the federal government to test the soundness of his position. He is also free to take the matter through the various steps of the union's appeal procedures, ultimately to the constitutional convention.[79] If the PRB were to review official collec-

[75] 363 U.S. 574 (1960). The decision quoted observations made in the same vein by Cox, "Reflections Upon Labor Arbitration," 72 Harv. L. Rev. 1482, 1498-99 (1959).

[76] Absent evidence of bad faith or discriminatory motivation, the General Counsel of the NLRB will refuse to issue a complaint against a union alleging it committed an unfair labor practice by refusing to process grievances which it claimed lacked merit. Administrative Decision of the General Counsel, Case No. SR-853 (Oct. 3, 1960), citing Hughes Tool Co., 104 N.L.R.B. 318, 329 (1953).

[77] The full implication and scope of this provision in Article 32, § 12, have yet to be considered by the PRB. For instance, the official collective bargaining policy may be discriminatory within the meaning of Article 32, § 9(b). See Sanders v. Local 157, UAW, PRB Case No. 39 (Feb. 3, 1960).

[78] 61 Stat. 141 (1947), 29 U.S.C. § 158(b)(2) (1952).

[79] These would not appear to be alternative remedies. *But cf.* Spielberg Mfg. Co., 112 N.L.R.B. 1080 (1955), wherein the NLRB refused to entertain unfair labor practice charges on the merits because the charging party had voluntarily participated in arbitra-

tive bargaining policies in the context of article 32 appeals involving grievance handling, it would be delving into the substantive aspects of the case before it. To date, in article 32 appeal cases, the PRB, as we shall soon see, has restricted itself in the main to safeguarding procedural rights.

3. The Scope of Public Review Board Review

Article 31, section 5, and article 32, section 11 of the UAW constitution grant "hearings" before the PRB as a matter of right in those cases in which substantial issues exist. The PRB made it abundantly clear that the type of hearing the constitution envisages in such circumstances is the limited one parties usually enjoy when the jurisdiction of the tribunal is of a review nature: oral argument, based on the record previously made, directed to the substantial issues involved. Only that evidence offered to it which was part of the record before the tribunal from which the appeal was made will be considered by the PRB unless persuasive reasons have been established by the moving party for not having presented the evidence at an earlier stage of the case.[80] Further, the only new evidence which the PRB has accepted in any case before it so far has been that which was incidental or supplementary to the evidence already a part of the record. In this way the scheme of the constitution, whereby the union is given the opportunity to consider and adjust all of the disputes within its family before the PRB enters the scene, is not thwarted. In those instances in which the PRB has sustained the appeal before it and issues remained which had not been reached by the lower tribunal when it considered the matter, the case has been remanded to the union for such purpose.[81] Thereafter, in such a case, the matter may again be appealed to the PRB for review of the remaining issues, if they are of the type over which the PRB has jurisdiction.

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tion proceedings, fairly conducted, between his employer and his bargaining representative in which the subject matter of the charges was adjudicated in a manner consistent with the policy of the National Labor Relations Act, as amended.

[80] Rule 9 of the PRB's Rules of Procedure, Series 4, currently in effect, states in part: "a. Additional evidence—that is, evidence in addition to that in the record transmitted to the Board—may be presented only in the following situations: (1) Where authorized by the Chairman of the panel of the Board on the basis of a written request filed with the Board. . . . The request to present additional evidence shall set forth (a) Persuasive reasons for presenting such evidence and for not having presented it at prior hearings in the case, (b) The names of all witnesses whose testimony is desired to be presented, (c) The relevance of the anticipated testimony of each of these witnesses to the issues before the Board, and (d) A description of any documentary evidence to be offered. . . ." Rule 9 was most recently applied in Telakowicz v. Local 525, UAW, PRB Case No. 46 at 5 (Oct. 31, 1960).

[81] Ann Gaikowski (Local 22, UAW), PRB Case No. 30 (Nov. 16, 1959) is illustrative of such PRB action.

In resolving the cases before it to date, the PRB appears clearly to have been primarily concerned with the question of whether the appellants enjoyed all of the procedural rights to which they were entitled under the UAW constitution. In respect to substantive issues, the PRB has unmistakably exhibited a reluctance to superimpose its judgment upon that of the international executive board and any subordinate bodies which earlier considered the matter. The PRB apparently shares the view that "the history of liberty has largely been the history of observance of procedural safeguards."[82]

In *Atwan v. Ormsby*,[83] the PRB examined a voluminous record involving 111 separate charges on a local union level alleging fiscal mismanagement, illegal elections and gifts, infiltration of the local union by criminal elements, and threats and acts of reprisal. In affirming the decision of the international executive board, the PRB stated that the evidence as a whole supported the findings of fact and the conclusions reached by the international executive board and therefore, for that case at least, it adopted the limited standard by which federal administrative agency decisions are reviewed by the courts.[84]

Nor has the PRB exhibited any disposition to reach to the moral, statutory, or common law and to reject or ignore the plain meaning of any provision of the UAW constitution which disposes of the issues of a case before it. In its decisions so far, the PRB has referred to such outside sources only as an aid in interpreting the constitutional provisions before it or as evidence of the soundness of its resolution of the issues before it. Throughout the PRB's decisions is the unmistakable theme that no rule or decision by it can be inconsistent with, or unauthorized by, the UAW constitution, the supreme law of the union and the source of all of the authority possessed by the PRB.[85] It has exhibited no tendency so far of becoming a Frankenstein, overpowering its creator, the constitutional convention, and acting inconsistently with the convention's desires.

4. Enforcement and Review of Public Review Board Decisions

Article 31, section 3 of the UAW constitution, explicitly in the case of appeals pursuant to article 32 and implicitly in the case of AFL-CIO ethical practices codes complaints pursuant to article 31, makes PRB decisions final and binding. Will the courts enforce a PRB decision if

[82] McNabb v. United States, 318 U.S. 332, 347 (1942).

[83] PRB Consolidated Cases No. 32 (Feb. 19, 1960).

[84] Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951); NLRB v. Pittsburg S.S. Co., 340 U.S. 498 (1951).

[85] Oberer, "Voluntary Impartial Review of Labor: Some Reflections," 58 Mich. L. Rev. 55, 62-66 (1959), discusses various criteria of review available to the PRB.

a suit for its enforcement is brought by the party victorious before it? And will the courts review a PRB decision if the losing party before it files an action to set aside the decision? No cases have considered these questions yet.

If the international union or one of its subordinate bodies were to refuse to take the specific action directed in a PRB order, the opposing party should be able to obtain enforcement of the order in the civil courts. The courts usually consider a union constitution as constituting a contract between the union and its members.[86] Hence, it can be argued, the PRB is a creature of the constitution, and article 31, section 3 of that instrument, which makes PRB decisions final and binding, constitutes an enforceable agreement.

Under this theory, a member would appear to be precluded from obtaining court review of a PRB decision adverse to him. But may he ignore the PRB's adverse decision and commence an original action with an appropriate court and enjoy a trial de novo? The Labor-Management Reporting and Disclosure Act of 1959 suggests in cases of infringement of certain of its provisions that he may. In connection with title I Bill of Rights matters, section 102 states: "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. . . ." Sections 304(a) and 306, concerning title III trusteeships, and sections 402 and 403, concerning title IV elections, contain comparable provisions. It is improbable the courts will allow the superior federal policy, enunciated in the Disclosure Act of 1959, of affording court relief to members in certain title I, III, and IV situations to be superseded by the "final and binding" provision of article 31, section 3 of the UAW constitution.

Interpretations fairly placed on a union's rules by its officials generally will be accepted by the courts.[87] Additionally, the courts ordinarily have refused to interfere with the final resolution within a union's appeals procedures of a dispute, absent fraud, bad faith, or caprice.[88] As a practical matter, where the PRB—a body of impartial, eminent citizens—has rendered the final decision for the UAW concerning an internal dispute, it would seem the courts will refrain from interfering with the decision unless an error of law and not of judgment has been committed.

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86 Summers, *supra* note 37 at 1054-58.

87 English v. Cunningham, 46 L.R.R.M. 2660, 2661 (D.C. Cir. July 21, 1960).

88 Fox v. Knight, 350 P.2d 177 (Ore. 1960).

## CONCLUSION

Impartial public review of internal disputes within unions must be considered still in the experimental stage. The Labor-Management Reporting and Disclosure Act of 1959 will not have the effect of eliminating or discouraging the use of such review by unions. Evidence of this is the adoption since the passage of that act of a limited form of public review by the Packinghouse Workers Union. The self-imposed limitation by the UAW's Public Review Board of its review to procedural matters in the main emphasizes the necessity for the aggrieved UAW member to make a proper record at the trial level stage when the evidence pertaining to the issues is established. The UAW constitution (article 32, section 4) guarantees the right of the member to outside representation at this stage. However, the often prohibitive cost to the member of retaining an attorney or other consultant sufficiently specialized in matters of this kind usually results in the member presenting his own case. The Upholsterers Union's system of using professional hearing officers, otherwise unconnected with the union, at the trial stage affords the aggrieved member a hearing before a tribunal otherwise disassociated from the union, at an earlier stage than the UAW's system.

An examination of the cases which have arisen before the UAW's PRB reveals that insubstantial claims are not infrequently made within the appeals system by members who insist on carrying such claims through every internal appeal stage available. The time, effort, and monetary expenditure required of the union to process such appeals to completion is far from minimal. It is unfortunate that these cases arise but, as in any system of jurisprudence, there is no way of recognizing the unmeritorious from the meritorious claims until after they have been resolved. This is one of the costs of maintaining a democratic system of jurisprudence.

Finally, the outstanding contribution from a system of voluntary impartial public review such as the UAW's is that which flows from its mere existence. The UAW's PRB is constantly looking over the shoulder of every international and local union official in the sense that his actions ultimately may come before that body for review. With few exceptions, the conduct of such officials—from shop steward to international officer—reveals they are aware of this potential scrutiny.[89] Many other organizations, labor and non-labor, throughout our American pluralistic society might do well to emulate the UAW's system of resolving internal disputes.

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[89] Harrington, "What Union Members Think of Public Review," contained in a Report to the Center for the Study of Democratic Institutions (Fund for the Republic) entitled "Democracy and Public Review" 51, 52-53, 59-61, 64 (1960).