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The Labor-Management Reporting and Disclosure Act, Section 501: A Tool for Developing Internal Union Democracy

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THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT, SECTION 501: A TOOL FOR DEVELOPING INTERNAL UNION DEMOCRACY

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INTRODUCTION

The authors of this article contend that section 501 of the Labor-Management Reporting and Disclosure Act[1] (hereafter LMRDA) provides a legal mechanism for the enforcement and protection of internal union democracy. The language of the statute sets out a fiduciary relationship existing between union officers and their membership. In the context of internal union affairs such a relationship creates an affirmative duty on the part of union officers to be responsible to their membership for the manner in which they represent membership interests.

The inspiration for this article comes from the members of the United Steel Workers of America (hereafter USWA) who filed suit under LMRDA section 501 in 1974 against their leadership.[2] The suit was brought in response to the enactment of the Experimental Negotiating Agreement[3] (hereafter ENA) between the management of the steel industry and the USWA. The agreement provided for binding arbitration of all issues arising during collective bargaining which were not resolved when the then current contract ran out. The

1. 73 Stat. 519 (1959), 29 U.S.C. § 501 (1973).
2. Aikens v. Abel, 373 F. Supp. 452 (W.D. Pa. 1974).
3. 4 CCH LAB. L. REP., LABOR RELATIONS ¶ 9030 (1974) (reporting the full text of the Experimental Negotiating Agreement).

effect of the agreement was to preclude a "legal" or authorized strike by the membership over the terms of the contract. Despite the critical nature of the right to strike, the union leadership did not inform the membership of the agreement prior to the actual contract negotiations. The agreement had the effect of preventing rank and file participation in either the negotiating or final adoption of the agreement. The petitioners demanded an end to the ENA because of the manner in which the agreement was made, as well as the substance of the agreement itself.

Certain facets of section 501 which call for clarification and expansion have been excluded from discussion below. In particular, we have not investigated the wording of the section which prohibits union officers from acting "as an adverse party" in relation to their membership. We must leave to others the application of these words to situations such as those where union officials refuse to demand adherence to health and safety regulations or objectively aid employers in evading the provisions of those regulations. Another area for further investigation involves officials who purposefully restrict contract demands to traditional economic ones, neglecting the increasingly complex needs of their membership. One example of such neglect is the persistent refusal on many unions' parts to adopt contract demands for child care facilities for parent-workers.

This article is divided into three major parts. The first is a description of the legislative history of section 501 and an examination of the treatment which courts have given to the section. This section demonstrates that officers have an historical and well-recognized fiduciary duty which is peculiar to their capacity as representatives of working people. The second section consists of descriptions of the history and development of three major trade unions. The absence of internal democracy within each of these unions in matters of vital concern to their respective memberships illustrates the continuing need for a responsive and democratic union leadership. The third section summarizes the conclusions to be drawn from this study of section 501 and suggests guidelines for its future use.

I. PAST INTERPRETATIONS OF SECTION 501

A. *Legislative History*

The LMRDA[4] was the third major act passed by Congress in the

4. 73 Stat. 519-46 (1959), 29 U.S.C. § 402 *et seq.* (1973).

field of labor-management relations since the depression of the 1930s. Neither the Wagner Act[5] nor the Taft-Hartley Act,[6] which preceded the LMRDA, had provisions regulating the internal affairs of labor unions. In the opinion of commentators of the period, Congress believed that the unions, as voluntary organizations, should be free to govern themselves, and, consequently, Congress scrupulously avoided legislation to regulate their internal affairs.[7] By 1958, however, the Senate Select Committee on Improper Activities in the Labor-Management Field, chaired by Senator John McClellan, found evidence of serious abuse of power by the leadership in some labor organizations—abuses such as racket influences in the organized labor movement and unscrupulous leaders usurping the rights of individual members.[8] The committee investigators disclosed the disappearance of 10 million dollars from the union treasuries over a period of fifteen years,[9] and found "undemocratic perpetuation in office of self-serving union officers, the use of coercive and perverted union practices for personal gain—these and other abuses on the part of some union representatives as well as some employers and their representatives."[10]

The McClellan Committee, in the message to Congress submitted with the committee's interim report of its findings, recommended legislation in five areas of labor-management relations:

> First, legislation to regulate and control pension, health and welfare funds;
>
> Second, legislation to regulate and control union funds;
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> Third, legislation to insure union democracy;
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> Fourth, legislation to control middlemen in labor-management disputes;
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> Fifth, legislation to clarify the "no-man's land" in labor-management relations.[11]

It was in response to the conditions articulated in the findings of the McClellan Committee that Congress enacted the LMRDA. Of all

5. 49 Stat. 449-57 (1935), 29 U.S.C. § 151 *et seq.* (1973).
6. 61 Stat. 136-62 (1947), 29 U.S.C. § 141 *et seq.* (1973).
7. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819 (1960).
8. SENATE SELECT COMM. ON IMPROPER ACTIVITIES IN THE LABOR MANAGEMENT FIELD, INTERIM REPORT, S. REP. No. 1417, 85th Cong., 2d Sess. (1958).
9. *Id.*
10. *Id.*
11. *Id.*

the sections of the LMRDA, section 501 is one of the most significant yet least explored and developed provisions of the act. By holding union officers responsible to their members as fiduciaries, section 501 offers a mechanism by which union members can correct the abuses of a secure and self-serving union leadership.

Prior to the passage of the LMRDA, the House Committee on Education and Welfare stated its intent to create legislation which would hold union officers and employees to the same standard of loyalty as that to which other fiduciaries have traditionally been held.[12] Under this traditional standard, the responsibility of a fiduciary varies with the nature of the relationship.[13] The greater the independence of the fiduciary in the exercise of authority, the greater the scope of the fiduciary responsibility.[14] The House Report noted that common law fiduciary principles have long forbidden any person in a position of trust to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those served by the fiduciary.[15]

Two important elements in congressional labor legislation shed light on the discussion of the scope of the fiduciary responsibility of union officers. The first is the clear expression of the intent of Congress to hold trade union officials and their agents to the highest fiduciary standards:

> Union officials occupy positions of trust. They hold property of the union and manage its affairs on behalf of the members. It is the duty of union officers, just as it is the duty of all similar trustees, to put their obligations to the union and its members ahead of any personal interest.[16]

The second element of importance in construing the intensity and scope of the fiduciary duty is the prohibition of dual unionism in the Taft-Hartley amendments to the National Labor Relations Act. Because a union which gains a majority of votes in a certification election becomes the exclusive representive of all workers in the bargaining unit or plant for a year,[17] the victorious union gains a position of strength and security for an extended period of time. As a

12. H.R. REP. No. 741, 86th Cong., 1st Sess. (1959).
13. A. SCOTT, ABRIDGMENT OF THE LAW OF TRUSTS 319 (1960).
14. Scott, *The Fiduciary Principle*, 37 CALIF. L. REV. 539, 540 (1949).
15. H.R. REP. No. 741, *supra* note 12.
16. *Id.*
17. National Labor Relations Act § 9(c), 61 Stat. 136, 144 (1947), 29 U.S.C. § 159(a) (1973).

corollary, exclusivity should result in a higher duty of loyalty on the part of the union official to the membership, since the membership is not free to turn to another union as its bargaining agent.

There remains the question of the scope of this fiduciary relationship, *i.e.*, whether the responsibility extends beyond the purely financial matters to which union officers must attend and encompasses those areas of labor-management relations where it may be difficult to point to a clear financial or personal conflict of interest. The legislative history of the LMRDA as a whole and section 501 in particular provides further guidance.

The reports of the McClellan Committee produced a flurry of bills in the 86th Congress (1959-1960) in the area of labor-management relations.[18] In the Senate, the Committee on Labor and Public Welfare reported out the Kennedy-Ervin Bill.[19] As it was presented for debate on the floor, Title IV of the bill dealt with internal safeguards but relied solely upon the union adoption of ethical practice codes. Amendments were added which placed the union officials in a position of trust vis-a-vis the union, its members and its funds, and which permitted suits by members in federal and state courts in the event of a breach of this trust.[20] It is imperative to note that the section of the bill passed in the Senate spoke of the fiduciary responsibility relative only to "money or other property."[21]

The House Committee on Education and Welfare received the Senate bill along with a number of bills introduced on the floor of the House.[22] In all of the bills studied by the House Committee, the fiduciary responsibility was defined in traditional economic terms, with a call to adherence to a high standard of loyalty as the means of regulation and sanction of the union officials.[23] The House Committee reported out the Elliot Bill,[24] which contained the wording of section 501(a) as it now exists and which was passed by the House as the Landrum-Griffin Act. The Senate subsequently adopted the House

18. There were 71 bills introduced in the second session of the 85th Congress concerning regulation of trade union practices. J. RELZER & G. CARAHER, LABOR EXPERTS ON PENDING LABOR LEGISLATION: AN OPINION SURVEY 1 (1958).
19. S. REP. No. 187, 86th Cong., 1st Sess. (1959).
20. For a complete legislative history of floor amendments to S. 1555 see 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT DISCLOSURE ACT OF 1959, at 516, 546, 576 (1959) [hereinafter cited as LEGISLATIVE HISTORY].
21. S. 1555, 86th Cong., 1st Sess. (1959).
22. *See* H.R. REP. No. 741, *supra* note 12.
23. For the texts of many of the bills introduced see LEGISLATIVE HISTORY, *supra* note 20.
24. H.R. 8342, 86th Cong., 1st Sess. (1959).

version which became entitled the Labor-Management Reporting and Disclosure Act of 1959.

In the debates on the various bills, three groups emerged: the supporters of the various phrasings of the fiduciary responsibility, who contended that the bills were adequate, and two camps of opponents. In opposition were those who thought the bills provided insufficient sanctions and regulations. However, opposition also came from the established leadership of the trade unions, through spokesperson George Meany, and from trade union allies in the Senate—most notably Wayne Morse of Oregon. Both feared the use of a provision such as section 501 by "some dissident elements of a union . . . to cause trouble within the union."[25] Both Morse and Meany expressed this fear of the section in the context of its use as a tool to stop "legitimate expenditures."[26] Among these were the political, charitable and social expenditures made by the unions to "advance the interest and welfare of its members."[27] In sum, the trade union leaders opposed the bills because they could limit the kinds of activities in which the unions might engage and could weaken the unions in relation to management through added internal strife.

The proponents of section 501 and the concept of the fiduciary as applied to trade unions responded to the opposition by acknowledging the myriad responsibilities of a trade union. As Senator John Kennedy said:

> The problems with which labor organizations are accustomed to deal are not limited to bread and butter unionism or to organization and collective bargaining alone, but encompass as broad a spectrum of social objectives as the union may determine.[28]

This acknowledgement was embodied in section 501(a), which calls for the fiduciary to take into account "the special problems and functions of a labor organization." By such a statement, a broad area of activity was deemed appropriate activity in which unions could engage. Furthermore, the House Report on the Elliot Bill expressed this desire for a restrained reading of the legislative intent to

25. 105 CONG. REC. 16,387 (1959) (remarks of Senator Morse).
26. 105 CONG. REC. A6401 (1959) (remarks of Representative Dent quoting statement of George Meany, President of AFL-CIO).
27. *Id.*
28. *Id.* at A6573.

regulate—a reading which allows the unions to authorize expenditures and engage in a wide variety of activities:

> Our language does not purport to regulate the expenditures or investments of a labor organization. Such decisions should be made by the members in accordance with the constitution and bylaws of their union. Union officers will not be guilty of a breach of trust when their expenditures are within the authority conferred upon them either by the constitution and bylaws or by a resolution of the . . . appropriate governing body not in conflict with the constitution and bylaws.[29]

Although the part of the report quoted above refers primarily to the financial expenditures of union officials in their capacities as union officials, the important thread in the paragraph is the concern that officers act in accordance with the wishes of the union as stated in the constitution, bylaws and resolutions of the union. The lack of emphasis on pecuniary matters can be seen from another section of the report:

> S. 1555 applied the fiduciary principle to union officials only in their handling of "money or other property" [S. 1555, § 610], . . . the committee extends the fiduciary principle to all activities of union officials.[30]

The congressional intent was obedience to the wishes of the union membership and loyalty to the interests of the union members. Clearly then, it was the intent of Congress to permit an expansive interpretation of what is considered appropriate union activity and to minimize congressional interference in those areas, while at the same time demanding from union officers strict adherence to the wishes of the members as articulated in the constitution, bylaws or resolutions of the union.

B. *Judicial Interpretation*

In the sixteen years since the passage of the LMRDA, federal courts have continued to differ widely in their interpretations of its scope. Construction of section 501 has been particularly varied. Al-

29. H.R. REP. No. 741, *supra* note 12.
30. *Id.*

though in a minority, conservative courts have generally taken a non-interventionist position, in which the role of the judiciary in the regulation of labor unions is limited to insuring that union officers exercise their power over union funds responsibly.[31] Other, more activist courts, regarding themselves as guardians of union democracy, have taken a more expansive view of the scope of the fiduciary obligations of section 501, and have consequently held union officers to a higher standard of responsibility in the performance of all their duties.[32]

The limited scope given to section 501 by many federal courts is perhaps best exemplified by *Gurton v. Arons*.[33] In *Gurton*, the court dismissed plaintiff's section 501 cause of action, holding that section 501 applied only "to fiduciary responsibility with respect to the money and property of the union," and consequently is "not a catch-all provision under which union officials can be sued on any ground of misconduct with which the plaintiffs choose to charge them."[34] Plaintiffs, members of the American Federation of Musicians, Local 802, sought to enjoin action by local officers as well as the International Executive Board under section 501. The dispute concerned voting procedures; the local union had voted by a large majority to permit election of officers by secret ballot mail vote. Plaintiffs Gurton and Rothstein then proposed amendments to the local's by-laws which would effectively annul this decision by restricting the voting membership to those appearing or at least registering in person during regular business hours. Because a majority of Local 802's members were not employed as full-time musicians, and many of them either lived or worked out of the area, a requirement of personal

31. *See, e.g.*, Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968); Cassidy v. Horan, 405 F.2d 230 (2d Cir. 1968); Yanity v. Benware, 376 F.2d 197 (2d Cir. 1967); Jennings v. Carey, 58 L.R.R.M. 2606 (D.C. Cir. 1965); Coleman v. Brotherhood of Railway & Steamship Clerks, 340 F.2d 206 (2d Cir. 1965); Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964); Parks v. I.B.E.W., 314 F.2d 886 (4th Cir. 1963); Purcell v. Keane, 54 F.R.D. 455 (E.D. Pa. 1972); Richardson v. Tyler, 309 F. Supp. 1020 (N.D. Ill. 1970); Levinson v. Perry, 71 L.R.R.M. 2554 (S.D.N.Y. 1969); Charles v. American Fed. of Musicians, 241 F. Supp. 595 (S.D.N.Y. 1965); Echols v. Cook, 56 L.R.R.M. 3030 (N.D. Ga. 1962); Forline v. Local 42, Marble Polishers, 211 F. Supp. 315 (E.D. Pa. 1962); Penuelas v. Moreno, 198 F. Supp. 441 (S.D. Cal. 1961).

32. *See, e.g.*, Pignotti v. Sheet Metal Workers Local 3, 477 F.2d 825 (8th Cir. 1973); Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972); Semancik v. U.M.W.A. Dist. 5, 466 F.2d 144 (3d Cir. 1972); Bakery & Confec. Workers v. Ratner, 335 F.2d 691 (D.C. Cir. 1964); Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962), *aff'd*, 325 F.2d 646 (8th Cir. 1963); Cefalo v. Moffet, 333 F. Supp. 1283 (D.D.C. 1971); Puma v. Brandenburg, 324 F. Supp. 536 (S.D.N.Y. 1971); Retail Clerks Local 648 v. Retail Clerks Int'l, 299 F. Supp. 1012 (D.D.C. 1969); Blassie v. Poole, 58 L.R.R.M. 3259 (E.D. Mo. 1965); Moschetta v. Cross, 241 F. Supp. 347 (D.D.C. 1964); Alvino v. Bakery & Confec. Workers, 46 L.R.R.M. 2812 (D.D.C. 1960).

33. Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964).

34. *Id.* at 375.

presence at voting meetings or registration would have meant virtual disenfranchisement. Passage of the Gurton-Rothstein resolutions would probably have resulted in continued control of the local by the relatively small proportion of members employed as full-time musicians.

The local union's Executive Board refused to calendar the resolutions until plaintiffs obtained an injunction compelling them to do so.[35] After the resolutions had been adopted by a majority of those attending a local meeting, local officers appealed to the International Executive Board. Acting under a union bylaw authorizing Executive Board action when a local has taken a stand allegedly "in violation of the principles of the Federation,"[36] the International Executive Board invalidated both resolutions.

Plaintiffs then sought relief under section 501 from the nullification of their local's vote. While the effect of plaintiffs' voting restrictions might well have been anti-democratic, the resolutions had been adopted by majority vote at a regularly scheduled local meeting. Thus, the issue of whether "top-down" invalidation of a local's resolutions was proper under the circumstances could have been viewed by the court as posing a legitimate section 501 question. Instead, the court chose to dismiss for failure to state a claim upon which relief can be granted when, arguably, a ruling on the merits that defendant's actions were necessary to preserve internal union democracy would have been more appropriate.

The deficiencies in the *Gurton* decision are probably due to the fact that the court's narrow interpretation of the scope of section 501 was based on a misreading of the statute's legislative history. The Court of Appeals for the Second Circuit was misled as to the intended scope of section 501 by the lower court's citation to selected excerpts from the legislative history of the LMRDA indicating that section 501 related solely to financial matters.[37] The excerpts cited, however, were contained in an *early* version of section 501 which was in fact so limited.[38] The bill as finally enacted included deliberately broadened language delineating the fiduciary responsibilities of union officials.[39] *Gurton* and cases following it are thus based on a misreading

35. Gurton v. Manuti, 235 F. Supp. 50 (S.D.N.Y. 1964).
36. 339 F.2d at 375.
37. Guarnaccia v. Kenin, 234 F. Supp. 429, 442-43 (S.D.N.Y. 1964), *citing* 2 LEGISLATIVE HISTORY, *supra* note 20, at 1129-31.
38. 2 LEGISLATIVE HISTORY, *supra* note 20, at 1129-31 (debate between Senators McClellan and Ervin on S. 1555, § 610).
39. Section 501, in pertinent part, reads as follows:

of this legislative purpose. The Second Circuit's reliance on an inapplicable congressional debate provides ample ground for argument that the entire line of cases adhering to this limited construction of section 501 ought to be overruled.

The already narrow remedy of *Gurton* was further limited by a District Court in Illinois in *Richardson v. Tyler*.[40] The *Richardson* court held that in order to maintain a suit under section 501 plaintiffs must show that the alleged mismanagement of union funds resulted in personal benefit to the officers involved. Without such a showing of "self-dealing," what the court termed "mere irregularities" will not be rectified under section 501.[41] According to *Richardson* section 501 would not be violated by mere mismanagement of union funds; as long as an officer made an accounting of all profits received in an official capacity, she or he would have fulfilled the fiduciary obligation. This approach to the responsibilities that accompany a position of trust leaves union members virtually bereft of a remedy for many of the questionable practices of union leadership.

Furthermore, even when a cause of action relates to purely monetary breaches of trust, and is thus permissible by *Gurton*'s standards, a court may still be reluctant to allow the action. In these instances, narrow interpretations of section 501 frequently rest on the procedural requirements of section 501(b), which requires union members to demand that their officers either bring suit or secure an accounting before the members themselves can sue under section 501(a).[42] Strict construction of this requirement provides an avenue for dismissal.

(a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

40. Richardson v. Tyler, 309 F. Supp. 1020 (N.D. Ill. 1970).
41. *Id.* at 1023.
42. 29 U.S.C. § 501(b) reads as follows:

The case most frequently relied upon to justify such a strict construction is *Coleman v. Brotherhood (Railway & Steamship Clerks).*[43] *Coleman* held that the section 501(b) requirement of a request for action by a member of the union is a mandatory prerequisite for suit under Title V of the LMRDA. A showing of the futility of such a request will not excuse failure to make actual demand for suit.

In order to foreclose future suit on the same cause of action after plaintiffs had complied with the demand requirement, the *Coleman* court also rested its holding on the broader, substantive language of *Gurton. Coleman* thus also held that plaintiff's charges that defendant officers suppressed information on an issue to be voted upon were not properly brought under section 501 since no mismanagement of union money was involved. The *Coleman* court supported its narrow view of section 501 with reference to the same erroneous legislative history relied on in *Gurton.*[44] Since the court insisted upon basing its holding on *Gurton*'s substantive grounds, as well as its interpretation of section 501(b) procedural requirements, cases following *Coleman* must be regarded with equal suspicion.

A few courts have waived the demand for suit requirement in cases where its futility has been adequately demonstrated. One such case is *Weaver v. United Mine Workers,*[45] in which several union members sued under section 501, though only one of the plaintiffs, Yablonski, had personally made demand for suit. By the time the case came to court, however, Yablonski had been murdered, allegedly in retaliation for his efforts to democratize the UMW. In light of the

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> (b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

43. Coleman v. Brotherhood of Railway & Steamship Clerks, 340 F.2d 206 (2d Cir. 1965).
44. *Id.* at 209.
45. Weaver v. U.M.W., 80 L.R.R.M. 2596 (D.C. Cir. 1972).

obvious frustration of the purposes of the LMRDA that strict enforcement of the demand requirement entails, the court excused strict compliance by holding that it would be both futile and wasteful at that point in the litigation.[46]

The "good cause" requirement of section 501(b), another procedural barrier to suit, has been interpreted as requiring exhaustion of internal union remedies. Courts following this interpretation defend their position by pointing out that such a requirement actually favors internal democracy by encouraging unions to correct their own wrongs and by stimulating the establishment of honest and democratic procedures.[47]

For example, the court in *Penuelas v. Moreno*[48] held section 101(a)(4) of the LMRDA applicable to suits brought under section 501. Section 101(a)(4) requires exhaustion of reasonable internal hearing procedures before instituting legal proceedings under other sections of the act, but does not refer to Title V. The court reasoned that unless the "good cause" language of section 501(b) referred to something more than satisfaction of the demand for suit requirement, it was mere surplus verbiage. Stressing that legislative proponents of the LMRDA were reluctant to encourage unnecessary judicial interference in internal union affairs, the court concluded that judicial restraint in this area served the cause of union democracy.[49]

Exhaustion of internal remedies was thus held determinative of whether good cause for suit had been shown. The *Penuelas* court cited with approval one commentator's rationale for strict adherence to the exhaustion requirement:

> The extent, if any, to which a union member's right to sue his organization or its officers should be curtailed has always been a matter of controversy. Few would deny him the right under all circumstances; but most would agree that "freedom of litigation . . . is hardly so essential a part of the democratic process that the courts should be asked to strike down all hindrances to its pursuit. Section 101(a)(4) thus wisely in-

46. *Id.* at 2599.
47. *See, e.g.*, Echols v. Cook, 56 L.R.R.M. 3030 (N.D. Ga. 1962); Penuelas v. Moreno, 198 F. Supp. 441 (S.D. Cal. 1961); Morrissey v. Cocker, 57 L.R.R.M. 2400 (N.Y. Sup. Ct. 1964).
48. 198 F. Supp. 441 (S.D. Cal. 1961).
49. *Id.* at 447.

> cluded a proviso requiring a union member to exhaust his internal remedies before seeking relief in court or before an administrative body. Democratic processes atrophy when they are not exercised; union members will have no interest in improving their organizations internal adjustment procedures if they are never required to use them.[50]

From this analysis, the court concluded that good cause within the meaning of section 501(b) requires exhaustion of internal remedies; to hold otherwise would be to subvert the policy of fostering union democracy—a policy which both Congress and the courts have expressly adopted.

Penuelas has not been universally followed. Recent cases indicate that the making of a requisite unsuccessful demand for suit is sufficient compliance with section 501(b) to confer jurisdiction on a federal court.[51] In other words, courts increasingly find "good cause" satisfied by an unsuccessful demand for suit.

There is substantial case support for the proposition that section 501 of the LMRDA was intended not only to cover instances of financial mismanagement but also to extend the fiduciary principle to all the activities of union officials and representatives. In fact, the majority of courts that have construed this section have construed it broadly.[52] None, however, have documented the justification for an expansive interpretation of section 501 as exhaustively as the Minnesota District Court in *Nelson v. Johnson.*[53] The opinion draws heavily on the economic and historical development of labor organizations prior to the passage of the LMRDA to support its contention that Congress meant to extend the fiduciary duty of union officials beyond the narrow bounds of union financial affairs.

At the outset the *Nelson* court noted that "unions are vastly different from other types of voluntary mutual benefits associations."[54] Unions are intimately bound up with the effective exercise of

50. *Id., citing* Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851, 869 (1960).
51. *See, e.g.*, Purcell v. Keane, 406 F.2d 1195 (3d Cir. 1969); Horner v. Ferron, 362 F.2d 224 (9th Cir. 1966), *cert. denied*, 385 U.S. 985 (1966); Aho v. Bintz, 290 F. Supp. 577 (D. Minn. 1968); Persico v. Daley, 239 F. Supp. 629 (S.D.N.Y. 1965).
52. Clark, *The Fiduciary Duties of Union Officials Under Section 501 of LMRDA*, 52 MINN. L. REV. 437 (1967).
53. Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962), *aff'd*, 325 F.2d 646 (8th Cir. 1963).
54. *Id.* at 252.

very basic rights, *i.e.*, the right to work and to receive a decent wage, as well as to labor under decent and dignified conditions. The union movement was "born and nurtured for the purpose of bringing into industry a greater measure of personal freedom and personal dignity," and to create an instrument of industrial democracy, namely collective bargaining, through which workers might gain a voice in determining the rules which govern their working lives.[55] Obviously this purpose has in the past been defeated by union bureaucracies where the leadership has sought to gain and maintain autocratic control. If the right of workers to participate fully in making the laws under which they lead their working lives is denied by union leadership and ignored by the courts, "then collective bargaining has not brought (workers) freedom but an additional master."[56] Unlike other mutual benefit associations where the proper handling of financial resources is the primary duty of the organizations' officers, the broad nature and purpose of labor unions requires that the management of dues and other money be only one part of the officers' and representatives' duty.

Not only do unions have much broader aims than other mutual benefit associations, but, as the *Nelson* court pointed out, they are often not voluntary in the traditional sense. For example, it is often the case that union membership is a condition of employment. While such a requirement tends to strengthen a union's position in its relationship to management, it also increases the importance of internal union democracy. In such a situation workers must be able to participate fully and freely in the decision-making process within the labor organization, for they are not free to pursue their demands outside it.

> As the *Nelson* court pointed out, not only are labor unions [i]nvoluntary organizations, but they obtain a substantial measure of their compulsory jurisdiction over individuals from the law itself. Labor relations acts, both federal and state, compel the employer to give the union exclusive bargaining rights, and the individual is legally barred from asserting his independence.[57]

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55. *Id.* at 263, *citing* Summers, *The Public Interest in Union Democracy*, 53 NW. U.L. REV. 610, 624 (1958).
56. 212 F. Supp. at 254, *citing* Summers, *Union Powers and Workers' Rights*, 49 MICH. L. REV. 805, 820 (1951).
57. 212 F. Supp. at 260, *citing* Summers, *Union Democracy and Union Discipline*, N.Y.U. 5TH ANNUAL CONF. ON LABOR 443, 459-60 (1952).

Having created the bounds within which individual workers may operate, the legislature and the courts have a responsibility to insure that those laws covering labor relations do not have the effect of destroying the democratic rights of union members. At the same time that the courts must refrain from intrusion into the affairs of unions where it may work to sap their strength in relation to their powerful corporate opponents, the courts must protect the democratic processes within unions by which union policy and leadership is determined.[58] It is in this context that the *Nelson* court justified the extension of the fiduciary duty to include the protection of political rights within the union.

The *Nelson* court initially viewed section 501 as narrowly concerning the potential financial irresponsibility of union officials: "it was only after an exhaustive study of the legislative history . . . that [the] court was thoroughly convinced of the width and breadth of Section 501 of the LMRDA."[59] The court was thorough and explicit in its support of a fiduciary principle with broad scope; other courts have agreed. These subsequent decisions rely, either explicitly or implicitly, on the general proposition that union officials have a fiduciary duty under Title V of the LMRDA to insure and protect the political rights of all members of their organization. In general, the facts in these cases fall into two categories. The first involves allegations of a violation of trust where union officials use their position of power to punish or threaten members who have attempted to assert their rights,[60] and the second involves similar allegations in relation to actions taken by union officials which tend to obstruct or undermine the internal democratic processes existing within the union.[61]

58. 212 F. Supp. at 252.
59. *Id.* at 280.
60. Semancik v. U.M.W.A. Dist. 5, 324 F. Supp. 1292 (W.D. Pa. 1971), *aff'd* 466 F.2d 144 (3d Cir. 1972) (injunction granted against union prosecution of members for election activities); Local 648, Retail Clerks v. Retail Clerks Int'l, 299 F. Supp. 1012 (D.D.C. 1969) (court ordered reinstatement to salaried union position where members were fired for election activities); Alvino v. Bakery & Confec. Workers, 46 L.R.R.M. 2812 (D.D.C. 1960) (preliminary injunction granted to prevent retaliatory firing).
61. Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972), *cert. denied*, 409 U.S. 853 (1972) (reversing dismissal and remanding for further hearing a suit charging union officials with violation of union constitution by maintaining locals with less than ten members); Pignotti v. Local 3, Sheet Metal Workers, 343 F. Supp. 236 (D. Neb. 1972), *aff'd*, 477 F.2d 825 (8th Cir. 1973), *cert. denied*, 414 U.S. 1067 (1973) (activities of officers aimed at overriding the local's "no" vote on pension plan enjoined where such activities included putting the local into trusteeship after it rejected the plan); Cefalo v. Moffet, 333 F. Supp. 1283 (D.D.C. 1971) (preliminary injunction issued against vote on proposed merger where officers conducted negotiations in secret and left membership ignorant of the issues involved), *modified*, 449 F.2d 1193 (D.C. Cir. 1971) (referendum vote on merger permitted provided membership was fully apprised of all issues involved and ample opportunity afforded the op-

Underlying most of the decisions involving punishment of members for political activity is the recognition that judicial failure to enjoin such conduct on the part of entrenched leadership may contribute to the eventual demise of democratic participation by the union membership. For example, in *Alvino v. Bakery and Confectionary Workers*,[62] the court ordered the reinstatement of two union vice presidents and enjoined union prosecution against them where it found that the dismissals were in retaliation for the vice president's activities in supplying information and encouraging local support for a campaign to oust the union president. It was pointed out by the court that these acts of discipline "were designed to coerce and intimidate plaintiffs and other . . . members of defendant union from engaging in similar [legitimate] activities."[63] And, similarly, in a case in which the plaintiffs had been fired from ther jobs as district organizers because they had participated in an opposition slate during an election, their reinstatement was ordered on section 501 grounds.[64] One court has held that the mere threat of punishment, when intended to deter protected activities, may be sufficient to constitute a violation of the fiduciary duty.[65]

Another area of concern for those courts following a broad interpretation of section 501 involves actions taken by union officials in disregard of the union's own constitution, bylaws or resolutions passed by the membership, thereby undermining whatever democratic procedures are already in existence within the union. Not infrequently the objective sought by union officials in these instances is the consolidation of power within their own hands. For instance, the defendant

position to air its views); Moschetta v. Cross, 48 L.R.R.M. 2669 (D.D.C. 1961) (order issued requiring the holding of a special convention constitutionally authorized but blocked by refusal of officers to complete arrangements).

62. Alvino v. Bakery & Confec. Workers, 46 L.R.R.M. 2812 (D.D.C. 1960).

63. *Id.* at 2812. The Bakery & Confectionery Workers were investigated by the McClellan Committee. The Committee found that Cross, the International's president, sanctioned the use of violence to discourage any dissent, railroaded through changes in the union constitution which destroyed any pretense of union democracy, directed the abandonment of secret ballots for the election of officers, and jettisoned parliamentary procedure at a convention, saying such rules were not made for bakers and confectioners. SELECT COMMITTEE ON IMPROPER ACTIVITIES IN THE LABOR-MANAGEMENT FIELD, INTERIM REPORT, S. REP. No. 1417, 85th Cong., 2d Sess. (1958).

64. Local 648, Retail Clerks v. Retail Clerks Int'l, 299 F. Supp. 1012 (D.D.C. 1969).

65. Blassie v. Poole, 58 L.R.R.M. 2359 (E.D. Mo. 1965). The court let stand two counts in plaintiff's complaint alleging violation of section 501 by the International officers who, having taken the local under trusteeship, threatened with reprisal any members who attempted to meet and discuss the local's problems without defendant International having called the meeting. The court held, however, that the International's failure to call meetings as required by the local's constitution did not violate section 501 since the International acted within its constitutional authority in establishing the trusteeship.

union officials in *Nelson* were found to have violated their fiduciary trust on two grounds. First, their refusal to pay the plaintiffs' legal expenses was in violation of a constitutionally authorized membership resolution mandating such payment. Second, it was clear that their refusal was motivated by the fact that the plaintiffs had incurred those expenses in a prior litigation defending their rights against these same officers. Violations of fiduciary responsibility have also been found where a union refused to disband locals with less than ten members as required by the union's constitution (these "bogus" locals served to maintain control in the hands of the existing leadership),[66] and where union officers failed to hold a special convention authorized by the union's General Executive Board in accordance with constitutional provisions (the convention threatened continued control of the union by certain officers).[67]

At least some courts have held that mere compliance with a union constitution does not automatically place conduct outside the reach of judicial scrutiny.[68] Obviously, mere procedural regularity does not always insure that the objectives of the conduct are consistent with democracy. An important extension of the fiduciary duty owed under section 501, the obligation of full factual disclosure to the membership, is to be found in *Cefalo v. Moffet*.[69] Although the court felt constrained to interpret the facts of the case, involving a merger issue, as a question of the management of union funds and thus properly an issue under section 501, the importance of the decision lies in the court's focus on the methods used by the union officials in creating a decision-making procedure. In so doing, the court expanded the fiduciary concept to include an obligation on union officials to insure full and informed membership participation in the decision-making process, particularly where the issue to be decided involves important interests of the union members.[70] This duty of full disclosure is clearly relevant to the non-financial area of union officials' responsibilities as well, since the goal of democratic participation in

66. Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972), *rev'g* 320 F. Supp. 161 (W.D. Pa. 1970), *cert. denied*, 409 U.S. 853 (1972).
67. Moschetta v. Cross, 48 L.R.R.M. 2669 (D.D.C. 1961).
68. Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972) (not a prima facie defense to section 501 action that the complained of conduct was authorized by union constitution); Semancik v. U.M.W.A. Dist. 5, 324 F. Supp. 1292 (W.D. Pa. 1971) (although union prosecutions of members for their activities in union election were authorized by union constitutional provision, further prosecutions were enjoined where they were shown to be retaliatory); Puma v. Brandenberg, 324 F. Supp. 536 (S.D.N.Y. 1971) (pension plan set up according to powers granted by the union's constitution open to judicial scrutiny).
69. Cefalo v. Moffet, 333 F. Supp. 1283 (D.D.C. 1971).
70. *Id.* at 1288.

the affairs of the union is possible or meaningful only where the complete dissemination of information to the membership is insured.

The expansive concept of fiduciary duty argued for in this article can only become an effective mechanism for the furthering of union democracy if trial courts have the power to award attorneys' fees to union members pursuing their rights under section 501. Clearly, most rank and file members do not have the resources necessary to institute litigation. The problem arises because section 501(b) of the LMRDA provides that a trial judge "may allot a reasonable part of the recovery" to pay the legal fees incurred by an individual member prosecuting under Title V. But where a suit is brought charging a violation of section 501 for interference with the political rights of the plaintiff—under the broad reading of the fiduciary duty—the recovery is often some form of relief not involving monetary recovery. To encourage rank and file members to pursue internal union democracy in the courts when necessary, some courts have held that an award of damages is not necessary for the plaintiff to recover legal fees.[71] In these cases, the awards have been justified on the equitable principle that the pursuit of substantial rights by individual union members redounds to the benefit of the organization as a whole and the union should bear the cost. Underlying this view is the understanding that an inability to recover legal expenses would discourage the bringing of these suits and thus serve as an additional barrier to the democratization of labor organizations.[72]

II. APPLICATION OF SECTION 501 TO SPECIFIC UNIONS

The role and nature of section 501 suits must inevitably vary from industry to industry, and from union to union. The following discussion of three unions suggests ways in which democratic and anti-democratic forces function within the unions. In addition, possible ways in which section 501 suits can strengthen the democratic forces are explored. The unions chosen for discussion—the United Auto Workers, the United Steel Workers and the International Brotherhood of Electrical Workers—represent a broad spectrum of the

71. Bakery & Confec. Workers v. Ratner, 335 F.2d 691 (D.C. Cir. 1964) (union members and their counsel who bring suits for the benefit of the union are to be protected and reimbursed regardless of the character of relief sought); Local 648, Retail Clerks v. Retail Clerks Int'l, 299 F. Supp. 1012 (D.D.C. 1969) (effect of the ruling to reinstate plaintiffs to their positions furthers the right of free expression and thus benefits the union); Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962) (plaintiffs' successful defense of free speech rights in prior suit benefited local).

72. Nelson v. Johnson, 212 F. Supp. 233 (D. Minn. 1962).

work force, and represent varying degrees of internal union democracy.

A. *The International Brotherhood of Electrical Workers*

The International Brotherhood of Electrical Workers (hereafter IBEW) is a large AFL-CIO union that has consistently worked to "manage" the labor interests within the electrical industry at the expense of its members. The IBEW has many of the characteristics of other big industrial unions such as the steelworkers, yet it also has a history and organization similar to a craft union. The following factors merit scrutiny in the context of section 501 litigation: (1) the IBEW represents workers in many different areas, and in fact is the fifth largest union in the world;[73] (2) there are indications that, as in many unions, race and sex discrimination exists within the union;[74] and (3) the IBEW has more of its members and attention focused on the east coast and midwest where historically it has done the most organizing.[75] Although there has been great growth in the electronics manufacturing industry in the south and west, the existing union leadership and structure has not organized in these areas.

The IBEW was founded in 1891. Prior to 1918, all decisions of the biannual conventions required approval through membership referendum.[76] This procedure ensured extensive democratic participation and review of leadership policies. Beginning in 1918, a series of constitutional changes centralized decision making in the leadership and severely limited membership review. Conventions are now held only every four years and actions taken at the conventions are final unless the convention requests membership referendum.[77] The number of convention delegates has been also reduced.[78]

Another significant alteration was instituted in 1919 with the creation of the Council on Industrial Relations (hereafter CIR), a tribunal composed of equal representation from IBEW and the National Electrical Contractors Association (hereafter NECA), the major employer organization.[79] The CIR's function is to resolve dis-

73. I.B.E.W., LEADERSHIP TRAINING MANUAL § 1, *History and Structure of the IBEW* 16 (1972) [hereinafter cited as TRAINING MANUAL].
74. Confidential interview with staff member, IBEW Local, in San Francisco, Cal., 1975.
75. Confidential interviews with IBEW representatives, in San Francisco, Cal., 1975.
76. TRAINING MANUAL, *supra* note 73.
77. *Id.* at 7, 13.
78. *Id.* at 13.
79. *Id.* at 8.

putes voluntarily submitted to it. Presently, this body decides over 150 disputes each year. Most collective bargaining agreements between IBEW locals and NECA chapters now contain a "council clause," requiring submission to CIR of all disputes arising during the life of the agreement and all unresolved, proposed changes at the end of the contract term. To the extent that the strike serves as labor's most important lever in contract negotiation and enforcement, the CIR, as with all binding arbitration, weakens labor's position. The IBEW leadership has institutionalized binding arbitration so that the right to strike is an option for dissatisfied membership only in the most abstract sense.[80]

The general organization of the IBEW is similar to many other unions in that there is a regular convention, offices with considerable autonomy, and rules for approval of local actions. The highest governing body is the convention held once every four years. Since the termination of referendum votes, all decisions of the convention, including proposed resolutions and constitutional amendments, are final and binding.

Between conventions, the functional controlling body is the International Executive Committee composed of nine members, one from each of the eight districts and one chairperson elected at large. This body is responsible for all appeals from the International President's rulings on elections, jurisdiction discipline of union members and locals, etc.; for suspension of local charters; for trial of a local or an individual member charged with injuring the interests of the IBEW; and for action on business matters such as the union pension plan, constitutional amendments, etc.[81]

The most powerful single officer is the International President who, like other International officers, is elected at the convention. This officer's duties include: (1) power to prefer charges against any union member for violation of the constitution; (2) power to take charge of a local for up to six months before referral to the Executive Committee for action; (3) power to suspend or revoke a local charter; (4) power to remove an officer; and (5) power, shared with the International Secretary, to make all invest-

80. *Id.*, stating:
> The council proved to be a milestone in the Brotherhood's history. Acting as a "Supreme Court" of the electrical construction industry, it has caused thousands of disputes to be settled without strike, winning for us the title, "Strikeless Industry."

81. *Id.* at 19.

ments of union funds.[82] International Vice Presidents (IVP) from each district are to assist the locals in organizing, collective bargaining and "contract administration." If there are disputes under the contract, or if it is necessary to replace lower union officials, it is the IVP who can take initial action.[83]

The International organization is further divided according to the branches of the electrical industry into which the IBEW has been organized, including Construction and Maintenance, Manufacturing, Government, Broadcasting and Recording, Sign and Motor Shop, and Telephone and Utility.[84] Operating under the authority of a regional Vice President, these departments work with, or in addition to, appropriate locals on all aspects of union activity. Although local officials such as the business agent often have wide power of appointment negotiation and organizational control, all of their actions are open to change from any one of these higher levels.

There are twenty-three specified grounds for misconduct noted in the constitution, including creating or attempting to create dissatisfaction or dissention among any of the members or among locals of the IBEW; advocating "unauthorized work stoppages"; or failing to abide by the strict requirements of exhaustion of union remedies before proceeding with any court action against the union.[85] Charges against an officer must be presented to the local executive board to be decided by the IVP. Adverse decisions can be appealed to the convention.[86] Constitutional amendments also have to be presented to the locals for a vote, but only after the amendments are presented in one of two ways: (1) a proposal of five locals with the approval of the International Executive Committee; or (2) a proposal at the International Convention after approval by a committee appointed by the International President.[87]

With the passage of the LMRDA in 1959, the membership was given new ways to question union officials and procedures. Challenges to elections, to the misuse of union funds, and the "due process" of union procedure could now be raised. The IBEW leadership faced a serious legal challenge in the early 1960s in *Parks v. IBEW*.[88] The case arose after a protracted struggle between a local of

82. *Id.*
83. *Id.*
84. I.B.E.W. CONST. art. 28.
85. *Id.* at art. 27, § 1.
86. *Id.*
87. *Id.* at §§ 8-9.
88. Parks v. IBEW, 314 F.2d 886 (3d Cir. 1963).

the union, employer representatives and the International. The local had gone on strike on at least two occasions in an effort to gain the contract demands that they saw as most important. The International wanted all of the disputes referred to binding arbitration, and in response to the strike the local was put into trusteeship and its charter revoked.

In the action by the local and individual members of the union the local claimed: (1) that the International President had no constitutional authority to act as he did; (2) that even if the authority did exist, it was a breach of his duty to the union members to act as he did; and (3) that the International President's actions were improper and without adequate hearing. There was also a charge that the International President had collaborated with the NECA during the negotiations.

The District Court agreed with the plaintiffs as to the improper motives of the International President, but on appeal the higher court upheld the International on all grounds. The court found that the International President's actions—specifically his control of the strike power by union members and the use of the CIR for contract negotiations—were necessary for organizational stability and for labor peace. The section 501 arguments were not pressed in this case; thus, one of the basic intents of the LMRDA—to give rights and powers to the union members themselves—should still be pursuable in this context.

From the above historical and organizational description it is apparent that the organization has developed over the years to vest more and more of its decision-making power in its officials and in the International Convention. Although the literature and reputation of the union tends to boast of its "strikeless" history, this is also a sign that the needs of the rank and file members are not necessarily being represented and implemented by the union. Moreover, the ostensibly democratic forms of the union may not be indicative of the ways in which rank and file members can act in their own interests or restrain officials who act contrary to the interests of it. The IBEW constitution itself makes it an offense to work "in the interests of any organization or cause which is detrimental to, or opposed to the IBEW."[89]

Originally, the IBEW had a fairly progressive, democratic form of decision-making through its convention held every two years. With

89. I.B.E.W. CONST. art. 27, § 1(10).

all actions subject to the approval of the membership at large, there was little chance for the establishment of policies and decisions not in the best interests of the rank and file. The union leadership apparently found this to be a cumbersome process that did not allow them to operate as they wished.[90] The present structure of final convention decisions, except where ratification is specifically called for, lends itself to abuse of the substance and the form of democratic decision-making. Decisions which are actually adverse to the interests of the membership can pass through the convention process and never be considered by the membership as a whole. The convention schedule is drawn up and administered by the International Executive Committee and amendments to the constitution must be approved by these upper bodies without lower level ratification.

While the variety of possible abuses is large, to the extent that actions of delegates and union officials at the convention can be shown to be "adverse to the interests" of the members at large, individual members should be able to challenge them using section 501. This possible legal action has not been received positively by many courts which are concerned with judicial intervention into union affairs.[91] There are certain standards that courts could use to assess when it is appropriate to overturn part or all of the decisions made at "authorized" union proceedings like a convention.

Courts should look to three areas to justify their intervention: (1) the extent to which union members are able to be a part of making and reviewing decisions at all levels; (2) the effect that union leadership actions would have on the ability of workers to organize and act to better both their economic and non-economic working conditions; and (3) overt evidence of corruption and action by union officials contrary to the expressed wishes of the members. This last area is nominally covered by section 501 case law, but there is still the reluctance to look at obvious instances of corruption and arbitrary official action when they come within established procedures.

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90. TRAINING MANUAL, *supra* note 73, at 7.

91. The court in *Parks*, for example, articulated its reluctance to intervene:

> [I]t does not lie within the authority of a court to give effect to its general preferences between international power and local autonomy in matters of collective bargaining . . . . Although state courts have traditionally exercised some supervisory function over local-international relations, and the federal courts are now empowered to intervene in some areas under a number of provisions of the LMRDA, federal judges may not, on their own, cure whatever deficiencies they think may exist in the pattern the parties have fashioned.

314 F.2d at 906-07.

In looking at any specific action that is challenged by union members, courts should look to these areas to see if the actions violate the control by union membership to which these points are directed. Although there might be some infringement upon the efficiency of current union hierarchies, there would be a gain to most of the membership in increased control over their own organizations, with the courts as an active balance as envisioned in the LMRDA.

The functioning of the CIR is another area in which section 501 could be used to secure the interests of the membership. The CIR record for "strikeless mediation" has been noted above. The weakness of such a body in representing the interests of the membership at large has also been noted. The whole process of a mandatory arbitration is a difficult area to attack legally, since courts have seen the tradeoff between the right to strike and compulsory arbitration as insuring labor "stability" and thus fulfilling the intent of most labor legislation.[92] However, the intent of the LMRDA was to give union members the right to insure that their own organizations are run democratically and that their interests are served by union officials.[93]

Section 501 could be used in a situation where the CIR settles a contract negotiation dispute on terms that the local had specifically rejected; or where the CIR settled some non-wage issue such as safety and health grievances without worker input or affirmation. Suits based on the section 501 standard of duty to union members could directly challenge decisions of the CIR which are made without rank and file participation or support.

The negotiation of contracts can take place with varying degrees of local control in the IBEW, but ultimately all actions are subject to International approval. The purpose of section 501 as a check on the fiduciary duty of officers would seem to be especially apt in the area of contracts and working agreements, since it involves *both* a financial component and a broader responsibility to the interests of the membership.

Even without more blatant breaches of financial duties by International and local officials, it should be a breach of the fiduciary duty where there is no ratification of the contract by members of the local, as can happen in unions like the IBEW. The duties of the union

92. Vaca v. Sipes, 386 U.S. 171 (1966); USWA v. American Mfg. Co., 363 U.S. 546 (1960); USWA v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960); USWA v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

93. *See* Yablonski v. UMWA, 80 L.R.R.M. 2594 (D.C. Cir. 1971).

leadership, whether it be an appointed Business Representative or an elected negotiating committee, involves the most crucial aspects of trust and power. The terms of the contracts that most labor units now sign determine nearly all of the important areas of their workers' lives—wages, benefits, conditions of work, the right to strike, arbitration, etc. It is an appropriate extension of the concept of a fiduciary to maintain that the fiduciary should be held strictly accountable for his actions in negotiating a contract which is contrary to the real interests of the union members. Suits based on the fiduciary standards of section 501 can be brought where contract negotiation or adoption has not realized these interests as it should.

The duty of a fiduciary to guard those interests with which he has been entrusted apply just as forcefully to the convention process, to the CIR and to the negotiating and signing of working agreements as they do to the management of union funds.

B. *The United Automobile Workers*

The United Automobile, Aerospace and Agricultural Implement Workers of America (hereafter UAW) is one of the most powerful trade unions within the United States. It has one of the largest memberships of any single union, and its membership is known for its fighting spirit. In contrast with other powerful trade unions, such as the United Steelworkers of America, the UAW has a reputation for internal democracy.[94]

Despite this reputation, the history of the Union tends to demonstrate that, at least on a national level, the union leadership has been very resistent to change. Not only have the policies of the union remained basically unchanged since the close of the 1940s, the actual persons in leadership positions have successfully retained their power for nearly thirty years. Specifically, the leadership group which gained control of the union in the later 1940s, led by Walter Reuther, has remained in control.[95] This alone points up the need for closer scrutiny of the affairs of unions, and in particular the ways in which groups retain power and undermine opposition. This section will touch on the experiences which the UAW has had with suits brought

94. W. SERRIN, THE COMPANY AND THE UNION, THE CIVILIZED RELATIONSHIP OF THE GMC AND THE UAW (1973).

95. M. STEIBER, GOVERNING THE UAW 98 (1962). Steiber notes that Reuther's successor, present UAW president Leonard Woodcock, had been heir apparent to Reuther since the late 1950s and an International Vice President since the late 1940s. The UAW has had only two presidents since the mid-1940s.

under section 501 and on the potential uses for section 501 which remain.

The UAW's reputation as a standard-bearer for internal union democracy goes back to the early years of the union's formation. Workers in individual auto plants formed strong and sometimes wholly independent union locals during the massive organizing drives of the 1930s.[96] Local union autonomy was an important part of the militant plant-by-plant growth of the union;[97] the success of plant walk-outs and sit-down strikes in the early years of the union demonstrated the support and participation of the rank and file workers in the life of the union.[98]

The rank and file sentiment favoring local autonomy was reflected in the initial policies of the "unity" caucus of Walter Reuther. When Reuther first came to power within the union International leadership, he supported a vigorous strike policy and opposed dismissal of organizers because of their political views.[99] Unfortunately, the conditions generated by the Second World War, including labor's no-strike pledge,[100] had an adverse effect on the autonomy of union locals; the union locals have never regained the degree of independence and self-reliance which they developed during the organizing drives. From that time forward, the UAW has had a virtual monopoly on trade union organization within the auto industry.[101]

At the same time as it became the unrivaled and unquestioned legal representative for its membership, the UAW leadership began to alter its policies towards management. Specifically, their policies increasingly called for greater and greater union-management cooperation.[102] Consequently, local union militance and independence was

96. W. McPherson, Labor Relations in the Auto Industry (1940).

97. For a discussion of the influence of early forms of organizing on patterns of labor negotiation see J. Harbison, Patterns of Union-Management Relations (1947).

98. For an exciting account of successive "sit-downs" in Detroit in 1937 see *How Chevy 4 Was Taken*, United Automobile Worker, Feb. 25, 1937, *quoted in* American Labor in the Twentieth Century 273 (J. Auerbach ed. 1969).

99. McPherson, *supra* note 96, at 19.

100. UAW, Handbook for UAW Stewards 65 (1945) stated:

> [The] central aim of all of today's policies and programs is: to win the war swiftly and to build lasting peace and security based on full production, full employment. . . . Specific measures to achieve this are: a. Full, uninterrupted production; 100% observance of the no-strike pledge, reaffirmed by membership referendum.

101. J. Harbison, *supra* note 97, at 22.

102. This trend is illustrated by the fact that in UAW, Handbook for Stewards, *supra* note 100, nearly twice as much space is used to describe grievance procedures as is devoted to discussion of building union strength.

looked upon with less and less favor. Local militance and autonomy has increasingly been viewed as disruptive of reasonable union-management relations.[103]

The manner in which the UAW leadership responded to challengers is of particular concern in our consideration of section 501. To accomplish the task of solidifying and maintaining its position, the Reuther forces established formal and informal practices within the union which functioned in an anti-democratic fashion by cutting away at the legitimate representative roles of the union locals.

During one power struggle which took place in the late-1940s, the International Executive Committee brought charges of "disloyalty" against some of its critics.[104] Even though there was no existing provision for the lodging of such charges against the union local's leaders, and no provision for national convention consideration and judging of such charges, the 1947 convention voted to expel the challengers. This extraconstitutional action is important in light of the obligation which section 501 of the LMRDA subsequently placed on officers to uphold the democratic processes of their unions. At the time of this activity, the UAW constitution did contain a specific procedure for trial on such charges; trial of members was to be conducted within their own local unions, with the right of appeal for the defendants to the International Executive Board and the convention. Two years after the expulsions, the International Executive Board initiated a constitutional amendment giving it the power to do precisely what it had done in 1947: to prefer charges on its own against individual union members.[105] In 1951, the constitution was further amended to empower the International Board to proceed directly against members who appeared to be engaged in a conspiracy against the union. If the events herein described were to take place today, section 501 should be available as a remedy for practices which so clearly are taken to stifle debate and challenge within the union.

Another manner in which challenges arising out of union locals have been dealt with has been the imposition of trusteeships. One such incident took place when officers of Detroit Amalgamated Local

103. W. SERRIN, *supra* note 94. The author particularly notes the continuing efforts of union officials to forestall and undercut the development of local union action in support of the strike.

104. UAW CONVENTION PROCEEDINGS 261-78 (1949); STEIBER, *supra* note 95, at 132.

105. UAW CONST. art. 48 § 17 (1949).

205 were found guilty of conspiring to decertify the UAW by the International Union Trial Committee. Underlying the stated charges were allegations of communist sympathies on the part of the convicted members. Simultaneous with the bringing of the charges, the International imposed a trusteeship over the union local. Although the International's constitution provided for specific election procedures to be followed when such action was taken, the union-appointed administrator retained jurisdiction over the local for more than sixty days without holding an election.[106] The leadership of the local was prevented, therefore, from exercising their representative roles, and the membership was prevented from replacing the leaders in such a way as to deprive them of organized response to the actions of the administrator. Where, as in this case, trusteeships are imposed with the clear intent to remove recalcitrant local leadership, section 501 should be available to provide a legal remedy.

The anti-communist provision of the UAW constitution[107] has continually emerged as a tool of the leadership to thwart challenges to its authority. One such incident involved the bringing of charges of communist affiliation and the imposition of a union trusteeship. The local which bore the brunt of these actions was the one out of which a rival caucus was leading a reform campaign against the International leadership.[108] After the local union's General Council had acquitted the leadership of charges of communist affiliation, the administrator appointed to supervise the trusteeship removed five of those charged from their union offices.[109] This action was both unauthorized and in contravention of the existing UAW trial provisions. Nonetheless, the International Board succeeded in sweeping out its opposition, and in eventually expanding its power to review the actions of union locals in cases where communist affiliation is alleged.[110] In light of *United States v. Brown*,[111] which held that absolute exclusion of communists

106. STEIBER, *supra* note 95, at 136.
107. UAW CONST. art. 48 § 15 (1951).
108. STEIBER, *supra* note 95, at 144.
109. IV UAW Administrative Letter, No. 11, March 27, 1952, published the following reasons for placing the local under administratorship: (1) to end the influence and "disruptive activities of a small Communist clique which was using the union for its own interests"; (2) to meet the problems not being dealt with by the local because of communist influence; (3) to stop "Ford Facts," the local publication, from publishing material contrary to policies of the International in violation of the UAW Constitution; and (4) to stop irresponsible action by the local leadership which was harming the entire union.
110. UAW CONST. art. 48 §§ 17-18 (1954). That this provision was passed for the specific purpose of affecting the outcome of the struggle between the International and its then current opposition is reinforced by the fact that as of 1960 this provision remained unused.
111. United States v. Brown, 381 U.S. 437 (1965).

from union offices constituted a punishment in the form of a bill of attainder, the UAW constitutional provision relating to communist affiliation is of questionable validity even if it is not used to hamper legitimate challenges to the power of union leadership. However, when such challenges are frustrated, as was the case in the incident described above, anti-communist provisions should clearly be closely scrutinized by the courts. Section 501 supplies an effective means of conducting such scrutiny.

There are many other important provisions of the existing UAW constitution which govern the relationship between the union locals and the International and which are not expressly subject to the provisions of the LMRDA. Among those features are actions and decisions of union locals which are subject to the approval of the International. For instance, the constitution requires that local union publications conform to the policies of the International union.[112] In 1954, the International went so far as to place a local under administratorship, which is equivalent to a trusteeship, for violating a 1951 International convention mandate that it cease publishing "anti-union" material.[113] When utilized by the International, this provision has the certain effect of undercutting the responsiveness and integrity of local union procedures. If this provision were to be used to impose constraints on dissenting locals, section 501 should be available to provide for judicial remedy for anti-democratic actions taken against the local.

Another constitutional provision, not peculiar to the UAW, is one which requires the approval of the International Executive Board prior to local union strikes.[114] The existence of this provision has a great effect on the local leadership and local membership. The elected local leaders often find themselves caught in an irresolvable conflict between the desires and actions of the local membership and the policies of the International.[115] The force of the strike approval

112. UAW CONST. art. 29 § 8 (1972).
113. *See* UAW, CONVENTION PROCEEDINGS 341-56 (1951).
114. UAW CONST. art. 50 §§ 2-7 (1972).
115. For an account of a recent incident which serves as a classic example of the consequences of this conflict see Detroit Free Press, July 12, 1974, at 1, col. 1. Workers in the Detroit Dodge Truck plant walked off the job after several workers were injured due to unsafe working conditions. The wildcat strikers were confronted with the active opposition of the International. The local leadership was prohibited by the union constitution from doing anything save urging members to return to work. Three weeks after the wildcat, after a number of arrests of local members and firing of others, the International Executive Board authorized a strike vote at the plant. The strike vote won, but the arrested and fired workers were left without union support.

requirement is buttressed by the power of the International President to revoke the charter of any local union engaging in an unauthorized strike action.[116] In addition, no local has any constitutional claim for financial or organizational assistance from the International or from another local union.[117] This constraint on inter-local support is itself reinforced by the requirement that during an unauthorized strike all appeals for financial support made by one local to another must be approved by the Regional Director, a member of the International Executive Board.[118] These provisions generate and reinforce divisions between local leadership and membership. The natural consequence of such a division is the demoralization and apathy of local leadership and membership in relation to the elective processes within the union; in wildcat strike situations local leaders are prohibited by their union constitution from supporting the efforts of their own membership.

Our brief study shows that even the UAW, a trade union commended for its internal democracy, is structured in such a way as to undercut the independence of union locals and reinforce the strength of centralized International union leadership. As a result, the membership becomes unable to rely on the union procedures to effectuate their desires, other than at contract ratification times. The power of the International has grown at times by formal, constitutional processes, and at times by bare assertion of power.

Particular focus can be drawn to several provisions of the UAW constitution: (1) that local publications support International policy; (2) that local officials support the policies of the International;[119] (3) that an instruction to a local union delegate to a convention does not bind the delegate on any issue;[120] and (4) that local unions cannot strike without International Board approval. Such provisions cut directly against the development of self-reliant, active, responsible local leadership and membership. With local unions hamstrung by such provisions, it is difficult to see how trade unions such as the UAW can ever carry out their social role of bringing democracy to the workplace.

These provisions generate irresolvable conflicts between the directives and desires of local membership, and the UAW International leadership and constitution. These provisions, among others, may be

116. UAW CONST. art. 50 § 17 (1972).
117. *Id.* at § 6.
118. *Id.* at art. 46 § 2.
119. *Id.* at art. 38 § 6.
120. *Id.* at art. 8 § 25.

susceptible to judicial scrutiny through suits brought under section 501. The need for such scruting arises particularly where the provisions are utilized in order to inhibit and attack opposition to the International. Because elements of democracy and accountability are primary components of the union officer's fiduciary duty, courts should be open to suits which bring into question the uses to which the above mentioned provisions are put by the International leadership.

C. *United Steel Workers of America*

The antagonism between the members of a union and their leaders, while a central theme in the trade union movement today, has reached a particularly acute level in the steel industry. The United Steel Workers of America (hereafter USWA), which represents those employed in the production and fabrication of steel, is both historically and presently one of the least democratic of all unions in this country. It makes secret agreements with management, often in derogation of its members' rights. It lacks any significant amount of democracy in its internal procedure. It shows a marked reluctance either to rely on the intelligence and militancy of its members or to develop those qualities. The USWA represents a prime example of the necessity for stronger guarantees of internal union democracy.

The USWA began its existance as the Steel Workers Organizing Committee (SWOC) of the Congress of Industrial Organizations.[121] Its original goal was the establishment of a union at United States Steel Corporation.[122] The initial funding for SWOC came from the United Mine Workers, headed by John L. Lewis, and the CIO; it consisted of $500,000 and 200 organizers.[123] SWOC's leaders, many of them former UMW officials, were all appointed by Lewis.[124] Many of them continued to draw their salaries from the UMW rather than from SWOC.[125] The resulting isolation from the membership was accentuated when the contract which U.S. Steel and SWOC negotiated in 1937 without a strike[126] called on SWOC to administer a three-

121. I. BERNSTEIN, THE TURBULENT YEARS 435-41 (1960).
122. *Id.* at 458.
123. D. MCDONALD, UNION MAN 91 (1969).
124. S. LYND, A HISTORY OF THE STEELWORKER'S UNION 3 (1973).
125. R. BOYER & H. MORAIS, LABOR'S UNTOLD STORY 312 (1955).
126. S. LYND, *supra* note 124, at 4. Lynd posits that the only explanation for the sudden and unforeseen reversal in policy on the part of U.S. Steel was that the same interests controlled both U.S. Steel and General Motors at the time and that those interests were not prepared for a sit-down strike like the one at the Flint, Michigan plant the previous winter.

year no-strike agreement. SWOC's leaders were unwilling to rely on their members to win a better contract, but rather opted to take what U.S. Steel would give them without a fight.[127]

The way in which recognition was won in the rest of the steel industry was quite different. Companies such as Youngstown, Jones & Laughlin, and Republic resisted the organizing drives in a very violent manner, leading to some of the worst picket-line clashes of the decade.[128] Contracts were not signed until the early 1940s.[129] The traditions of militancy which developed during these struggles resulted in a much more independent status within the union for these locals. But this militancy, often directed at both the company and the union leaders, only lasted about ten years.[130] It never fully realized its potential due to the unusual degree of power which the USWA constitution granted to the union leaders.

The 1700 delegates attend the union's founding convention in 1942 discovered that the constitution had already been prepared by the SWOC leadership. By that time, they had held their appointments as its leaders for six years.[131] No amendments were allowed without the rejection of the entire article sought to be amended.[132] Without allowing the delegates to either consult with their constituency or among themselves, Phillip Murray, head of SWOC, gavelled the constitution through in ten hours.[133]

After the constitution was established, no successful challenge to the entrenched leadership developed.[134] Phillip Murray died in office in 1953 and was succeeded by David McDonald, the former union vice-president. McDonald became the only USWA president to be defeated in an election when I.W. Abel, the secretary-treasurer of the union prior to 1965, unseated him.[135] Abel's campaign relied heavily on membership discontent over what was considered to be excessive cooperation with the steel companies on McDonald's part.[136] How-

127. It is possible that SWOC sympathy with the UMW affected this decision. A strike in the steel industry would have caused a drastic cut in coal production which would have resulted in heavy layoffs in the mines.

128. The bloodiest of these took place on May 30, 1937, when Chicago police killed 10 and wounded 68 people in front of the Republic Steel plant.

129. D. McDONALD, *supra* note 123, at 147-48.

130. S. LYND, *supra* note 124, at 5.

131. W. LESERSON, AMERICAN TRADE UNION DEMOCRACY 160 (1959).

132. *Id.* at 64.

133. *Id.* at 175.

134. However, that which did arise prompted an amendment to the constitution, art. V § 5, which drastically raised the number of local union endorsements necessary for a place on the International election ballot.

135. J. HERLING, RIGHT TO CHALLENGE 255-98 (1972).

136. I. Abel, Where They Stand (1965) (campaign literature). In this leaflet,

ever, once elected, Abel began to cooperate at least as much as McDonald.

The first contract negotiated by Abel, only a few months after his election, provided for "informal discussion" to deal with a number of important issues that the regular bargaining sessions had left unresolved.[137] In 1968 he began to mention the possibility of a binding arbitration clause for unresolved issues in place of a strike.[138] Membership response to the possibility of giving up the right to strike was so intense that union counsel Bernard Kleinman went on record as stating that such a far-reaching decision would not be made without the approval of all policy making groups within the union *as well as* a poll of the entire membership.[139] And yet, in March, 1973, without any prior warning to the membership, Abel announced that the 1974 contract gave up the right to strike and substituted a binding arbitration clause.

The contract, known as the Experimental Negotiating Agreement (ENA),[140] provided for a three percent raise for each of the three years it would be in effect, cost of living improvements, and a bonus of $150 to each employee covered by the act,[141] in exchange for the union's agreement to arbitrate. Any negotiable issues unresolved by April 15, three and one half months before expiration of the 1971 contract, would be submitted to binding arbitration. Strikes over local issues would be allowed only if bargaining failed and Abel approved the strike. Abel may have believed that the ENA was the best thing for the union, but the secrecy in which it was negotiated leads one to question whether Abel felt that the union's members would agree with him.

Abel's latest campaign for re-election took place during the negotiations concerning the ENA, but at no time during the campaign was this vital issue ever raised.[142] Once negotiations were completed, the Basic Steel Industry Conference (BSIC), composed of the presidents of the approximately 800 basic steel locals and the broadest policy-making body of the union, was summoned to Wash-

Abel stated "[t]he union can't serve two masters—the companies can well take care of themselves—the union's leaders must look after the interests of the membership!"

137. S. LYND, *supra* note 124, at 10.

138. *Id.*

139. *Id.*

140. For the complete text of the ENA see 4 CCH LAB. L. REP., Labor Relations ¶ 9030.

141. The $150 bonus was specifically in consideration for abandoning the use of the strike weapon.

142. S. LYND, *supra* note 124, at 12.

ington. Despite the importance of the ENA, and contrary to previous union policy,[143] there was no mention of what was to be discussed in Washington in the letter which called the conference. Once in Washington, the 300 or so attending BSIC members were handed the ENA text and told to accept it or reject it immediately. Unable to consult with their constituency, only seven of the BSIC members voted against the ENA. And despite Kleinman's 1968 pledge, there was no membership ratification. The ENA had been adopted.

A situation like this demonstrates that legislative and judicial guarantees of freedom of speech and discussion within the unions are inadequate by themselves to ensure that the union leaders will respond to the needs and desires of the union members. Even if every rank and file member of the USWA had been unalterably opposed to the ENA and Abel's retention of office, they would not have been able to alter the course of events until the next general election. Since it was clear that any remedy would have to be found outside the processes of the union, a lawsuit was filed to secure a preliminary injunction against the operation of the ENA until it could be submitted to a membership vote. Among the major legal bases of the lawsuit, *Aikens v. Abel*,[144] was the violation by the union leadership of its fiduciary duty as set forth in section 501 of the LMRDA.[145] An analysis of the pleadings and the decision can serve as an example of some of the theories under which a section 501 suit may be brought.

The section 501 count first set out an analysis of the judicial and legislative history of section 501. The acceptance of a broad construction of the fiduciary duty in the Eighth and Third Circuits and the apparent misreading of the legislative history of the LMRDA which resulted in the narrow interpretation of the Second Circuit were pointed out. The section 501 count then proceeded to allege the following four instances of violation of the fiduciary duty:

First, the union leaders violated the provision of section 501 which requires them to govern themselves in accordance with the union's "constitution and bylaws and any resolutions of the governing

143. Trial Memorandum for Plaintiffs, Aikens v. Abel, 373 F. Supp. 452 (W.D. Pa. 1974).

144. 373 F. Supp. 452 (W.D. Pa. 1974).

145. Plaintiff's complaint in *Aikens v. Abel* included causes of action based on violation of 73 Stat. 522(a)(1) (1959), 29 U.S.C. § 411(a)(1) (1973) (denial of fair notice); violation of 73 Stat. 522(a)(2) (1959), 29 U.S.C. § 411(a)(2) (1973) (denial of rights to free assembly, free expression of opinions on any business properly before the union meeting); violation of plaintiff's right to strike and freedoms of speech and assembly without due process; and breach of defendant's fiduciary duty under the laws of the Commonwealth of Pennsylvania.

bodies adopted thereunder." In September, 1972, at the last International convention (the supreme legislative and judicial body of the union), a resolution was passed which stated that the union "must always be prepared and willing to back up its demands with the strike weapon." Under the union constitution, the leaders are bound to carry out the policies of the International convention.[146] The adoption of the ENA went directly counter to this resolution.

Second, the union dealt with adverse parties (the steel companies) in a collusive and conspiratorial manner. The union leaders are alleged to have dealt with their constituency as if it were they who were the adverse parties, rather than the companies.

Third, the union leaders violated their common law duty of full disclosure as fiduciaries. The secrecy, lack of notice and lack of opportunity to be heard all violate this duty.[147] The lack of any requirement of membership ratification under the USWA constitution could well hold the union to a higher level of duty as a fiduciary, analogous to a trustee of the estate of an infant or incompetent party.[148]

Fourth, the union leaders held and expended funds in an improper manner by using them in the negotiation and administration of the ENA. Additionally, the union leaders administer a Strike and Defense Fund set up in 1965 through a dues increase; the payments into this fund still continue, though the reasons for the fund's existence do not.

The court's decision treated the fiduciary duty in the narrowest manner possible. The court held that section 501 regulates only internal union affairs, and that therefore the ENA was not subject to its provisions. It further held that even if there were a cause of action under section 501, there was no violation of the fiduciary duty. Despite its importance in the pleadings and the great range of interpretations, the judge spent very little time in discussing the fiduciary.[149]

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146. USWA CONST. art. IV § 20.
147. RESTATEMENT (SECOND) OF AGENCY §§ 381, 383 (1957).
148. The language of section 501 specifically calls on the courts to take into consideration "the special problems of a labor organization" when interpreting the statute.
149. One method of countering this tendency of the courts is a showing of a *direct* economic effect on the financial situation of the plaintiffs. This method was employed in *Aikens v. Abel* by inclusion of an appendix to the pleadings using the statistical tool of multiple regression analysis which developed a strong argument for the fact that the real wages in the steel industry advanced only during periods of heavy

III. SUMMARY AND CONCLUSIONS

The legislative history of section 501 of the LMRDA shows clearly that the section's purpose was to establish a relationship of trust between union officers and members which would encompass all the activites of a union officer acting to represent membership. That this congressional intent has not been universally implemented by the courts is also clear. Section 501 was born of a recognition that union officers' responsibilities historically extended beyond proper management of membership dues; and that officers historically had an affirmative duty to strive to improve the conditions under which the union membership lives. Precisely because of this special nature of labor unions, the LMRDA's authors attempted to encourage responsive and democratic union leadership without simultaneously encouraging internal strife. The courts have often responded to the tension between these purposes by taking a mechanical, hands-off approach to the regulation of union officers' conduct under section 501. It is our position that the congressional intent to bolster the cause of union democracy can best be served by holding union officers to a high standard of fiduciary responsibility under the section, a responsibility not limited to fiscal matters.

The decision in *Nelson* and the line of cases following its lead have expanded the fiduciary responsibility to include protection of political rights, respect for internal democratic procedures, prohibition of retaliatory conduct against members who challenge entrenched leadership and the duty of disclosure of information considered vital to membership. In short, these courts have been willing to scrutinize and condemn the conduct of union officials and representatives where it interferes with an open and democratic political process within the labor organization.

Even courts with a liberal approach to section 501 have hesitated to expand their inquiry to encompass all the activities of union representatives. In particular, they have maintained a hands-off policy in relation to the conduct of union officials during collective bargaining and to the other aspects of union-management relations. Certainly this area of union leadership's responsibility, no less than the internal processes of the union, requires the informed participation of rank and file membership if positions taken by officers and negotiators during collective bargaining are not to reflect only the policies of the leadership. Since the leadership can have interests which conflict with the interests of the workers they represent, we suggest that section

strike activity. The court failed to take any notice of this appendix which, though relying on sophisticated economic analysis, was presented in a very clear fashion.

501 serve as the basis for subjecting collective bargaining agreements to judicial scrutiny when the conduct of union officials in the negotiating process violates their fiduciary obligation. The ENA is a perfect example of the need for such a remedy.

Judicial examination of collective bargaining agreements is not a radical concept; the social need to remedy the pervasive effects of racism and sexism gave rise to judicial intervention through both the "duty of fair representation" and the "practices and procedures" language of Title VII of the 1964 Civil Rights Act.[150] The question for us is not whether the courts should ever review the provisions of collective bargaining agreements, but rather, having intervened to outlaw racist and sexist provisions, will courts tolerate agreements between union representatives and management which violate the fiduciary duty. The history and present practice of the three unions discussed in this article demonstrates the need for an expansive notion of the fiduciary responsibility. Since each union's history is different, however, the particular application of section 501 will vary.

Where the history and structure of a union is unquestionably authoritarian and antidemocratic, section 501 can be used to promote disclosure of matters of concern to the membership. This application of section 501 could be especially important in collective bargaining situations in which the union's constitution does not require such disclosure. Such was the case with the Steelworkers and the ENA. The ENA itself clearly proves that technical adherence to union constitutional procedure does not alone guarantee a collective bargaining agreement which is democratically adopted, either directly or through representatives, by an informed membership.

Changes in union constitutions which are undertaken to achieve the aims of union leadership at the expense of the genuine democratic processes within the union should also be evaluated by the courts. Courts already intervene to prevent firing of employees for their union organizing; the same kind of protection should be extended to union members who are penalized or harassed by union officers because the members try to exercise their democratic rights. Once a member demonstrates that an improper motive initiated disciplinary action from the union leadership, the union officers should bear the burden of showing that their actions were reasonable, justifiable and in keeping with the fiduciary responsibility.

150. 78 Stat. 253-66 (1964), 42 U.S.C. § 2000e *et seq.* (1973).

An important lesson to be learned is that a key element in the development of internal democracy is the preservation of the legitimate roles of union locals. The importance of union locals is exemplified in the UAW, where local union leadership exerts some degree of power in relation to the International. This power has its roots in the way in which the union was first organized. When autonomy of the locals was undermined, the possibilities for the development of serious opposition to existing union leadership was lessened. The importance of local, rank and file based support is also borne out by the experience of the Steelworkers. The election of I.W. Abel to the presidency of the union was a result of the power that he accumulated as an officer in the International; that is, his power did not depend on local support. The membership is without the means to directly influence him; if USWA locals were stronger, there would at least be the precondition for exerting organized pressure on behalf of the membership.

In evaluating the IBEW another lesson was learned: loss of internal democracy is a high price to pay for uninterrupted industrial peace. The Council on Industrial Relations involves only the union leadership in resolving disputes, placing the actions of the leadership outside of membership control. A narrow construction of section 501 leaves union members without a legal tool to evaluate and review the results of this autocratic control. As with the establishment of the ENA, the fact that the decisions which labor officials make in such situations affect the lives of the membership reinforces the necessity of defining the fiduciary duty as a continuing obligation, extending to all aspects of union leadership reponsibility, including the collective bargaining process.

The point cannot be stressed too strongly that the courts must not turn a deaf ear to the claims that antidemocratic processes and constitutional provisions violate the letter and the spirit of section 501. An example of one such constitutional provision is the UAW provision which relieves convention delegates of the obligation to vote in accordance with the express wishes of their membership. Such a provision contradicts the accountability which a fiduciary, a union officer or representative, must have in relation to the membership. The UAW provision calling upon local officers and local papers to adhere to the International union policies raises an interesting and dramatic problem. Even if the local membership demands a certain action of its elected officers, those officers, because

of International policy, may not be able to carry out the wishes of their local. This is in direct conflict with the rights of the membership; they establish the trust relationship through their participation in union affairs and they are the beneficiaries of the trust relationship. Therefore, *they* must have the right to determine the manner in which the trust relationship is carried out.

Not only should union constitutions be subject to review where they obviously promote conflict between the democratically expressed wishes of the membership and the policies of the International leadership; "constitutionally" valid actions which are motivated by antidemocratic reasons should also present situations for application of section 501. For example, in ruling as it did in the Steelworkers' suit, the court supported the leaderships' secret negotiations and agreement with the steel industry, contrary to the express interests of the union membership. The methods used by Abel and the International to negotiate and ratify the ENA were not contrary to the union's constitution, yet the result clearly ran counter to the desires and expectations of the USWA members. When such a situation develops, a court must be able to evaluate the union's actions by some standard beyond mere adherance to constitutional procedures. If International leadership places a local into trusteeship for the purpose of stifling dissent from that local, the courts must be open to suits which demonstrate that such an impermissible motive existed in the imposition of the trusteeship. The history of the UAW indicates that such actions taken by the International often take place in the context of power struggles within the union. For the court to hold that section 501 does not supply a remedy is neither necessary nor reasonable. While courts cannot, should not, and will not be the creators of democracy within trade unions, they should nonetheless facilitate the growth of that process.

The criteria which we propose that courts utilize in testing whether a cause of action exists under section 501 are simple and straightforward. There are two main areas in which section 501 can be applied: (1) when there is a misappropriation or mishandling of union finances; and (2) when the alleged activity of the officer violates the duty to represent the interests of the members and to uphold democratic processes within the union. In assessing these actions, the courts should take cognizance of: (1) official action which oversteps its constitutional authority; (2) official action which amounts to a refusal to adhere to constitutionally enacted policy

expressions of the membership; (3) official action which demonstrates, despite its "legality" in relation to union by-laws, an intention to stifle dissent; and (4) official action or procedure which undermines the legitimate representative roles of local leadership.

Use of such criteria is based on the legislative history of the section and on the approach of the *Nelson* case. If the courts assume their responsibility in this area and apply such criteria consistently and uniformly, the possibility that section 501 will be used by union membership will increase. Courts need not fear that their evaluation of internal union activity will be harmful "interference" so long as the goal of fostering internal union democracy is advanced by such "intervention."

In the final analysis, the use to which an expanded section 501 will be put will depend upon the organization and initiative of the rank and file membership. A more populist judicial construction of section 501 will not, and cannot, act as a substitute for the membership's own assumption of the task of establishing a democratic, responsive trade union movement in this country.