

# MEMBERS' CONTROL OVER OFFICERS, ELECTIONS, AND FINANCES: EQUITABLE REMEDIES AND MODERN DEVELOPMENTS

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There is a striking contrast between the vast number of international and local unions in the United States, and the relatively small number of reported cases involving officers, elections and finances in the period prior to the enactment of the Landrum-Griffin Act.<sup>1</sup> A few of the many factors contributing to bring about this result are worth some discussion here.

The scope of judicial intervention in the trade union field has been limited by the basic approach of the courts to cases in this area.

The substantive law generally applicable to intraunion proceedings holds that the constitution of the organization constitutes a contract which binds the participants. Thus, at least under this theory, the courts would not be free to interfere with what might generally be considered undesirable union conduct so long as it was permissible under the union's bylaws. The case results indicate, however, that the courts have been more interested in achieving basic justice than simple conformity to what have sometimes been inadequate constitutional procedures, and for this reason, the courts have tended to find interference with property rights as a basis for intervention where the simple contract theory was insufficient.

Undoubtedly the relative infrequency of decisions is also attributable in part to such obvious factors as the cost of litigation, the delays incident thereto, the requirements of exhaustion of internal remedies, and the lack of protection afforded to the litigant. However, in all fairness, the relative scarcity of decisions in a field so vast must indicate also general satisfaction on the part of union membership with the way in which their unions have operated at the grass-roots level.

Any student of the labor movement knows that the literal provisions of many union constitutions are no true indication of the actual democracy within the particular organization. Infused in the structure and fabric and daily conduct of most unions is the ideology out of which the organizations emerged. In many instances their con-

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<sup>1</sup> Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. I, 1959).

stitutions are documents drawn by workers unskilled in law, and the unions have adhered nevertheless to the ethical, spiritual and democratic qualities that motivated their early leadership. The ethical practices codes have reaffirmed the fact that the ethics of the market place are not deemed adequate by the labor movement itself. A balanced picture, however, must recognize that in significant areas of the union body politic, undemocratic practices and even corruption had become a significant problem.

All this of course points up the fact that the trade union movement does not exist apart from the society that nurtures it. The McClellan Committee hearings were not alone a commentary on segments of the labor movement, but on the ethical state of our industrial society as a whole. For any group within society to raise itself significantly above the general ethical level is indeed a Herculean effort requiring motivated and inspired leadership. "To separate labor officers and to apply the standards of the public official, or even more stringent standards, to his personal and official life," Dunlop has written, "involves an ideological uprooting of the union officer from his place as a part of the larger business system."<sup>2</sup> Kerr points out that single-party control is characteristic not only of the typical international labor union, but of such other groups in our democratic society as the corporation, the fraternal order, the religious denomination, the farm organization, and even the political party.<sup>3</sup> Regardless of such structure, however, the international union can be extremely responsive to membership desires and pressures, and at the local level contests for major office are frequent. The local union leaders who have tried to prevent members from attending meetings have hardly been as serious a problem as the apathy of members who, in spite of every inducement, prefer to watch television and engage in social activities rather than attend union meetings. This, again, has been a characteristic problem of all groups in our society. As a practical matter, in most local unions the leadership has been subject in the last analysis to the members' control, independent of statutes or court intervention.

Common law remedies were for various reasons inadequate for the resolution of intraunion problems. Unions, as voluntary associations, did not possess juristic personality and, hence, were not suable at common law. In addition, a member of a voluntary association could not sue the association for damages, for it was said that he was legally

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<sup>2</sup> Dunlop, "The Public Interest in Internal Union Affairs," reprinted in Selected Readings Prepared for the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, "Government Regulation of Internal Union Affairs Affecting the Rights of Members" (85th Cong., 2d Sess. 13 (1958)).

<sup>3</sup> Kerr, "Unions and Union Leaders of Their Own Choosing," reprinted in Selected Readings, *supra* note 2, at 111.

as responsible as any other member for the obligations of the group, and he would in effect merely be suing himself. The remedy at law would ordinarily be inadequate because the peculiar nature of the problems presented was not susceptible of solution by monetary damages. From all this, it is apparent that if solution to problems of control by members over officers, funds, and elections was to be secured under the existing legal framework, it had to be through the use of some of the traditional remedies available in courts of equity where the union could be directly made a party. Two of the so-called "extraordinary remedies"—mandamus and receivership—have been used from time to time by courts of equity in dealing with intra-union problems, in addition to the other equitable remedies of injunction and accounting. The literature has been surprisingly barren of consideration of these "extraordinary remedies" by courts of equity in connection with intraunion disputes. They will be here considered, followed by an examination of the provisions of the two federal enactments which are applicable to the problem—the National Labor Relations Act<sup>4</sup> as amended, and the Labor-Management Reporting and Disclosure Act of 1959,<sup>5</sup> which has revolutionized the law in this field.

#### MANDAMUS, INJUNCTION, AND ACCOUNTING

Historically, the writ of mandamus issued from a court of superior jurisdiction, directed to a private or municipal corporation or any of its officials, or to an inferior court, commanding the performance of a specified act of a public, official, or ministerial duty, or directing the restoration to the complainant of rights or privileges of which he has been illegally deprived.<sup>6</sup> It was not surprising that a member hoping to find some way to compel action by a union official would seek to utilize this ancient writ. However, certain real drawbacks stood in the way. First, mandamus would not ordinarily lie to regulate the internal affairs of an unincorporated association since two natural persons are involved.<sup>7</sup> Second, issuance of the writ required the showing of a clear, legal right to the performance of a particular act; it would not command a discretionary act, nor would it issue where the law afforded any other remedy.<sup>8</sup>

As early as 1888, a California court allowed the writ in a suit against a union after an expulsion from membership. The court refused to apply to an unincorporated association a standard any dif-

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<sup>4</sup> 61 Stat. 136 (1947), 29 U.S.C. § 141 (1958).

<sup>5</sup> 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. I, 1959).

<sup>6</sup> 55 C.J.S. "Mandamus" § 1 (1948).

<sup>7</sup> *State v. Miers*, 49 S.D. 96, 206 N.W. 236 (1925).

<sup>8</sup> *High, Extraordinary Legal Remedies* 17 (3d ed. 1896).

ferent than "to incorporated bodies of the same character."<sup>9</sup> Subsequently, a California court in one case issued a writ of mandamus commanding the union defendant to afford the plaintiff a full and fair hearing or to reinstate him,<sup>10</sup> and in another case the court in a mandamus proceeding compelled an unincorporated labor union to allow members to inspect certain financial records of the association without even a requirement of exhaustion of internal remedies.<sup>11</sup> Other states frequently achieved the same result but instead of issuing a writ of mandamus (where the defendant was an incorporated association), the court, in a suit in equity for an injunction, would simply direct reinstatement.<sup>12</sup>

Since the remedy at law was never adequate in this field, an equity court could issue an injunction where there was a showing of irreparable injury to the personal or property rights of the individual.<sup>13</sup> Moreover, where a property right was involved, the court would frequently intervene even if internal remedies had not been exhausted.<sup>14</sup> Courts have not hesitated to issue injunctions in connection with intra-union problems, whether they related to officers,<sup>15</sup> elections,<sup>16</sup> or funds.<sup>17</sup>

At the instance of a member, courts have been disposed to require an accounting of funds by union officials.<sup>18</sup> This relief has also been combined with an order compelling an election.<sup>19</sup> Not infrequently

<sup>9</sup> *Otto v. Journeyman Tailors Union*, 75 Cal. 308, 17 Pac. 217 (1888).

<sup>10</sup> *Cason v. Glass Bottle Blowers Ass'n*, 37 Cal. 2d 134, 231 P.2d 6 (1951). Writ of mandate issued directly ordering reinstatement in *Dingwall v. Amalgamated Ass'n of St. Ry. Employees*, 4 Cal. App. 565, 88 Pac. 597 (Ct. App. 1906).

<sup>11</sup> *Mooney v. Local 284, Bartenders Union*, 48 Cal. 2d 841, 313 P.2d 857 (1957).

<sup>12</sup> *Burke v. Monumental Div.*, 286 Fed. 949 (D.C. Md. 1922); *Holmes v. Brown*, 146 Ga. 402, 91 S.E. 408 (1917); *Meurer v. Detroit Musicians' Ass'n*, 95 Mich. 451, 54 N.W. 954 (1893); *Jersey City Printing Co. v. Cassidy*, 63 N.J. Eq. 759, 53 Atl. 230 (1902); *Simons v. Berry*, 240 N.Y. 463, 148 N.E. 636 (1925).

<sup>13</sup> 43 C.J.S. "Injunctions" § 16 (1945).

<sup>14</sup> *Oil Workers Union v. Superior Court*, 103 Cal. App. 2d 512, 230 P.2d 71 (Ct. App. 1951); *Bell v. Sullivan*, 183 Misc. 543, 49 N.Y.S.2d 388 (Sup. Ct. 1944); *contra*, *Leahigh v. Beyer*, 116 N.E.2d 458 (Ohio C.P. 1953); *Local 104, Int'l Bhd. of Boilermakers v. Int'l Bhd. of Boilermakers*, 28 Wash. 2d 536, 183 P.2d 504 (1947).

<sup>15</sup> *DeMonbrun v. Sheet Metal Workers Ass'n*, 140 Cal. App. 2d 546, 295 P.2d 881 (Ct. App. 1956); *Schrank v. Brown*, 192 Misc. 80, 80 N.Y.S.2d 452 (Sup. Ct. 1948).

<sup>16</sup> *Dusing v. Nuzzo*, 177 Misc. 35, 29 N.Y.S.2d 882 (Sup. Ct. 1941); *Sibilia v. Western Electric Employees Ass'n*, 142 N.J. Eq. 77, 59 A.2d 251 (Ct. Err. & App. 1948); *O'Neill v. Journeymen Plumbers Ass'n*, 348 Pa. 531, 36 A.2d 325 (1944).

<sup>17</sup> *DeMonbrun v. Sheet Metal Workers Ass'n*, *supra* note 15.

<sup>18</sup> *Bell v. Sullivan*, *supra* note 14; *Local 104, Int'l Bhd. of Boilermakers v. Int'l Bhd. of Boilermakers*, *supra* note 14.

<sup>19</sup> *O'Neill v. Journeymen Plumbers Ass'n*, *supra* note 16. An excellent treatment of election problems is found in *Summers*, "Union Powers and Workers' Rights," 49 Mich. L. Rev. 805 (1951).

the court acted to protect a local union from seizure by its parent international.<sup>20</sup> But whether by way of mandamus, or injunction, or accounting, courts have been a considerable facility for protecting the union member in a contest with his union and its officials. The cost of litigation has, however, undoubtedly been a serious practical impediment to legal recourse in many cases.

#### RECEIVERS

A judicial device which on infrequent occasions has been utilized by the courts in connection with internal union problems has been the receivership. This remedy, which is among the oldest known in the court of chancery,<sup>21</sup> consists of the appointment by the court of a person to manage and preserve the property during the pendency of suit.<sup>22</sup> The receiver can be appointed "where such action may be deemed necessary to preserve property of an organization . . . against fraudulent acts of persons entrusted with its property, or where there is no properly constituted governing body, or where internal dissension makes impossible the successful conduct of its affairs."<sup>23</sup> In such a situation the receiver is appointed only for the period the case is pending and only where it appears to the court that the assets of the organization will otherwise be wasted or diverted through fraud, mismanagement or dissension.<sup>24</sup>

Where the facts are such as to impel the placing of a local union under receivership, the court is not likely to require that all administrative remedies shall have been exhausted as a prerequisite to such relief.<sup>25</sup> Judges have recognized the right of unions generally to function without interference by the courts.<sup>26</sup> But the courts, notwithstanding, act where the affairs of a local are "on the verge of complete

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<sup>20</sup> Schrank v. Brown, *supra* note 15. Abuse of power by international officers appears in a number of cases. Local 11, Int'l Ass'n of Bridgeworkers v. McKee, 114 N.J. Eq. 555, 169 Atl. 351 (Ch. 1933); O'Neill v. Journeymen Plumbers Ass'n, *supra* note 16.

<sup>21</sup> 75 C.J.S. "Receivers" § 4 (1952).

<sup>22</sup> Robinson v. Nick, 235 Mo. App. 461, 136 S.W.2d 374 (1940).

<sup>23</sup> Local 11, Int'l Ass'n of Bridgeworkers v. McKee, *supra* note 20, at 560, 169 Atl. at 353.

<sup>24</sup> Robinson v. Nick, *supra* note 22.

<sup>25</sup> Local 11, Int'l Ass'n of Bridgeworkers v. McKee, *supra* note 20; Robinson v. Nick, *supra* note 22.

<sup>26</sup> "The authority of the officers of the aforesaid local in the conduct of its business affairs should be regarded as absolute when such officers act *within the law*. Questions of policy of management of the business affairs of said local should be left to the members of the local insofar as they do not contravene or violate the constitution and laws provided for its government." Local 11, Int'l Ass'n of Bridgeworkers v. McKee, *supra* note 20, at 560, 169 Atl. at 353.

disruption" and receivership appears "to be the only solution of the problem confronting the court." The receiver is not "expected to bring pressure to bear upon an employer for a closed shop, or to call a strike, or to take his place in the picket line, for none of such things pertaining to the policies of the union and the personal activities of its members are any part of his function as a receiver."<sup>27</sup> It has been recognized that a court of equity cannot operate a labor union, and that the labor organization's bargaining power is completely suspended during the time it is under the supervision of the courts.<sup>28</sup> The receiver's "function as an officer of the court by which he is appointed, and from which he derives whatever power he possesses, is only to receive, manage, protect, and preserve the property committed to his possession, holding it during the pendency of the suit for the benefit of all parties concerned, and retaining possession, subject to the proper orders of the court, until such time as he may be finally discharged."<sup>29</sup>

Among the situations where receivers have been appointed have been the following: (1) where the officers have engaged in fraudulent and undemocratic practices;<sup>30</sup> (2) where the local is in the process of dissolution;<sup>31</sup> (3) as an interim device in connection with securing an accounting of the funds,<sup>32</sup> or the holding of a new election,<sup>33</sup> or properly ascertaining the results of a prior contested election,<sup>34</sup> or (4) as a security measure it may be sought by a judgment creditor.<sup>35</sup> Receivership is a harsh remedy which the courts will utilize only in extreme cases.<sup>36</sup> Under it, the union's functioning as a democratic institution is completely suspended.<sup>37</sup> Control is taken from the officers, but rather than being lodged in the members, is placed in a court-appointed official.<sup>38</sup> Probably a typical reaction is that of Professor

<sup>27</sup> Robinson v. Nick, *supra* note 22 at 482, 136 S.W.2d at —.

<sup>28</sup> Mursener v. Forte, 186 Ore. 253, 205 P.2d 568 (1949).

<sup>29</sup> Robinson v. Nick, *supra* note 22, at 482, 136 S.W.2d at —.

<sup>30</sup> Collins v. Int'l Alliance of Theatrical Stage Employers and Moving Picture Machine Operators, 119 N.J. Eq. 230, 182 Atl. 37 (Ch. 1937); Mursener v. Forte, *supra* note 28.

<sup>31</sup> Kealy v. Faultener, 18 Ohio Dec. 498 (C.P. 1907).

<sup>32</sup> Local 373 v. Int'l Ass'n of Bridgeworkers, 120 N.J. Eq. 220, 184 Atl. 531 (Ct. Err. & App. 1936).

<sup>33</sup> Collins v. Int'l Alliance of Theatrical Stage Employers and Moving Picture Machine Operators, *supra* note 30.

<sup>34</sup> Sibia v. Western Electric Employees Ass'n, *supra* note 16.

<sup>35</sup> Dist. 21, UMW v. Bourland, 169 Ark. 796, 277 S.W. 548 (1925).

<sup>36</sup> Mursener v. Forte, *supra* note 28. For a case in which appointment of a receiver was denied, see Fitzgerald v. Abramson, 89 F. Supp. 504 (S.D. N.Y. 1950).

<sup>37</sup> See Note, 27 Ore. L. Rev. 248 (1948); Note, 46 Harv. L. Rev. 1037 (1933).

<sup>38</sup> Receivership has been called "the most drastic remedy and the most expensive luxury known to the realm of law." Note, 42 Yale L.J. 1244, 1248 (1933).

Cox who calls it "intolerable for the Government to appoint outsiders to act as receivers [of a labor union]."<sup>30</sup> British courts have long been precluded by statute from appointing receivers over labor unions, and there is a dearth of reported cases involving such receiverships.

The great historical connection between labor law and receiverships is wholly unrelated to the appointment of receivers over labor unions, about which there is not even any discussion in encyclopedias and treatises.<sup>40</sup> The origin of the labor injunction has been traced to the business receivership cases of the final quarter of the last century in which the courts, through receivers, took over the operation of some of the major railroads of the country.<sup>41</sup> When workers struck against railroads, which were in receivership, they found themselves facing the summary power of federal judges to punish by contempt those who interfered in any way with the functioning of the court or its appointed officials.<sup>42</sup> The courts in the modern union receivership cases have not shown the iron determination to prevent resistance to their action shown in the railroad receivership cases. An open defiance of a court order by electing officers and adopting a constitution in a local under receivership was in one case held not to constitute contempt.<sup>43</sup> Similarly a court voided an expulsion of an official who had been charged with circulating false and malicious statements in a circular protesting the appointment of a receiver.<sup>44</sup>

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<sup>30</sup> Cox, "The Role of Law in Preserving Union Democracy," 72 Harv. L. Rev. 609, 634 (1959).

<sup>40</sup> A leading law encyclopedia cites numerous actions and proceedings in which the receivership device is available, but there is no reference therein to labor unions. 75 C.J.S. "Receivers" § 7 (1952). The same is true of a leading text on the subject. Clark, A Treatise on the Law and Practice of Receivers (3d ed. 1959).

<sup>41</sup> Nelles, "A Strike and Its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction," 40 Yale L.J. 507 (1931). In 1877 President Scott of the Pennsylvania Railroad asserted: "The laws which give the Federal courts the summary process of *injunction* to restrain so comparatively trifling a wrong as infringement of a patent right certainly must have been intended or ought to give the United States authority to prevent a wrongdoing which not only destroys a particular road but also paralyzes the commerce of the country and wastes the national wealth." *Id.* at 533. Concerning this, Nelles observed: "This, it is believed, was the first suggestion of the possibility of labor injunctions in the United States." *Ibid.*

<sup>42</sup> *Secor v. Toledo, P. & W. Ry.*, 21 Fed. Cas. 968, 971 (No. 12,605) (C.C.N.D. III. 1877); *King v. Ohio & M. Ry.*, 14 Fed. Cas. 539 (No. 7,800) (C.C. Ind. 1877). In another case the court refused to order the receiver to reinstate employees who had earlier gone on strike in protest against a wage reduction because "to do so would cause the removal of competent men who served the receiver under adversity." *Booth v. Brown*, 62 Fed. 794 (C.C.N.D. Wash. 1894).

<sup>43</sup> *Koukly v. Canavan*, 154 Misc. 343, 277 N.Y. Supp. 28 (Sup. Ct. 1935); *Koukly v. Weber*, 154 Misc. 659, 277 N.Y. Supp. 39 (Sup. Ct. 1935).

<sup>44</sup> *Schrank v. Brown*, *supra* note 15.

Today both the railroad receivership cases and the few union receivership cases are quite remote from the practical problem of the control of union members over officers, elections, and finances.

### MONITORS

A recent variation of the receivership device has been the monitorship which grew out of the bitter controversy involving the International Brotherhood of Teamsters. This plethora of litigation had its origin in a suit filed in the district court for the District of Columbia on September 19, 1957, which sought an order preventing a convention of the International Brotherhood of Teamsters which was scheduled to commence eleven days thereafter.<sup>45</sup> On September 28, 1959,—two days before the convention was to begin—a preliminary injunction was issued enjoining the Teamsters from<sup>o</sup> conducting an election of officers at the convention. The same day the court of appeals stayed the effectiveness of the order, thus permitting the convention to proceed. Chief Justice Warren, in circuit, refused to interfere.<sup>46</sup> At the convention the union's constitution was amended and James R. Hoffa was elected General President, his term of office to commence December 1, 1957. On October 14, 1957, an amended complaint was filed, and on October 23, 1957, an order was issued enjoining any of the elected officers from assuming office. After another quick appeal and some minor modification of the temporary injunction by the court of appeals, the trial on the merits began. The plaintiffs adduced evidence from December 2, 1957, to January 16, 1958, with occasional interruptions including discussion by counsel of the possibilities of a disposition of the case by consent. A settlement was reached and on January 31, 1958, a consent decree was signed under the terms of which the officers-elect assumed office and a Board of Monitors, consisting of one nominee of the plaintiffs, one of the defendant-Teamsters, and a mutually selected chairman, was appointed to supervise the union's operations. The contest that subsequently ensued among the Monitors themselves, as well as the present stalemated situation, are well known, and the details are not here important.

Two significant differences between the monitorship and the re-

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<sup>45</sup> These facts concerning the Teamster-Monitor Litigation are taken from a mimeographed study by one of the attorneys for the Teamsters Union, Raymond W. Bergan.

<sup>46</sup> *Cunningham v. English*, 78 Sup. Ct. 3 (1957). The Chief Justice said: "To enjoin the election of officers of an international union of 891 locals and 1,500,000 members during the course of its convention proceedings, on allegations of conspiracy supported by the affidavits here, without testimony having been taken, would indeed be drastic action."



ceivership are apparent: First, the monitorship is consensual while the receivership may be imposed over the opposition of one or more of the parties; second, the monitorship is tripartite by nature, while the receivership is ordinarily a single individual independent of the litigants. The requirement of consent makes it unlikely that monitorships will be used in most intraunion situations requiring reform; any tripartite body has discernible weaknesses in a major power struggle, such as has been involved in the Teamster-Monitor Litigation. It is interesting to note that a monitorship has since been established in Puerto Rico in a case growing out of alleged violation of the Labor-Management Reporting and Disclosure Act, where the consensual aspect of monitorship was retained, but only a single monitor appointed.<sup>47</sup>

#### PROPOSED LEGISLATION

Fears generated in certain parts of the labor movement by the Teamster-Monitor Litigation resulted in the introduction in the 86th Congress of a bill to amend the Norris-La Guardia Act to prohibit federal courts from having "jurisdiction to issue or continue in effect any judicial order appointing a receiver, trustee, master, monitor, or administrator . . . to manage or administer, or supervise the management or administration, of the affairs of any labor organization. . . ."<sup>48</sup> On behalf of the bill, Representative Roosevelt stated that he had introduced it at the request of the National Maritime Union and the Flight Engineers International Association, both AFL-CIO affiliates, because he had "carefully looked into the matter and reached the conclusion that such legislation reflects the very sound principle that the operation of labor unions should remain in the hands of the membership. . . ."<sup>49</sup> President Meany of the AFL-CIO voiced firm opposition to the bill since its purpose was "to free the officers of the International Brotherhood of Teamsters from the supervision now exercised by the United States District Court for the District of Columbia through a Board of Monitors appointed by it."<sup>50</sup> This "must necessarily tend to impair the independence of the federal judiciary," Mr. Meany stated, because Congress would be thus intervening "for the purpose of affecting the outcome of a particular pending case."<sup>51</sup>

<sup>47</sup> *Marin v. UDEM de Puerto Rico*, 46 L.R.R.M. 2744 (D.C. Puerto Rico 1960).

<sup>48</sup> H.R. 11958, 86th Cong., 2d Sess. A proviso adds: "That nothing contained herein shall be construed to prevent the appointment of a receiver for the sole purpose of preserving the funds, property, or assets of a labor organization pending the conduct of an election of officers or vote upon the removal of officers pursuant to the [Landrum-Griffin Act]."

<sup>49</sup> 106 Cong. Rec. 8185 (daily ed. April 27, 1960).

<sup>50</sup> Letter from George Meany to Rep. Edwin E. Willis, May 17, 1960.

<sup>51</sup> *Ibid.*

Aside from this, however, Mr. Meany observed that he knew of no evidence that the federal courts had abused their powers to appoint receivers or monitors, and he thought that during "a schism situation," it was a necessary power for the courts to have, "to prevent one group of members from unilaterally possessing itself of assets claimed by a rival group."<sup>52</sup> The bill died in a subcommittee of the House Judiciary Committee.

#### NATIONAL LABOR RELATIONS BOARD REMEDIES

While the Landrum-Griffin Act<sup>53</sup> primarily creates and protects rights and remedies for union members affecting their status and privileges within their unions, apart from their employee status, the Taft-Hartley Act<sup>54</sup> essentially creates and protects rights which are based upon employment relationship and collective bargaining and not upon internal incidents of union membership.<sup>55</sup> Under the National Labor Relations Act [NLRA], protection is afforded to employees who seek either to join or not to join unions, but the internal relationship between member and union generally is not subject to regulation by the National Labor Relations Board [NLRB].<sup>56</sup> As long as the member's job status is not affected, the union's power with respect to its members is not regulated, absent any coercion or intimidation. Section 8(b)(1)(A) expressly preserves from regulation the union's right to prescribe its own rules for the acquisition or retention of membership. This exemption is qualified only to the extent that where membership in the union is required as a condition of employment, the initiation fees required may not be "excessive or discriminatory" and dues must be uniform.

Prior to the Landrum-Griffin amendments, the NLRA denied access to NLRB processes to unions unless they filed with the Secretary of Labor their constitutions and bylaws and detailed information regarding their internal procedures, as well as a financial statement which was also required to be made available to the members of the

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<sup>52</sup> *Ibid.* For a contrary view, see Pressman, "Appointment of Receivers for Labor Unions," 42 Yale L.J. 1244 (1933).

<sup>53</sup> Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. I, 1959).

<sup>54</sup> National Labor Relations Act, as amended, 61 Stat. 136 (1947), 29 U.S.C. § 141 (1958).

<sup>55</sup> Some overlapping is probably inevitable. See *Johnson v. Local 58, Int'l Bhd. of Electrical Workers*, 181 F. Supp. 734 (E.D. Mich. 1960), holding that the right of assembly, which is protected by § 101(a)(2) of Landrum-Griffin, may be invoked against union officials' threats of job discrimination against members of the local union who met to seek a separate charter for their group.

<sup>56</sup> *UAW v. Hinz*, 218 F.2d 664 (6th Cir. 1955).

union; also the officers of the union first had to file non-communist affidavits with the NLRB. These requirements, however, created no corresponding rights for members to compel unions to furnish financial statements or to compel them to comply with the reporting and affidavit requirements of the act.<sup>57</sup> No machinery existed under that law by which an employee could compel compliance with the filing or affidavit requirements by a union which was willing to do without the NLRB's services.<sup>58</sup> The act makes no reference to internal union elections, nor does it furnish union members with any remedies before the NLRB whereby they can exercise control over their officers.<sup>59</sup> The NLRB exercised no direct control over union funds or financial malpractices of union officials. Some deterrent against abuse of power by union officers probably results from the availability of the NLRB's election procedures for decertification or for a change of bargaining representatives.<sup>60</sup> The availability of the latter alternative has, however, been substantially reduced by the existence of "no-raiding agreements" among many unions precluding any interference with the representation rights enjoyed by any signatory to such pact, and by the NLRB's application of the contract bar doctrine.<sup>61</sup>

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<sup>57</sup> See *Bennett v. Lodge 992, Bhd. of Ry. & Steamship Clerks*, 159 F. Supp. 93 (D.C. Mass. 1958).

<sup>58</sup> The Taft-Hartley reporting and affidavit requirements were repealed by the Landrum-Griffin Act. 73 Stat. 524 (1959), 29 U.S.C. §§ 431 (d) and (e) (Supp. I, 1959).

<sup>59</sup> Union members and non-members alike have a right under the act to equal representation, but as a practical matter it is a right which is hardly enforceable before the NLRB itself except through the drastic remedies of decertification or change of bargaining representatives. See Cox, "The Duty of Fair Representation," 2 Vill. L. Rev. 151, 172-75 (1957), suggesting that breach of the duty of fair representation should be treated by the NLRB as an unfair labor practice, as was held in *Holman v. Industrial Stamping and Mfg. Co.*, 142 F. Supp. 215, 218-19 (E.D. Mich. 1946). See also, Wellington, "Union Democracy and Fair Representation: Federal Responsibility in a Federal System," 67 Yale L.J. 1327, 1333-43 (1958).

<sup>60</sup> The transfer of one union's funds to another with consequent unavailability of sick and death benefits to the adherents of the first union was held to invalidate the results of an NLRB election in which the second union obtained a majority. *Kearney & Trecker Corp. v. NLRB*, 210 F.2d 852 (7th Cir. 1954), *denying enforcement* to 101 N.L.R.B. 1577 (1952).

<sup>61</sup> Despite the considerable evidence developed by the McClellan Committee of financial irregularities by certain officials of the International Brotherhood of Teamsters, and the fact of the Teamster expulsion from the AFL-CIO on grounds of corruption, the Board refused to apply the "schism" doctrine to cases involving membership efforts to disaffiliate from the Teamsters Union during the term of an existing collective bargaining agreement, on the ground that no union had been chartered by the AFL-CIO to cover the Teamster jurisdiction. *B & B Beer Distributing Company, Inc.*, 124 N.L.R.B. 1420 (1959); *cf.*, *Hershey Chocolate Corp.*, 121 N.L.R.B. 901 (1958).

UNION MEMBERS' CONTROL OVER OFFICERS, ELECTIONS, AND  
FINANCES UNDER LANDRUM-GRIFFIN

The Labor-Management Reporting and Disclosure Act of 1959<sup>62</sup> provides a double-barrelled weapon to enforce sound financial practice and internal democratic procedures. The union member in some instances is provided with relatively easy access to the federal courts to enforce his rights and in some instances he may also call upon the formidable resources of the federal government, which in turn is armed with broad investigatory powers and criminal sanctions. Unfortunately, the new statute is unable to counteract the apathy and indifference on the part of individual members and to infuse a desire to participate, which is a necessary element—and probably the most important one—in achieving the desired objective.

Title I<sup>63</sup> of the Landrum-Griffin Act codifies the basic rights of individual members and places some basic limitations upon the power of unions and their officers. Section 101(a)(1) guarantees equal rights for all members with respect to the nominations of candidates, voting in elections or referenda, attendance at meetings and participation in deliberations, subject to reasonable rules in the union's constitution and bylaws. It is significant that the new act does nothing to remove the barriers of racial or other forms of discrimination against obtaining membership in unions, so that there remains unremedied the problem of employees who cannot join and participate in the affairs of the unions which act as their statutory representatives.<sup>64</sup> The good faith of the sponsors of the new act will remain in doubt so long as the law remains so glaringly lacking in the area of basic civil rights.<sup>65</sup>

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<sup>62</sup> 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. I, 1959).

<sup>63</sup> 73 Stat. 522-23 (1959), 29 U.S.C. §§ 411-15 (Supp. I, 1959).

<sup>64</sup> "The right to participate is not fully protected, however, as long as employees in the bargaining unit are arbitrarily excluded from membership. Although unions have made much progress in removing color bars from their constitutions, a number still refuse to admit Negroes. The state courts, with one exception, have refused to grant any person admission to the union. The ACLU believes that a complete bill of rights must include the right of a worker to join the union which acts as his representative. . . ." From Statement of the American Civil Liberties Union on Proposed Legislation to Protect Internal Rights of Union Members, S. 1555, H.R. 4473, H.R. 3028 and H.R. 7265, 86th Cong., 1st Sess. (1959), submitted to House Education and Labor Committee, June 16, 1959.

<sup>65</sup> On August 12, 1959, Rep. Powell of New York offered an amendment to H.R. 8400, 86th Cong., 1st Sess. (1959), to prohibit discrimination by a collective bargaining representative with respect to admission or retention of membership or in the representation of employees, on grounds of race, religion, color, sex or national origin. Rep. Powell said, in part, "How ridiculous it is for any human being, from whatever section of this country they may come, to speak of a bill of rights in connection with any legislation whatsoever, and exclude from that bill of rights any mention of civil rights.

Unquestionably the statute will, however, afford protection against discriminatory treatment for those who are already members, enforceable by an action in the federal district courts.<sup>66</sup>

Section 101(a)(2)<sup>67</sup> safeguards the rights of members to meet and assemble, express views and arguments, including their views on candidates and union business at meetings. Section 101(a)(3)<sup>68</sup> establishes the requirement of a majority vote by secret ballot at a meeting held upon due notice, or in a referendum by secret ballot before a union can increase local union dues and initiation fees or levy assessments. For international unions, the requirement is either a majority vote of delegates at a regular convention, or at a special convention held on at least thirty days written notice; or by a majority vote of all members voting in a secret ballot referendum; or, where authorized by the union constitution, by action of the executive board of the union, in which case it can be effective only until the union's next regular convention.

The provisions which permit unions to place restrictions upon the guaranteed rights contained in sections 101(a)(1) and (2)<sup>69</sup> by "reasonable rules" in the union constitution, will of course focus great attention upon the restrictions of member rights and privileges contained in union constitutions. Since it appears that only the restrictions contained in union constitutions and bylaws can act as a limitation upon the statutory rights, it will become increasingly necessary for unions to codify in their constitutions the restrictions they seek to impose upon members, and where such constitutional restrictions already exist, there will unquestionably be careful scrutiny and elimination of provisions which are manifestly unreasonable. As to just what is "reasonable," we may anticipate that there will before long develop a considerable body of case law.<sup>70</sup> In this connection, it is clear that the safeguards against union disciplinary action contained in section 101(a)(5),<sup>71</sup> which require service of specified written charges, a

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To do that is nothing but outright hypocrisy and deception of the lowest type. . . ." The Powell amendment was defeated by a vote of 215 to 160 in the House. Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 520 (1959), 29 U.S.C. § 402(o) (Supp. I, 1959).

<sup>66</sup> 73 Stat. 522, 523 (1959), 29 U.S.C. §§ 411(a)(1) and (2), 412 (Supp. I, 1959).

<sup>67</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(2) (Supp. I, 1959).

<sup>68</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(3) (Supp. I, 1959).

<sup>69</sup> 73 Stat. 522 (1959), 29 U.S.C. §§ 411(a)(1) and (2) (Supp. I, 1959).

<sup>70</sup> It has been suggested that existing state law will have continuing vitality in this area because of the limited federal experience in internal union disputes and because of the overlapping jurisdiction created under the Landrum-Griffin Act. Summers, "The Law of Union Discipline: What the Courts Do in Fact," 70 Yale L.J. 175, 176-77 (1960).

<sup>71</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(5) (Supp. I, 1959).

reasonable period for the accused to prepare his defense, and a full and fair hearing, give further importance to unions' constitutional language. It seems unlikely that a court will sustain disciplinary action against a member unless his conduct is in violation of requirements which are reasonable and which are actually contained or may be reasonably inferred from language in the written constitution of a union, and that conduct which is not expressly prohibited by the constitution will not be permitted to sustain disciplinary action.<sup>72</sup> Since under section 101(b),<sup>73</sup> any provisions of union constitutions are declared void if inconsistent with section 101, there will be some interesting problems in drafting and interpreting disciplinary provisions for union constitutions. Section 101(a)(4)<sup>74</sup> protects the rights of members to institute proceedings in courts of law or before administrative agencies without interference by their unions, subject to the requirement presumably if contained in the union constitution that internal union remedies be first exhausted.<sup>75</sup> A member may not be required to exhaust internal procedures that extend beyond four months before filing such suit or proceedings.<sup>76</sup> The right of members to appear as witnesses in legislative, judicial or administrative proceedings, or to petition legislatures or to communicate with legislators is protected.<sup>77</sup> The same section forbids direct or indirect encouragement or financing by employers of such activity. It will be interesting to observe whether this latter restriction will have any effect on pressures exerted upon various legislative bodies wherein employer groups have solicited and encouraged employee participation, as in mass letter writing or telegraphing campaigns.

The rights contained in section 101 are enforceable in the federal district courts by appropriate remedy including injunctions.<sup>78</sup> In ad-

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<sup>72</sup> See discussion in Hickey, "The Bill of Rights of Union Members," 48 Geo L.J. 226, 250-56 (1959).

<sup>73</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(b) (Supp. I, 1959).

<sup>74</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(4) (Supp. I, 1959).

<sup>75</sup> An interesting theory is advanced in Powell, "The Bill of Rights—Its Impact Upon Employers," 48 Geo. L.J. 270 (1959), regarding this provision. Referring to the well-established rule in the courts that the grievance-arbitration machinery is an employee's exclusive avenue of relief for violations of labor agreements (absent unfair dealing by the bargaining agent) Powell suggests that § 101(a)(4) may change the rule. Since a union is forbidden by the statute to restrict a member's right to sue, it may not lawfully enter into a collective bargaining agreement with an employer which would have the same effect. It is doubtful whether the courts will adopt this ingenious theory, since it would seem contrary to the congressional intent not to interfere with collective bargaining rights of unions in the new act.

<sup>76</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(4) (Supp. I, 1959).

<sup>77</sup> *Ibid.*

<sup>78</sup> 73 Stat. 523 (1959), 29 U.S.C. § 412 (Supp. I, 1959).

dition, existing state, federal and administrative remedies, and remedies under any union constitution, are expressly preserved by section 103.<sup>79</sup> Section 104 is the one section which confers a right upon persons because of their employee status rather than to union members as such. This is the right to receive or inspect collective bargaining agreements. Unlike the other rights under title I, this right is enforceable only by the Secretary of Labor by suit in the federal courts, under section 210 of the act.<sup>80</sup>

Violations of title I of the act are expressly exempted from the Secretary of Labor's exceedingly broad investigatory powers conferred by section 601 of the act.<sup>81</sup> However, since section 609<sup>82</sup> prohibits unions and their officers and representatives from disciplining members for exercising *any right* under the act, and since the coverage of section 601 includes matters arising under section 609, it would seem that the Secretary in actuality would have full investigatory power over most violations of the Bill of Rights if there is disciplinary action against a member. Section 610<sup>83</sup> of the act makes it a crime to use or threaten the use of force or violence or to coerce or interfere with a member's utilization of rights under any provision of the act.

#### ELECTION RIGHTS AND REMEDIES

The regulation of union elections under Landrum-Griffin is so scattered throughout the statute as almost to warrant a recodification.

(a) Title I, sections 101(a)(1) and (2)<sup>84</sup> guarantees members the right to nominate candidates, to vote, and to express their opinions of candidates. These rights are enforceable under section 102<sup>85</sup> by civil suit in the federal court, and against violence and threats by criminal prosecution under section 610.<sup>86</sup>

(b) Title III,<sup>87</sup> dealing generally with the regulation of trusteeships, forbids the counting of the votes from a union under trusteeship, unless its delegates are elected by secret ballot in an election in which all good standing members of the union under trusteeship were eligible to participate. Wilful violations of this provision are made a

<sup>79</sup> 73 Stat. 523 (1959), 29 U.S.C. § 413 (Supp. I, 1959).

<sup>80</sup> 73 Stat. 523 (1959), 29 U.S.C. § 414 (Supp. I, 1959); 73 Stat. 529 (1959), 29 U.S.C. § 440 (Supp. I, 1959).

<sup>81</sup> 73 Stat. 539 (1959), 29 U.S.C. § 521 (Supp. I, 1959).

<sup>82</sup> 73 Stat. 541 (1959), 29 U.S.C. § 529 (Supp. I, 1959).

<sup>83</sup> 73 Stat. 541 (1959), 29 U.S.C. § 530 (Supp. I, 1959).

<sup>84</sup> 73 Stat. 522 (1959), 29 U.S.C. §§ 411(a) and (b) (Supp. I, 1959).

<sup>85</sup> 73 Stat. 523 (1959), 29 U.S.C. § 412 (Supp. I, 1959).

<sup>86</sup> 73 Stat. 541 (1959), 29 U.S.C. § 530 (Supp. I, 1959).

<sup>87</sup> 73 Stat. 530-32 (1959), 29 U.S.C. §§ 461-66 (Supp. I, 1959).

crime under section 303(b).<sup>88</sup> The criminal sanctions of section 610 would also be applicable here.<sup>89</sup>

(c) Title IV<sup>90</sup> is entirely devoted to the regulation of union elections. It makes mandatory the holding of elections at least every five years for international officers, every four years for officers of intermediate bodies, and every three years for local officers. International officers must be elected either by secret ballot among the members in good standing, or in convention by delegates elected by secret ballot. Similar provisions apply to elections of officers in intermediate bodies. Local officers must be elected by secret ballot among the members in good standing.<sup>91</sup> In any election of union officers, a candidate has the right to have his literature distributed by the union to the members at his expense, by mail or otherwise, and the union is required to refrain from discrimination among the candidates in making available lists of the members and in the distribution of literature. The two foregoing rights are enforceable in the federal courts.<sup>92</sup> Where there is a union security contract in effect, any candidate has the right to inspect a membership list within thirty days before the election, and he is entitled to an observer at the polls and counting of ballots.<sup>93</sup> This title establishes safeguards for adequate notice of secret ballot elections, and to protect against disfranchisement of members because of delay in the receipt of checked-off dues.<sup>94</sup> Unions are prohibited from using union funds in any election, and employers are forbidden to contribute funds to promote a union candidate.<sup>95</sup> Union constitutional provisions regarding election procedures, so far as they are not inconsistent with the act, are given the force of law and must be followed in elections under title IV.<sup>96</sup>

A member who is aggrieved by a violation of title IV, *including the valid election provisions of his union constitution*, is required first to exhaust his remedies under the union constitution. If within three months after initiating his grievance with the union he has still not obtained a final decision, he may then within one month file a complaint with the Secretary of Labor.<sup>97</sup> Within sixty days thereafter, if he finds probable cause to believe there is a violation, the Secretary

<sup>88</sup> 73 Stat. 531 (1959), 29 U.S.C. § 463(b) (Supp. I, 1959).

<sup>89</sup> 73 Stat. 541 (1959), 29 U.S.C. § 530 (Supp. I, 1959).

<sup>90</sup> 73 Stat. 532-34 (1959), 29 U.S.C. §§ 481-83 (Supp. I, 1959).

<sup>91</sup> 73 Stat. 532 (1959), 29 U.S.C. § 481 (Supp. I, 1959).

<sup>92</sup> 73 Stat. 532 (1959), 29 U.S.C. § 481(c) (Supp. I, 1959).

<sup>93</sup> *Ibid.*

<sup>94</sup> 73 Stat. 532 (1959), 29 U.S.C. § 481(e) (Supp. I, 1959).

<sup>95</sup> 73 Stat. 532 (1959), 29 U.S.C. § 481(g) (Supp. I, 1959).

<sup>96</sup> 73 Stat. 532 (1959), 29 U.S.C. §§ 481(e), (f), 482(a), (c) (Supp. I, 1959).

<sup>97</sup> 73 Stat. 532 (1959), 29 U.S.C. § 482(a) (Supp. I, 1959).



may file suit against the labor organization in the federal district court.<sup>98</sup> Pending the decision of the court, the election is presumed valid and the elected officers may continue to function.<sup>99</sup> The court may direct an election, if one has not been held within the period required by section 401, or direct a new election if there have been violations of section 401 that may have affected the outcome of the election. The court is empowered to order an election under the Secretary's supervision.<sup>100</sup> While the court's orders are appealable, an order directing an election may not be stayed pending an appeal.<sup>101</sup> Where union constitutions fail to provide an adequate procedure to remove an officer for misconduct, the Secretary may, after an administrative hearing held in accordance with the Administrative Procedure Act, direct an election by secret ballot among the members to remove such officer.<sup>102</sup> The Secretary is authorized to promulgate rules and regulations to determine the adequacy of union removal procedures applicable to officers guilty of misconduct.<sup>103</sup>

In any investigation of violations of title IV, the Secretary is empowered to make use of investigatory powers provided in section 601,<sup>104</sup> which are probably as broad as any that exist under the law today.

(d) Title V makes it a crime for any person, who has been convicted or served part of a prison term for specified crimes, or who has been a member of the Communist Party within the preceding five years, to serve as a union officer.<sup>105</sup> It appears that under the language of section 504(a) it is also a criminal violation for any labor organization or officer knowingly to permit any person to hold a union office if such person is disqualified under the foregoing provision.<sup>106</sup>

Members who complain of breaches of their rights under the election provisions of the law remain free before the election to use any existing state court remedies,<sup>107</sup> but the procedures under the act are made exclusive after the election has been conducted.<sup>108</sup>

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<sup>98</sup> 73 Stat. 534 (1959), 29 U.S.C. § 482(b) (Supp. I, 1959).

<sup>99</sup> 73 Stat. 534 (1959), 29 U.S.C. § 482(a) (Supp. I, 1959).

<sup>100</sup> 73 Stat. 534 (1959), 29 U.S.C. § 482(c) (Supp. I, 1959).

<sup>101</sup> 73 Stat. 534 (1959), 29 U.S.C. § 482(d) (Supp. I, 1959).

<sup>102</sup> 73 Stat. 533 (1959), 29 U.S.C. § 481(h) (Supp. I, 1959).

<sup>103</sup> 73 Stat. 533 (1959), 29 U.S.C. § 481(i) (Supp. I, 1959).

<sup>104</sup> 73 Stat. 539 (1959), 29 U.S.C. § 521 (Supp. I, 1959).

<sup>105</sup> 73 Stat. 536 (1959), 29 U.S.C. § 504 (Supp. I, 1959).

<sup>106</sup> 73 Stat. 536 (1959), 29 U.S.C. § 504(a) (Supp. I, 1959).

<sup>107</sup> 73 Stat. 534 (1959), 29 U.S.C. § 483 (Supp. I, 1959). See also discussion of some problems of jurisdictional confusion, in Daniels, "Union Elections and The Landrum-Griffin Act," Thirteenth Annual Conference on Labor 317, 328-31 (1960), which also discusses the few court decisions since passage of the act.

<sup>108</sup> 73 Stat. 534 (1959), 29 U.S.C. § 483 (Supp. I, 1959).

## UNION FINANCES AND RIGHTS OF MEMBERS

Several separate titles of the Landrum-Griffin Act<sup>109</sup> include provisions which bear upon the handling of union finances. Section 101 (a)(3) of title I<sup>110</sup> substantially restricts the power of unions to increase dues and to levy assessments. In title II, section 201(b)<sup>111</sup> imposes the obligation upon unions to file annually detailed financial reports, and the same title requires the union to make the same financial data available to the members. The right of members to examine union books "for just cause" is enforceable by suit in either the federal district courts or in state courts, with provision for an allowance of reasonable attorney fees in such suit.<sup>112</sup> Reports are also required from union officers or employees if they, their spouses or minor children hold an interest in the union, receive income or monetary benefit from the union or engage in certain specified conflict-of-interest transactions.<sup>113</sup> Generally speaking, these transactions may be either (1) with an employer whose employees the union represents or seeks to represent; (2) with any business which deals with such an employer; (3) with any business which buys from, or sells or leases to the union, or (4) with labor relations consultants of an employer.<sup>114</sup> Where no such transactions have occurred, a negative report is not required.<sup>115</sup> Reports filed under this title are public,<sup>116</sup> and the Secretary of Labor may publish any reports or data so filed,<sup>117</sup> or make them available for examination,<sup>118</sup> or furnish copies at cost to any persons except that copies may be furnished upon request and without cost to the governor of any state.<sup>119</sup> Unions and individuals filing reports are required to preserve for five years the documents upon which the reports are based.<sup>120</sup> Under this title, heavy criminal penalties may be imposed for wilful violation, including false reporting or withholding of required information, or the making of false entries or concealment or destruction of records which are required to be kept.<sup>121</sup> The Secre-

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<sup>109</sup> Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. I, 1959).

<sup>110</sup> 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(3) (Supp. I, 1959).

<sup>111</sup> 73 Stat. 524 (1959), 29 U.S.C. § 431(b) (Supp. I, 1959).

<sup>112</sup> 73 Stat. 524 (1959), 29 U.S.C. § 431(c) (Supp. I, 1959).

<sup>113</sup> 73 Stat. 525 (1959), 29 U.S.C. §§ 432(a)(1-5) (Supp. I, 1959).

<sup>114</sup> 73 Stat. 526 (1959), 29 U.S.C. § 432(a)(6) (Supp. I, 1959).

<sup>115</sup> 73 Stat. 526 (1959), 29 U.S.C. § 432(c) (Supp. I, 1959).

<sup>116</sup> 73 Stat. 528 (1959), 29 U.S.C. § 435(a) (Supp. I, 1959).

<sup>117</sup> *Ibid.*

<sup>118</sup> 73 Stat. 528 (1959), 29 U.S.C. § 435(b) (Supp. I, 1959).

<sup>119</sup> 73 Stat. 528 (1959), 29 U.S.C. § 435(c) (Supp. I, 1959).

<sup>120</sup> 73 Stat. 529 (1959), 29 U.S.C. § 436 (Supp. I, 1959).

<sup>121</sup> 73 Stat. 529 (1959), 29 U.S.C. § 439 (Supp. I, 1959).

tary of Labor is also empowered to bring a civil action in the federal courts for relief, including injunctions, against violations or threatened violations of this title.<sup>122</sup>

Title III<sup>123</sup> of the act regulates the financial dealings of unions under trusteeship. The financial reports required under title II, including those for the organization as well as for officers and employees are required of the trustees as well.<sup>124</sup> Criminal penalties for violation of these reporting provisions are provided,<sup>125</sup> and authority is granted to the Secretary of Labor to proceed civilly in the federal courts for relief against violations, actual or threatened.<sup>126</sup> Labor organizations are expressly authorized to impose trusteeships upon subordinate bodies in accordance with their constitutions for the purpose of correcting corruption or financial malpractice,<sup>127</sup> but when a trusteeship is imposed, the parent organization is forbidden to take anything more from the local than the normal per capita tax and assessments.<sup>128</sup> The parent organization is authorized, however, to distribute the assets of the organization under trusteeship in accordance with the union constitution in the event of a bona fide dissolution of the subordinate body.<sup>129</sup> Violation of these provisions is separately punishable as a crime.<sup>130</sup> This title authorizes suits by either the subordinate union, or by any member, or by the Secretary of Labor in the federal district courts<sup>131</sup> for relief, including injunction against trusteeship improperly imposed or operated. All other existing remedies at law or in equity are expressly preserved.<sup>132</sup> Members or subordinate labor organizations are given the option of filing a written complaint with the Secretary in such cases, and in the event he finds probable cause to believe there is a violation and files suit under section 304(a), he is required to withhold the identity of the complainant,<sup>133</sup> and the jurisdiction of the district court over the trusteeship becomes exclusive and its final judgment is *res judicata*.<sup>134</sup>

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<sup>122</sup> 73 Stat. 530 (1959), 29 U.S.C. § 440 (Supp. I, 1959).

<sup>123</sup> 73 Stat. 530-32 (1959), 29 U.S.C. §§ 461-66 (Supp. I, 1959).

<sup>124</sup> 73 Stat. 530 (1959), 29 U.S.C. §§ 461(a) and (b) (Supp. I, 1959).

<sup>125</sup> 73 Stat. 530 (1959), 29 U.S.C. §§ 461(b), (c), (d) and (e) (Supp. I, 1959).

<sup>126</sup> 73 Stat. 530 (1959), 29 U.S.C. § 461(b) (Supp. I, 1959); 73 Stat. 530 (1959), 29 U.S.C. § 440 (Supp. I, 1959).

<sup>127</sup> 73 Stat. 531 (1959), 29 U.S.C. § 462 (Supp. I, 1959).

<sup>128</sup> 73 Stat. 531 (1959), 29 U.S.C. § 463(a) (Supp. I, 1959).

<sup>129</sup> *Ibid.*

<sup>130</sup> 73 Stat. 531 (1959), 29 U.S.C. § 463(b) (Supp. I, 1959).

<sup>131</sup> 73 Stat. 531 (1959), 29 U.S.C. § 464(a) (Supp. I, 1959).

<sup>132</sup> 73 Stat. 532 (1959), 29 U.S.C. § 466 (Supp. I, 1959).

<sup>133</sup> 73 Stat. 531 (1959), 29 U.S.C. § 464(a) (Supp. I, 1959).

<sup>134</sup> 73 Stat. 532 (1959), 29 U.S.C. § 466 (Supp. I, 1959).

Title IV<sup>135</sup> of the act, which regulates union elections, also contains important limitations upon the use of union funds. The use of funds of the union received from dues, assessments or similar levy to promote a candidate for union office is prohibited.<sup>136</sup> Where a distribution of literature of any union candidate is made by the union, it seems clear that the union is obligated to require the candidate to reimburse the union for the reasonable expense of such distribution, and that it is required to treat all candidates equally with regard to the expense of such distribution.<sup>137</sup> In the event of a violation of the foregoing, the broad power of the Secretary of Labor to investigate is included under sections 601(a) and (b) of the act.<sup>138</sup> Where a violation of these provisions also violates the union constitution, members may continue to enforce the constitutional provisions by any existing remedies.<sup>139</sup> It is likely that a use of union funds to support a candidate for union office would be held to violate the provisions of title V<sup>140</sup> and the remedies therein contained would be available.

Title V<sup>141</sup> is the major section of the new act for the regulation of financial affairs of labor organizations. Declaring that union officials occupy "positions of trust" in relation to the union and the members, the act imposes upon them the duty to manage, invest and expend union funds and property in accordance with the constitution of the union and resolutions of its governing body, and to do the same solely for the benefit of the union and the members. Union officers are forbidden to deal adversely with the union or on behalf of any adverse party. They are forbidden to hold or acquire a conflicting interest, and they are required to account to the union for any profit received out of any transaction with the union conducted by them or under their direction.<sup>142</sup> Officers may not be exempted from liability for breach of these fiduciary duties by any exculpatory provision of the union constitution or by an exculpatory resolution of the governing body of the union.<sup>143</sup>

Where a violation of fiduciary duty is alleged and the union or its officers fail to sue for appropriate relief, after being requested to do so by any member, such member is authorized by the act to institute an action for the benefit of the union in the federal courts or in

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<sup>135</sup> 73 Stat. 532-34 (1959), 29 U.S.C. § 481-83 (Supp. I, 1959).

<sup>136</sup> 73 Stat. 533 (1959), 29 U.S.C. § 481(g) (Supp. I, 1959).

<sup>137</sup> 73 Stat. 532 (1959), 29 U.S.C. §§ 481(c) and (g) (Supp. I, 1959).

<sup>138</sup> *Ibid.*

<sup>139</sup> 73 Stat. 534 (1959), 29 U.S.C. § 483 (Supp. I, 1959).

<sup>140</sup> 73 Stat. 535 (1959), 29 U.S.C. § 501 (Supp. I, 1959).

<sup>141</sup> *Ibid.*

<sup>142</sup> 73 Stat. 535 (1959), 29 U.S.C. § 501 (Supp. I, 1959).

<sup>143</sup> *Ibid.*

a state court, to recover damages, or for an accounting or other relief. Prior to the filing of such action, leave of the court must be obtained upon verified application, which may be made *ex parte*. In such action, if successful, the court may allow out of the recovery, attorney fees and necessary expenses.<sup>144</sup>

Union officers, employees, trustees, and employees of trusts (in which unions have an interest), who handle funds or property of the trust, are required to be bonded by a corporate surety who is authorized by the Secretary of the Treasury as an acceptable surety on federal bonds, and the bond may not be placed through any agent, broker or surety company in which any union or union representative has an interest.<sup>145</sup> No union officer or employee may borrow a total of more than \$2000 from a union.<sup>146</sup> No union or employer may pay directly or indirectly the fine of any officer or employee convicted of any wilful violation of the act.<sup>147</sup> Heavy criminal penalties are imposed for embezzlement, theft or wilful conversion of union funds or property by a union officer or employee,<sup>148</sup> for violation of the bonding requirement,<sup>149</sup> for making a loan in a prohibited amount<sup>150</sup> or for payment by a union or employer of a fine levied against an officer or employee for violation of the act.<sup>151</sup>

Title V<sup>152</sup> also amends section 302 of the Labor-Management Relations Act by prohibiting employers, employer associations, or consultants from making gifts or loans to unions or union officers who represent or seek to represent their employees; and unions and their officers are forbidden to accept such gifts or loans.<sup>153</sup> The prohibition extends to gifts or loans to employees or employee committees, where it is intended to cause the employees or committees to influence other employees in the exercise of their rights to join unions or bargain collectively; the prohibition further applies to gifts or loans to unions or union officials intended to influence their actions as employee representatives.<sup>154</sup> Unions and their officers and employees are forbidden to require a fee for unloading trucks, other than compensation for employees who perform the work.<sup>155</sup>

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<sup>144</sup> 73 Stat. 535 (1959), 29 U.S.C. § 501(b) (Supp. I, 1959).

<sup>145</sup> 73 Stat. 536 (1959), 29 U.S.C. § 502(a) (Supp. I, 1959).

<sup>146</sup> 73 Stat. 536 (1959), 29 U.S.C. § 503(a) (Supp. I, 1959).

<sup>147</sup> 73 Stat. 536 (1959), 29 U.S.C. § 503(b) (Supp. I, 1959).

<sup>148</sup> 73 Stat. 536 (1959), 29 U.S.C. § 501(c) (Supp. I, 1959).

<sup>149</sup> 73 Stat. 536 (1959), 29 U.S.C. § 502(b) (Supp. I, 1959).

<sup>150</sup> 73 Stat. 536 (1959), 29 U.S.C. § 503(c) (Supp. I, 1959).

<sup>151</sup> *Ibid.*

<sup>152</sup> 73 Stat. 537 (1959), 29 U.S.C. § 186 (Supp. I, 1959).

<sup>153</sup> *Ibid.*

<sup>154</sup> 73 Stat. 537 (1959), 29 U.S.C. §§ 186(a) and (b)(1) (Supp. I, 1959).

<sup>155</sup> 73 Stat. 538 (1959), 29 U.S.C. § 186(b)(2) (Supp. I, 1959).

Finally, title VI prohibits picketing of any employer for personal profit or enrichment, and imposes a heavy penalty for violation.<sup>156</sup>

#### CONCLUSION

The new act has substantially done away with most of the impediments, both substantive and procedural, that formerly hampered suits involving union assets.<sup>157</sup> The inclination of the courts to apply to unions the law of fraternal associations, the reluctance of the courts to intervene in internal union affairs, the problems inherent in class suits, and problems of jurisdiction—these among others<sup>158</sup> are for the most part overcome by the comprehensive, if scattered, regulation of union finances and elections in the Landrum-Griffin Act. There is no doubt that the new act has created strong legal weapons for individual members and for minority factions in unions. For the most part, existing remedies in the state courts are preserved, but the ready access to the federal courts provided under the act without reference to diversity or jurisdictional amount, and the broad powers given to the courts under the act for the fashioning of remedies, suggest that litigation will naturally tend to gravitate toward the federal courts.<sup>159</sup> Provision for attorney's fees and expenses of litigation will of course encourage the filing of lawsuits, as will the protection against disciplinary action by the union contained in section 609. It is doubtful whether suits under section 501(b) of the new act will be significantly delayed or discouraged by the requirement that the union must first be given an opportunity to file suit, or by the requirement that leave of court be first obtained. Since the application for leave may be made *ex parte*, it can be assumed that leave will be granted automatically in any case where the proposed complaint and supporting affidavits make out a *prima facie* case.

It seems safe to predict that in spite of the clear reservations of state jurisdiction contained in the new law, the practical effect of this statute will inevitably be to shift from state to federal courts the forum for most future litigation involving members' control over officers, elections, and finances.

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<sup>156</sup> 73 Stat. 539 (1959), 29 U.S.C. § 522 (Supp. I, 1959).

<sup>157</sup> See Dugan, "Fiduciary Obligations Under The New Act," 48 Geo. L.J. 277, 278-83, 301-03 (1959).

<sup>158</sup> See Summers, "The Impact of Landrum-Griffin in State Courts," Thirteenth Annual Conference on Labor, 333, 337-50 (1960).

<sup>159</sup> Where the state courts are used, they will probably tend to adopt standards conforming to those established in Landrum-Griffin. *Id.* at 351-60 (1960). See also, Wollett, "Fiduciary Problems Under Landrum-Griffin," *id.* at 267, 287-90.