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BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS, 1959-1964.

I. Origin

In 1959 the Senate Labor Committee reported a proposed labor reform bill aimed at curtailing certain corrupt practices found to exist in some unions. This proposed bill included provisions regulating union elections and trusteeships, and required periodic reports on various union affairs by union officers.¹ During debate on the bill, Senator McClellan, whose committee's report on corruption within unions provided the impetus for the bill,² proposed an amendment entitled a "Bill of Rights of Members of Labor Organizations."³ This "Bill of Rights" became law on September 14, 1959, as Title I of the Labor-Management Reporting and Disclosure Act, more popularly known as the Landrum-Griffin Act.⁴ The "Bill" guarantees union members certain rights within their unions: an equal right to vote and nominate candidates, freedom of speech and assembly, protection against arbitrary dues increases, protection of the right to sue, and, finally, minimum procedural safeguards in the imposition of discipline by the union.⁵

1 S. 1555, 86th Cong., 1st. Sess. (1959); I LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT, 338-96 (1959).

2 See generally Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199 (1960); Summers, *American Legislation for Union Democracy*, 25 MOD. L. REV. 273 (1962).

3 105 CONG. REC. 6475-76 (1959); 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT, 1102 (1959).

4 §§ 1-611, 73 Stat. 519-41 (1959), 29 U.S.C. §§ 401-531 (Supp. V, 1964).

5 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101, 73 Stat. 522-23 (1959), 29 U.S.C. § 411 (Supp. V, 1964):

Sec. 101. (a)(1) **EQUAL RIGHTS** Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) **FREEDOM OF SPEECH AND ASSEMBLY** Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) **DUES, INITIATION FEES, AND ASSESSMENTS** Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except —

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to

Title I also nullifies union constitutional provisions and by-laws which are inconsistent with these protected rights.⁶ Further, the "Bill" confers jurisdiction upon the federal district courts to hear civil suits by aggrieved members,⁷ and provides that nothing in Title I shall limit any previous right a union member had under any other federal or state law.⁸ The concluding sections of the "Bill" require unions to furnish members with copies of the collective bargaining agreement upon request⁹ and to inform the members of the provisions of the act.¹⁰

Prior to enactment of the federal act, union members were not wholly without protection. State courts had expanded the traditional legal theories of property and contract to afford relief to members oppressed by their unions, and, in fact, developed a substantial body of common law on the subject.¹¹ Nonetheless, some members of Congress felt that state law was confused and inadequate and that federal legislation in the area was necessary.¹² Since a few of the legislators feared

express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) PROTECTION OF THE RIGHT TO SUE No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

6 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(b), 73 Stat. 523 (1959), 29 U.S.C. § 411(b) (Supp. V, 1964).

7 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 102, 73 Stat. 523 (1959), 29 U.S.C. § 412 (Supp. V, 1964):

Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

8 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 103, 73 Stat. 523 (1959), 29 U.S.C. § 413 (Supp. V, 1964): "Nothing contained in this title shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization."

9 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 104, 73 Stat. 523 (1959), 29 U.S.C. § 414 (Supp. V, 1964).

10 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 105, 73 Stat. 523 (1959), 29 U.S.C. § 415 (Supp. V, 1964).

11 See generally Cox, *The Role of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609 (1959); Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 YALE L.J. 175 (1960); Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

12 *E.g.*, 105 CONG. REC. 6484 (1959) (remarks of Senator Holland), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1110 (1959).

that passage of the federal bill might limit state jurisdiction,¹³ the special section was added to the "Bill" specifically providing that the "Bill" was supplemental and not in derogation of any other rights.¹⁴ Thus, in some situations a union member may bring an action under Title I in a federal district court for violation of the enumerated rights, or an action in the state courts under state law.¹⁵

The thrust of the "Bill of Rights" is aimed at one of the primary sources of corruption turned up by the McClellan Committee: the "tyranny of the all-powerful labor boss."¹⁶ The underlying rationale of the "Bill" is that by clothing members with a right to participate and be heard in union affairs through limited judicial intervention, they can maintain control of their unions and prevent the cancerous growth of racketeering and corruption.¹⁷ The federal approach is unique in that the rights secured are not property or contract rights, but instead, basic human rights analogous to those of citizens in a political democracy.¹⁸

In the five years since the Bill of Rights for Union Members was enacted, many problems and questions have been raised in applying it to concrete situations. The purpose of this note is to examine and compare the cases dealing with the "Bill" and sketch briefly the developing body of law.

II. Coverage

One of the first problems which arose in interpreting the "Bill of Rights" concerned simply the question of who was protected under the act.¹⁹ The title of the "Bill" and each subsection in Section 101 repeatedly state that the guaranteed rights are the rights of "members of labor organizations." The problem of coverage is complicated somewhat by the act's unusual definition of "member": "any person who has fulfilled the requirements for membership in such organization."²⁰ In *Hughes v. Local 11 of the Int'l Ass'n of Bridge Workers*,²¹ the plaintiff had attempted to transfer from one local within the international union to another. He had done all that was required by the international to effectuate the transfer, but the second local, Local 11, acted in violation of the international's constitution by refusing to accept him. In deciding whether it had jurisdiction, the district court interpreted "member" as meaning member of a "specific organization," *i.e.*,

13 *E.g.*, 105 CONG. REC. 6482 (1959) (remarks of Senator Kennedy), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1108-09 (1959).

14 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 103, 73 Stat. 523 (1959), 29 U.S.C. § 413 (Supp. V, 1964).

15 105 CONG. REC. 6483 (1959) (remarks of Senator Holland), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1109-10 (1959).

16 105 CONG. REC. 6472 (1959) (remarks of Senator McClellan), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1098 (1959).

17 *E.g.*, 105 CONG. REC. 6476 (1959) (remarks of Senator McClellan), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1103 (1959):

If we want fewer laws — and want to need fewer laws — providing regulation in this field, we should start with the basic things. We should give union members their inherent constitutional rights, and we should make those rights apply to union membership as well as to other affairs of life. . . . By so doing we will be giving them the tools they can use themselves.

18 See SMITH & MERFIELD, LABOR RELATIONS LAW 998 (1960), cited in *Green v. Local 705, Hotel Employees*, 220 F. Supp. 505, 506 n. 3 (E.D. Mich. 1963).

19 *Jackson v. Martin Co.*, 180 F. Supp. 475 (D. Md. 1960); *Strauss v. International Bhd. of Teamsters*, 179 F. Supp. 297 (E.D. Pa. 1959).

20 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 3(o), 73 Stat. 521 (1959), 29 U.S.C. 402(o) (Supp. V, 1964): "Member" . . . includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization."

21 183 F. Supp. 552 (D.N.J. 1960), *rev'd*, 287 F.2d 810 (3d Cir.), *cert. denied*, 368 U.S. 829 (1961).

a local.²² On appeal the Third Circuit reversed, holding that as a member of the international, plaintiff had secured certain rights and among them was the right to transfer to another local; he was therefore entitled to be considered a "member" of Local 11, at least to the extent of Title I's guaranteed rights.²³ The *Hughes* case is apparently as far as the courts have gone in broadening the concept of "membership," and the legislative history seems to bar any hope that the "Bill" will aid minorities who face discrimination in applying for Union membership.²⁴

While "membership in a labor organization" is the minimum qualification for protection under the Title I, it is not the only requirement. Again and again the courts have emphasized that the "Bill of Rights" deals with the relationship between a union member and the union,²⁵ and not a union-officer,²⁶ a union-employee,²⁷ a member-employer,²⁸ or even a member-member relationship.²⁹ Problems are created by the imposition of union discipline on members who occupy the dual role of member-officer or member-employer. The early cases arose immediately after the passage of the Labor-Management Reporting and Disclosure Act. Since it disqualified ex-criminals and communists from holding union office or employment,³⁰ certain union officers and employees became ineligible to hold their positions and were summarily removed by the unions. A few of these officers and employees sought relief under Title I, claiming that they had been "disciplined" without the procedural safeguards of Section 101(a)(5). The district courts dismissed their suits on the ground that these procedural safeguards are not applicable to the removal of union officers or employees from their positions.³¹ The problem became more complex in cases where the roles of union member and union officer were less distinguishable. In *Sheridan v. United Bhd. of Carpenters*³² a member was ousted as union business agent because he had prosecuted a union brother in court for assault and battery. Under the circumstances, it would have been a violation of Section 101(a)(4) for the union to have disciplined a union member for such an act. The district court accepted plaintiff's contention that in prosecuting a fellow union member he acted as a member, not an officer, and that the discipline for this act consisted of removal from union office.³³ On appeal, the decision was reversed. Judge Kalodner³⁴ explained that there was not meaningful distinction

22 *Hughes v. Local 11 of Int'l Ass'n of Bridge Workers*, 183 F. Supp. 552, 553 (D.N.J. 1960).

23 *Hughes v. Local 11 of Int'l Ass'n of Bridge Workers*, 287 F.2d 810, 817 (3d Cir. 1961).

24 *Moynahan v. Pari-Mutuel Employees Guild*, 317 F.2d 209 (9th Cir.), cert. denied, 375 U.S. 911 (1963). The court said at 210:

[The] legislative history persuasively demonstrates that Congress did not intend section 3(o) to limit the previously recognized rights of unions to choose their members. Scholars in the field of labor law, while deploring this result, agree that it represents the current state of the law. [Citations omitted.]

See also *Hughes v. Local 11 of Int'l Ass'n of Bridge Workers*, *supra* note 23, at 816-18.

25 *Allen v. Armored Car Chauffeurs Union*, 185 F. Supp. 492, 494 (D.N.J. 1960).

26 *Vars v. International Bhd. of Boilermakers*, 204 F. Supp. 241 (D. Conn. 1962), *aff'd on other grounds*, 320 F.2d 576 (2d Cir. 1963); *Jackson v. Martin Co.*, 180 F. Supp. 475 (D. Md. 1960); *cf. Serio v. Liss*, 189 F. Supp. 358, 362 (D.N.J. 1960), *aff'd*, 300 F.2d 386 (3d Cir. 1961).

27 *Bennet v. Hoisting Engineers Local 701*, 207 F. Supp. 361 (D. Ore. 1960); *Strauss v. International Bhd. of Teamsters*, 179 F. Supp. 297, 300 (E.D. Pa. 1959).

28 *Jackson v. Martin Co.*, 180 F. Supp. 475, 481-82 (D. Md. 1960).

29 *Tomko v. Hilbert*, 288 F.2d 625, 629 (3d Cir. 1961).

30 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 504, 73 Stat. 536-37 (1959), 29 U.S.C. § 504 (Supp. V, 1964).

31 *Jackson v. Martin Co.*, 180 F. Supp. 475 (D. Md. 1960); *Strauss v. International Bhd. of Teamsters*, 179 F. Supp. 297 (E.D. Pa. 1959); *cf.*, *Air Line Stewards Ass'n, Local 550 v. Transport Workers*, 334 F.2d 805 (7th Cir. 1964); *Serio v. Liss*, 189 F. Supp. 358 (D.N.J. 1960), *aff'd*, 300 F.2d 386 (3d Cir. 1961).

32 306 F.2d 152 (3d Cir. 1962), *reversing* 194 F. Supp. 664 (D. Del. 1961).

33 *Sheridan v. United Bhd. of Carpenters*, 194 F. Supp. 664, 669 (D. Del. 1961); *cf.*, *Burton v. Independent Packinghouse Workers Union*, 199 F. Supp. 138 (D. Kan. 1961).

34 There was no opinion for the court.

between plaintiff's actions as a member and as an officer. The fact was that by his actions plaintiff lost the confidence of the membership and, after hearing the trial committee's report, they exercised their right to remove him from office.³⁵

Sheridan demonstrates the dilemma encountered in the discipline of union officers. The legislative history strongly indicates that officers are not entitled to the procedural safeguards of Section 101(a)(5) in removal from office, for the reason that unions must have the right to protect themselves by summarily removing unfaithful officers.³⁶ On the other hand, for all practical purposes the officer is being punished for an act which, as a member, he had a right to do. This dilemma was resolved in *Grand Lodge of Int'l Ass'n of Machinists v. King*.³⁷ First, the Ninth Circuit clarified the scope of Section 101(a)(5): that it entitles a member to certain minimum procedural rights before he is disciplined by the union, and that these procedural safeguards do not apply to the removal from union office regardless of the reason for such removal.³⁸ Nonetheless, the court reasoned, the intraunion political rights of the "Bill" are applicable to all members whether or not they are also officers. The court found that these rights are expressly guaranteed by Section 609, a miscellaneous provision which makes it unlawful for a union to punish a member for exercising rights protected by the act.³⁹ Whereas Judge Kalodner in *Sheridan* assumed that the phrase "otherwise disciplined" in Section 609 had the same limitation vis à vis officers as its counterpart in 101(a)(5), the Ninth Circuit disagreed, explaining that the two sections are different in nature and purpose, and that Section 609 makes it unlawful to punish members or member-officers for exercising guaranteed rights regardless of the presence or absence of procedural safeguards. The gist of the *King* case is that while an officer may be summarily removed for any suspected misconduct, he may not be punished in any way, including removal from office, for exercising any of the rights guaranteed by Title I.⁴⁰

Another member-officer problem involves the extent to which an officer may, in the course of discipline, be deprived of his Title I rights without being entitled to the procedural safeguards of 101(a)(5). It is clear that he may be summarily removed from office,⁴¹ but it is also reasonably certain that he may not be expelled from the union without the minimal due process of 101(a)(5).⁴² The middle ground between these extremes has yet to be explored. The question has come up

35 *Sheridan v. United Bhd. of Carpenters*, 306 F.2d 152, 158 (3d Cir. 1962).

36 *E.g.*, 105 CONG. REC. 17899 (1959) (remarks of Senator Kennedy), 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT 1433 (1959):

The so-called Bill of Rights Title also secures important procedural safeguards against improper disciplinary action against union members as members. The Senate should note, however, that all the conferees agreed that this provision does not relate to suspension or removal from a union office. Often this step must be summarily taken to prevent dissipation or misappropriation of funds.

37 335 F.2d 340 (9th Cir. 1964), *cert. granted*, 33 U.S.L. WEEK 3145 (U.S. Oct. 20, 1964) (No. 456). Here plaintiffs were \$12,000 per year union representatives and were discharged by the General Secretary-Treasurer solely because they had supported his opponent in the last election.

38 The district court had suggested the contrary. See 215 F. Supp. 351 (N.D. Cal. 1963).

39 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 609, 73 Stat. 541 (1959), 29 U.S.C. § 529 (Supp. V, 1964):

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section.

40 *Cf. Saltzhandler v. Caputo*, 316 F.2d 445 (2d Cir.), *cert. denied*, 375 U.S. 946 (1963), *reversing* 199 F. Supp. 554 (S.D.N.Y. 1961). (free speech.)

41 *Supra* note 36.

42 *Vars v. International Bhd. of Boilermakers*, 204 F. Supp. 241, 243 (D. Conn. 1962), *aff'd*, 320 F.2d 576 (2d Cir. 1963).

where the discipline included a prohibition against future candidacy for union office.⁴³ Although the courts have intimated that such a prohibition is only "part and parcel" of the discipline,⁴⁴ the question has not been answered since the courts have agreed that the right to run for union office is not guaranteed by Title I.⁴⁵ The solution to this problem may be to limit summary discipline of officers and employees to suspension from their position; if further discipline is contemplated, the officer or employee should then be afforded the procedural safeguards of the "Bill."⁴⁶

III. Section 101(a)(1) — Equal Rights⁴⁷

This section guarantees members an equal right to vote and to participate in union meetings subject to "reasonable" union rules and regulations. In spite of a wide variety of alleged deprivations of "equal rights,"⁴⁸ the courts have generally construed this section narrowly: "Title I is not a 'catch-all' into which disgruntled members may sweep all manner of miscellaneous charges."⁴⁹ It is instead a "specific section for the enforcement of specific rights."⁵⁰ Thus, where union members charged a violation of their "equal rights" because the union failed to permit the membership to ratify or reject collective bargaining agreements, the court pointed out simply that the "Bill of Rights," Section 101(a)(1), does not include a provision guaranteeing members a right to vote on such contracts.⁵¹ A concurring judge felt that the plaintiffs had been denied equal rights and discriminated against by the union, but nonetheless, he admitted that Section 101(a)(1) does not outlaw such union conduct.⁵² Of course, if a contract becomes the subject of a union business meeting, then the members would have an equal right to speak out and vote on the matter.⁵³

A district court has held that a union's refusal to submit a member's by-law amendment to a vote was a denial of an equal right to vote,⁵⁴ however, when the union's International Executive Board declared the approved amendment null and void, the court upheld the Board's substantive determination of the propriety of the amendment as a "reasonable rule."⁵⁵

43 *Vars v. International Bhd. of Boilermakers*, *supra* note 42; *Mamula v. Local 1211, USWA*, 202 F. Supp. 348 (W.D. Pa.), *rev'd*, 304 F.2d 108 (3d Cir.), *cert denied*, 371 U.S. 823 (1962); *Hamilton v. Guinan*, 199 F. Supp. 562 (S.D.N.Y. 1961).

44 *Mamula v. Local 1211, USWA*, 205 F. Supp. 915 (W.D. Pa. 1962); *Hamilton v. Guinan*, *supra* note 43.

45 Cases cited in note 43 *supra*.

46 Dunau, *Some Comments on the Bill of Rights of Members of Labor Organizations*, NEW YORK UNIVERSITY FOURTEENTH ANNUAL CONFERENCE ON LABOR 94 (1961).

47 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(a)(1), 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(1) (Supp. V, 1964), *supra* note 5.

48 *Stout v. Construction Laborers Dist. Council*, 226 F. Supp. 673 (N.D. Ill. 1963) (racial discrimination); *McKeon v. Highway Drivers, Local 107*, 223 F. Supp. 341 (D. Del. 1963) (appointment not election, of business agent); *Green v. Local 705, Hotel Employees Union*, 220 F. Supp. 505 (E.D. Mich. 1963) (extortion, violence and intimidation, job discrimination); *Horn v. Amalgamated Ass'n of Street Employees*, 194 F. Supp. 560 (E.D. Mich. 1961) (bargaining away of seniority rights).

49 *Green v. Local 705, Hotel Employees* *supra* note 48, at 507. The court further said at 506:

It is true, of course, in a broad sense, that if a member is assaulted and as a result thereof confined to a hospital or bed, or, indeed, kidnapped and spirited from the jurisdiction, he may be prevented from voting in the next election or regarded as disciplined. But so interpreted Title I swallows too much.

50 *Id.* at 507.

51 *Cleveland Orchestra Comm. v. Cleveland Fed'n of Musicians*, 303 F.2d 229 (6th Cir. 1962) *affirming* 193 F. Supp. 647 (N.D. Ohio 1961); *accord*, *Branch v. Vickers, Inc.*, 209 F. Supp. 518 (E.D. Mich. 1962); *Horn v. Amalgamated Ass'n of Street Employees*, 194 F. Supp. 560 (E.D. Mich. 1961).

52 *Cleveland Orchestra Comm. v. Cleveland Fed'n of Musicians*, *supra* note 51, at 233-34.

53 *Id.* at 233 of majority opinion.

54 *Gurton v. Manuti*, 50 CCH Lab. L. Rep. ¶ 18985 (S.D.N.Y. 1964).

55 *Guarnacci v. Kenin*, 50 CCH Lab. L. Rep. ¶ 19222 (S.D.N.Y. 1964). In *Gartner v.*

The Section 101(a)(1) specific guarantee of an "equal right to vote" has not been widely explored by the courts. One unsettled area involves locals or smaller union subunits which are not afforded full participation in the larger unit on the same basis as other groups. In *Ragland v. United Mine Workers of America*⁵⁶ an Alabama district court refused to interpret the equal vote guarantee to entitle a "provisional district" to representation at the International convention. The union charter provided that such locals did not have the right to participate in the United Mine Workers' conventions or elections. The court said that the "provisional district" had acquiesced in this arrangement for twenty years and:

[T]he "equal rights" provision of the Act was not intended by Congress to change the internal organizational structure of unions. . . . [T]he Act is designed to protect the right to vote and participate where that right exists and not for the purpose of conferring the right to vote and participate in cases where it has not previously existed. . . .⁵⁷

A different tack was taken in *Acevedo v. Bookbinders Local 25*⁵⁸ where the union was divided into two classes, class A for skilled workers, and class B for semi-skilled workers. The local's constitution provided that certain officers, President, First Vice President, etc., were to be elected by Class A; the other officers, Second Vice President, Treasurer-Secretary, etc., were to be chosen by class B. Before dismissing the suit on other grounds, the New York district court found that such an arrangement was "manifestly unreasonable." The court said that while a union may be divided on the basis of crafts and artisans for the purpose of bargaining, "such distinctions may not indefinitely effect a discrimination in the right of a member to exercise the right given to all other members in the choice and election of those who will represent his interests."⁵⁹

Another problem concerns election irregularities and abuses, and their effect on a member's "equal right to vote." In *Young v. Hayes*⁶⁰ the ballots for a proposed constitutional amendment contained misleading information and afforded the voter only a single "yes" or "no" vote on a bloc of forty-seven amendments. The court held that the right to vote in the "Bill of Rights" is more than "a mere naked right to cast a ballot," therefore, "the spirit, if not the exact wording" of 101(a)(1) requires that the amendments be presented to the members in at least a more comprehensible grouping.⁶¹

The "right to cast a meaningful vote" presents a more complex problem in union election contests because of its overlap with Title IV, the section of the Bill governing union elections.⁶² The important difference between the two lies in their respective procedure: a Title I violation may be redressed by a suit in the district court instituted by the aggrieved member,⁶³ while a Title IV violation must be filed with the Secretary of Labor who will investigate the matter and bring suit in the district court if he has probable cause to believe that a violation has occurred.⁶⁴ There is no doubt that if the election has already been conducted, the

Soloner, 220 F. Supp. 711, 714 (E.D. Pa. 1963) the court held that a denial of voting privileges until the member paid a nominal fine of one dollar for non-attendance at meetings was a "reasonable rule."

56 188 F. Supp. 131 (N.D. Ala. 1960).

57 *Id.* at 133.

58 196 F. Supp. 308 (S.D.N.Y. 1961).

59 *Id.* at 311.

60 195 F. Supp. 911 (D.D.C. 1961).

61 *Id.* at 915-16. See also *Kolmonon v. International Hod Carriers Union*, 215 F. Supp. 703 (W.D. Mich. 1963) in which in a dictum the court "found" a denial of an equal right to vote where members scattered throughout the state of Michigan were required to come to Detroit to vote. The case was dismissed because it was a post-election challenge and remediable exclusively under Title IV of the act.

62 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) §§ 401-04, 73 Stat. 532-35 (1959), 29 U.S.C. §§ 481-83 (Supp. V, 1964).

63 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 102, 73 Stat. 523 (1959), 29 U.S.C. 412 (Supp. V, 1964).

64 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 402, 73 Stat. 534 (1959), 29 U.S.C. 482 (Supp. V, 1964).

exclusive method of challenging it is by the procedure of Title IV.⁶⁵ The dividing line is blurred, however, when judicial correction is sought before or during the election. The Circuits are in disagreement. The Seventh Circuit has affirmed a district court's action in seizing ballot boxes after a member alleged the printing of an unexplained surplus of ballots and ballot box tampering at a union election.⁶⁶ The Court of Appeals⁶⁷ said that the rank and file members may have been denied the right to vote "as surely as if the union hall had been barred against them while the balloting was conducted inside the hall."⁶⁸ The court continued:

Neither reason nor logic supports the suggestion that plaintiffs must now await the completion of the election and the counting of the purported ballots and then seek their remedy under Title IV. I think the statutory scheme of Title I would be defeated if the act must be so construed, and applied.⁶⁹

The Second Circuit in *Robins v. Rarback*⁷⁰ "respectfully" disagreed with the Seventh Circuit and rejected plaintiff's contention that the Section 101(a) (1) guarantee of an "equal right to vote" means a right to cast an "effective vote." The basis for the court's decision was that Section 101(a) (1) is a simple, unelaborate guarantee, and if Congress had intended federal courts to assume a general supervision of the conduct of union elections it would have indicated so more clearly.⁷¹ Also the court emphasized that the election procedure in Title IV carefully limits unjustified interference by the courts with internal union processes.⁷²

The logic and rationale of the Second Circuit is the more persuasive in that theoretically a member's right to cast an "effective ballot" may be impinged by the slightest election irregularity. The choice between Title I and Title IV is in effect a decision to route the remedy through the Secretary of Labor or by-pass him. While it may be slower to proceed through the Secretary of Labor, it is suggested that the Labor Department's services are of significant value in evaluating the election and supervising a new one if necessary.⁷³ If by so limiting Title I the elections would escape federal court supervision, the case for a broad interpretation of "equal right to vote" would be much stronger, but this is not the case since the violations seem to be adequately provided for by Title IV. It may be advisable therefore to restrict "equal right to vote" to the more overt and direct type of deprivation, such as the weighting of votes or the establishing of classes of voters.

Another question on which Title I and Title IV collide pertains to the right to be a candidate for union office. These cases arise in one of two ways: either the plaintiff is barred from becoming a candidate for office because of his failure to meet the "eligibility"⁷⁴ requirements or, as a result of union discipline, he has been forbidden to hold union office for a certain length of time.⁷⁵ Again, as in the

65 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 403, 73 Stat. 534 (1959), 29 U.S.C. § 483 (Supp. V, 1964).

66 *Beckman v. Local 46, Int'l Ass'n of Bridge Workers*, 314 F.2d 848 (7th Cir. 1963); *accord*, *Robins v. Rarback*, 325 F.2d 929, 931 (2d Cir. 1963) (concurring opinion).

67 The court adopted part of the District Judge's opinion which is apparently unpublished.

68 *Beckman v. Local 46, Int'l Ass'n of Bridge Workers*, 314 F.2d 848, 850 (7th Cir. 1963).

69 *Ibid.*

70 325 F.2d 929 (2d Cir. 1963).

71 *Id.* at 930.

72 *Id.* at 931.

73 *But see* *Robins v. Rarback*, 325 F.2d 929, 931 (2d Cir. 1963) (concurring opinion).

74 *Jackson v. National Marine Engr's Beneficial Ass'n*, 221 F. Supp. 347 (S.D.N.Y. 1963); *Jackson v. International Longshoremen's Ass'n*, 212 F. Supp. 79 (E.D. La. 1962); *Colpo v. Highway Truck Drivers Union, Local 107*, 201 F. Supp. 307 (D. Del. 1961), *appeal dismissed*, 305 F.2d 362 (3d Cir. 1962), *cert. denied*, 371 U.S. 890 (1962); *Johnson v. San Diego Waiters Union, Local 500*, 190 F. Supp. 444 (S.D. Cal. 1961).

75 *Mamula v. USWA*, 304 F.2d 108 (3d Cir.), *cert. denied*, 371 U.S. 823 (1962), *reversing*, 205 F. Supp. 915 (W.D. Pa. 1961); *Boling v. International Bhd. of Teamsters*, 224 F. Supp. 18 (E.D. Tenn. 1963); *Hamilton v. Guinan*, 199 F. Supp. 562 (S.D.N.Y. 1961); *Gammmon v. International Ass'n of Machinists*, 199 F. Supp. 433 (N.D. Ga. 1961).

election irregularity cases, if the election is over, the remedy lies in Title IV.⁷⁶ Even when the election has not been conducted, the overwhelming majority of courts refuse to hear them under Title I, and thus the general rule seems to be that nothing in the Bill of Rights protects a right to be a candidate; that right is exclusively dealt with by Section 401(e) (Title IV).⁷⁷

The Second Circuit, in *Harvey v. Calhoun*,⁷⁸ found a 101(a)(1) violation where union nomination procedure and eligibility requirements together, in effect, severely limited the members' ability to nominate candidates. The union constitution and by-laws provided that members could only nominate themselves and that no member other than an incumbent official was eligible unless he has been a member for five years and served a minimum number of days at sea on certain vessels. The court reasoned that Title I was added to the Landrum-Griffin Act because Congress felt that the other provisions did not sufficiently protect the basic rights of union members; therefore, there is no reason to assume that the overlapping provisions of Title IV have withdrawn jurisdiction granted under Title I.⁷⁹ A New York district court, following *Harvey v. Calhoun*, held that the imposition of new eligibility requirements was an infringement of union members' rights to nominate and to vote.⁸⁰ Here, a union committee changed the eligibility requirements after the nominations had been made.

The number of cases which have claimed a "right to be a candidate" under the Bill of Rights indicates, perhaps, a disbelief that such an obvious right could be omitted. It would seem that the right to be a candidate is closely connected with union discipline and a subject on which the courts could take immediate corrective action before a union election.

IV. Section 101(a)(2) Freedom of Speech and Assembly⁸¹

In contrast to the specific provisions of the "equal rights" section, the guarantees of free speech and assembly are stated quite broadly. These guarantees are, however, subject to the "reasonable rules" and regulations of business meetings. A special proviso also permits the unions to adopt and enforce reasonable rules regarding "the responsibility of every member toward the organization as an institution" and prohibiting "conduct that would interfere with its performance of its legal or contractual obligations."⁸² The leading case interpreting Section 101(a)(2) is *Saltzhandler v. Caputo*⁸³ where a union member was severely disciplined for distributing leaflets which branded the union president as a "petty robber," and accused him of mishandling union funds. The defendant union seized upon the similarity between the Bill of Rights for Union Members and the First Amendment guarantee of freedom of speech, and sought to exempt the plaintiff from the "Bill's" protection by analogizing Section 101(a)(2) to the *Beauharnais* case⁸⁴ which held that libel was not constitutionally protected as free speech. The court flatly rejected this and said that the exceptions to First Amendment guarantees are tried by impartial courts whose procedures include traditional judicial safeguards and whose decisions are subject to correction by higher courts; union

76 *Colpo v. Highway Truck Drivers Union, Local 107*, 305 F.2d 362 (3d Cir. 1962).

77 Cases cited notes 72 and 73 *supra*.

78 324 F.2d 486 (2d Cir. 1963), *cert. granted*, 375 U.S. 991 (1964) (No. 688, 1963 Term; renumbered No. 17, 1964 Term), *reversing* 221 F. Supp. 545 (S.D.N.Y. 1963).

79 *Id.* at 490.

80 *Libutti v. Di Brizzi*, 50 CCH Lab. L. Rep. ¶ 19188 (E.D.N.Y. 1964).

81 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(a)(2), 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(2) (Supp. V, 1964), *supra* note 5.

82 *Ibid.*

83 316 F.2d 445 (2d Cir.), *cert. denied*, 375 U.S. 946 (1963), *reversing* 199 F. Supp. 554 (S.D.N.Y. 1961); *accord*, *Stark v. Twin City Carpenters Dist. Council*, 219 F. Supp. 528 (D Minn. 1963).

84 *Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952): "Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary . . . to consider the issues behind the phrase 'clear and present danger.'"

trials are conducted before union trial boards and often their "procedure is peculiarly unsuited for drawing the fine line between criticism and defamation."⁸⁵ Also, the court added, it would be impractical to try *de novo* each charge of libel in the federal courts. Thus the rule from *Saltzhandler* is that unions may not subject a member to any disciplinary action on a finding of libel or slander. Nor may union members be disciplined for circulating defamatory material,⁸⁶ maliciously vilifying officers,⁸⁷ picketing,⁸⁸ or urging members not to pay dues of doubtful legality.⁸⁹ The immunity applies not only to discussions among union members themselves but also to any public utterance.⁹⁰ The purpose of the guarantee of free speech and prohibition of union discipline is abundantly clear: to prevent union officials from using their disciplinary powers to silence criticism and punish those who would dare question and complain.⁹¹ This does not mean, of course, that a member has a license to libel, slander, or otherwise injure a brother member, for an injured member may still bring a civil or criminal action in a state court.⁹²

In the Senate debate on the "Bill" Senator Goldwater had "grave misgivings" about the "reasonable rules" proviso because he feared that this provision might be used to curtail speech and criticism.⁹³ To be sure, defendant unions have raised the claim of "reasonable rules,"⁹⁴ but the courts seem reluctant to accept any restrictions on free speech.⁹⁵ For example, in *Farowitz v. Associated Musicians*⁹⁶ the Second Circuit said: "A rule which subjects a member to expulsion for complaining of a tax which he reasonably believes to be illegal is not a reasonable rule."⁹⁷

In summary it may be said that the freedom of speech guarantees are broad, and the court interpretations appear to be accordingly broad.

V. Section 101(a)(3) Freedom From Arbitrary Dues Increases⁹⁸

This section prohibits dues increases in either locals or internationals unless approved by a majority of the members or delegates. There have been few reported cases interpreting this section. A district court has held that Section 101(a)(3)(A) was not violated where a vote was taken to change to a new method of assessing dues and the ballot implied that the dues were being reduced while actually they were being increased.⁹⁹ The court upheld the increase since there was no evidence that anyone had been misled. In *Ranes v. Office Employees Int'l. Union*,¹⁰⁰ the

85 *Saltzhandler v. Caputo*, 316 F.2d 445, 450 (2d Cir. 1963).

86 *Leonard v. M.I.T. Employees Union*, 225 F. Supp. 937 (D. Mass. 1964).

87 *Cole v. Hall*, 49 CCH Lab. L. Rep. ¶ 19035 (E.D.N.Y. 1964).

88 *Graham v. Soloner*, 220 F. Supp. 711 (E.D. Pa. 1963); *Gartner v. Soloner*, 220 F. Supp. 115 (E.D. Pa. 1963).

89 *Farowitz v. Associated Musicians*, 330 F.2d 999 (2d Cir. 1964).

90 *Graham v. Soloner*, 220 F. Supp. 711 (E.D. Pa. 1963).

91 *Saltzhandler v. Caputo*, 316 F.2d 445, 449 (2d Cir. 1963).

92 *Id.* at 451.

93 105 CONG. REC. 6722 (1959), 2 LEGISLATIVE HISTORY OF THE LABOR-RELATIONS REPORTING AND DISCLOSURE ACT 1235 (1959).

94 *E.g.*, *Stark v. Twin City Carpenters Dist. Council*, 219 F. Supp. 528, 532 (D. Minn. 1963).

95 See, *e.g.*, *Cole v. Hall*, 49 CCH Lab. L. Rep. ¶ 19035 (E.D.N.Y. 1964). *But cf.*, *Rosen v. District Council No. 9 of the Bhd. of Painters*, 50 CCH Lab. L. Rep. ¶ 19245 (S.D.N.Y. 1964) (union rule prohibiting support of or association with communists within scope of reasonable rule proviso).

96 330 F.2d 999 (2d Cir. 1964).

97 *Id.* at 1002.

98 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101 (a) (3), 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(3) (Supp. V, 1964), *supra* note 5.

99 *Brooks v. Local 30, United Slate Workers*, 187 F. Supp. 365 (E.D. Pa. 1960). In *King v. Randazzo*, 50 CCH Lab. L. Rep. ¶ 19152 (E.D.N.Y. 1964), the dues were indirectly increased by the international's creation of an intermediate body. The court found a violation of § 101(a)(3)(B3)(iii) since the international lacked express authority to raise the dues and because "such an important resolution, in order to comply with the spirit and in fact with the wording of the statute, can only be accomplished by express language." *Id.* at 32040.

100 317 F.2d 915 (7th Cir. 1963).

Seventh Circuit held that 101(a)(3)(A) did not give the locals a veto over the international's power to raise dues under 101(a)(3)(B). The court refused to assume "that Congress . . . intended . . . to strip international unions of their traditional power to control minima and maxima of rates of dues. . . ." ¹⁰¹

One case, *Wittstein v. American Fed'n of Musicians*, interpreting Section 101(a)(3)(B) is currently on the Supreme Court Docket.¹⁰² At issue is the correct interpretation of the phrase, "by majority vote of the delegates voting at a regular convention." The case arose when the American Federation of Musicians' convention approved a per capita dues increase. When the vote was taken, instead of each delegate's vote counting as one, the votes of the delegates were weighted in proportion to the number of members in the locals they were representing. The Court of Appeals for the Second Circuit held that the procedure was in violation of the plain meaning of 101(a)(3)(B) by which "Congress intended to prevent future skulduggery of every possible character and description in the fertile field of increasing dues, initiation fees and assessments. . . ." ¹⁰³ The dissenting judge chastised the majority for taking a "myopic view" of the statute and losing sight of the particular evils at which the "bill" was directed.¹⁰⁴ He buttressed his opinion by a few computations: since the locals range from memberships of 20 to 28,000 with a total membership of 280,000, a fully proportional system with at least one delegate per local would require some 14,000 delegates.¹⁰⁵ In light of the general purposes of the "Bill," *i.e.*, union democracy, it is suggested that even though the convention's procedure was not in accordance with the plain meaning of the statute, it was within its spirit. It is not beyond the competence of the courts to decide whether a particular system of weighting votes is a violation of the Bill of Rights.

VI. Section 101(a)(4) Protection of the Right to Sue¹⁰⁶

Section 101(a)(4) forbids a union to interfere with a member's right to bring a suit before a court or administrative agency. Included in this section is a proviso which says that members "may be required to exhaust reasonable hearing procedures" within the union, up to a maximum period of four months before initiating an independent court action. While many courts have discussed Section 101(a)(4), few of them have dealt with what at first glance seems to be its *raison d'être*: prohibiting discipline against a member who has brought suit in a court or agency.¹⁰⁷ Instead, the overwhelming number of decisions dealing with this section have been cases brought by union members under Title I in which, almost as a matter of course, the defendant union or officer has preliminarily raised the objection that the plaintiff has not "exhausted" his internal union remedies.¹⁰⁸

101 *Id.* at 917.

102 326 F.2d 26 (2d Cir. 1963), *cert. granted*, 376 U.S. 942 (1964) (No. 775, 1963 Term; renumbered No. 27, 1964 Term), *affirming* 223 F. Supp. 27 (S.D.N.Y. 1963).

103 *Id.* at 30. The court further said:

One need not be steeped in the historical data affecting the uses and abuses of labor organizations to realize that any complicated system of proposing and voting for increases in dues, initiation fees and assessments is subject to manipulation, to the disadvantage of the individual union member.

104 *Id.* at 30-33.

105 *Id.* at 33.

106 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) §101(a)(4), 73 Stat. 522-23 (1959), 29 U.S.C. 411(a)(4) (Supp. V, 1964), *supra* note 5.

107 *Sheridan v. United Bhd. of Carpenters*, 306 F.2d 152 (3d Cir. 1962) (opinion of Judge Kalodner), *reversing* 194 F. Supp. 664 (D. Del. 1961) (member brought civil suit); *Baron v. North N.J. Newspaper Guild*, 224 F. Supp. 85 (D.N.J. 1963) (member filed charges with NLRB); *McCraw v. United Ass'n of Journeymen of Plumbing*, 216 F. Supp. 655 (E.D. Tenn. 1963) (member filed charges with NLRB).

108 *E.g.*, *Ragland v. UMWA*, 188 F. Supp. 131 (N.D. Ala. 1960) (equal right to vote); *Saltzhandler v. Caputo*, 199 F. Supp. 554 (S.D.N.Y. 1961), *rev'd*, 316 F.2d 445 (2d Cir.), *cert. denied*, 375 U.S. 946 (1963) (free speech); *King v. Randazzo*, 50 CCH Lab. L. Rep. ¶ 19152 (E.D.N.Y. 1964) (illegal dues increase); *Baron v. North N.J. Newspaper Guild*, *supra*

The doctrine of exhaustion is not an innovation of the Bill of Rights. The requirement of exhaustion of internal remedies is a traditional principle of equity and judicial administration which is widely utilized in the interrelation of courts and administrative agencies.¹⁰⁹ The net effect of the requirement is to determine the "timing" of judicial intervention.¹¹⁰ The doctrine of exhaustion has also been utilized by the state courts in their dealings with union problems.¹¹¹ In the judicial interpretation of the Bill of Rights, the exhaustion clause, tucked into 101(a)(4), has been limitation of the jurisdictional authority of the court and the magic phrase that calls forth this venerable common law doctrine of exhaustion.¹¹²

The purpose of the Bill of Rights is to encourage union democracy and in so doing help unions to help themselves. It is, therefore, essential that unions have not only the incentive, but also the opportunity to make internal corrections, thereby strengthening the institutions themselves.¹¹³ The exhaustion requirement of 101(a)(4) is consistent with this goal, yet prevents evasion by the labyrinthic internal remedy system, since the "Bill" specifically limits recourse to union remedies to a maximum of four months.¹¹⁴ It has been suggested that it is the unions, and not the courts, who have the authority to require the exhaustion of internal remedies before a member brings a suit;¹¹⁵ however, it is nearly universally held that it is the courts who are empowered to require exhaustion.¹¹⁶

The more difficult question is: When should a court require a member to exhaust his internal union remedies? A few early cases suggested that the requirement was absolute and unconditional.¹¹⁷ However, the guide post on this question was implanted in the leading case on exhaustion, *Detroy v. American Guild of Variety Artists*,¹¹⁸ in which the Second Circuit emphasized that the statute says that exhaustion "may" be required, not "must" be required. Hence, the general rule is that exhaustion may be required at the court's discretion.¹¹⁹ A number of circumstances might influence a court's decision on exhaustion. One factor is the

note 107 (right to sue); *Burris v. International Bhd. of Teamsters*, 224 F. Supp. 277 (W.D.N.C. 1963) (hearing).

109 *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51 n.9 (1938); see generally 3 DAVIS, ADMINISTRATIVE LAW §§ 20.01-10 (1958).

110 3 DAVIS, ADMINISTRATIVE LAW § 20.01 (1958).

111 See, e.g., Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1086-92 (1951).

112 *Detroy v. American Guild of Variety Artists*, 286 F.2d 75, 77-78 (2d Cir.), cert. denied, 366 U.S. 929 (1961); *Parks v. IBEW*, 314 F.2d 886, 925 (4th Cir.), cert. denied, 372 U.S. 976 (1963).

113 E.g., *Acevedo v. Bookbinders Local 25*, 196 F. Supp. 308 (S.D.N.Y. 1961) where the court said at 313:

It is better calculated to carry out the Congressional policy by permitting labor organizations to establish democratic procedures through self-government and self-determination rather than by judicial mandate; this means that "not only that interference with internal affairs of unions... [should] be kept to the necessary minimum, but also that wherever possible we should encourage unions to bring about their own reforms before we resort to Government sanction." [quoting S. 505, 86th Cong., 1st Sess. (1959)]

114 E.g., *Johnson v. Local 58, IBEW*, 181 F. Supp. 734 (E.D. Mich. 1960). Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(a)(4), 73 Stat. 522-23 (1959), 29 U.S.C. § 411(a)(4) (Supp. V, 1964), *supra* note 5.

115 *Sheridan v. United Bhd. of Carpenters*, 306 F.2d 152, 159 (3d Cir. 1962) (concurring opinion of Judge Hastie). See *Detroy v. American Guild of Variety Artists*, 189 F. Supp. 573, 575 (S.D.N.Y. 1960), *rev'd*, 286 F.2d 75 (2d Cir. 1961).

116 E.g., *Deluhery v. Marine Cooks Union*, 199 F. Supp. 270 (S.D. Cal. 1961).

117 *Mendez v. District Council for Ports*, 208 F. Supp. 917 (D. P.R. 1962); *Detroy v. American Guild of Variety Artists*, 189 F. Supp. 573 (S.D.N.Y. 1960); *Smith v. General Truck Drivers*, 181 F. Supp. 14 (S.D. Cal. 1960); cf. *Penuelos v. Moreno*, 198 F. Supp. 441, 447 (S.D. Cal. 1961).

118 286 F.2d 75, 78 (2d Cir.), cert. denied, 366 U.S. 929 (1961), reversing 189 F. Supp. 573 (S.D.N.Y. 1960).

119 E.g., *Burris v. International Bhd. of Teamsters*, 224 F. Supp. 277 (W.D.N.C. 1963); *Branch v. Vickers, Inc.*, 209 F. Supp. 518 (E.D. Mich. 1962); *Deluhery v. Marine Cooks Union*, 199 F. Supp. 270 (S.D. Cal. 1961).

degree of certainty that an internal remedy will be forthcoming within a reasonable time.¹²⁰ What is a reasonable time is determined by reference to the statutory maximum of four months and the particular circumstances of the case.¹²¹ Other considerations are the type and immediacy of the harm that the plaintiff will suffer,¹²² the blatancy of the federal violation,¹²³ and the extent to which the nature of the alleged violation has precluded the likelihood of a fair and adequate remedy.¹²⁴ The exhaustion doctrine seems to be an integral part of the judicial system and of the Bill of Rights. It gives the courts a necessary flexibility in timing judicial intervention to the most appropriate moment.

VII. Safeguards Against Improper Disciplinary Action¹²⁵

Section 101(a)(5) prohibits a union from disciplining a member (except for nonpayment of dues) unless the union has first provided him with certain minimum procedural safeguards, to wit: written specific charges, reasonable time to prepare a defense, and a full and fair hearing. These requirements are to a large extent simply a statutory enactment of the state courts' common law that union members must be afforded a minimum due process when being disciplined by their union.¹²⁶

Much of the litigation concerning Section 101(a)(5) deals with the term "otherwise disciplined." The scope of this phrase as it encompasses the discipline of officers has been previously discussed.¹²⁷ A number of the cases construing "otherwise disciplined" involve situations where a union's action or inaction affects a member's job. While technically any union action or inaction which adversely affects a member's job or job opportunity could be considered "discipline," this has not been the case. One form of union conduct which clearly is "discipline" is blacklisting.¹²⁸ On the other hand a union's violation of a collective bargaining agreement vis-à-vis a member has been held not to be "discipline,"¹²⁹ although it may be under certain circumstances. In *Gross v. Kennedy*¹³⁰ the collective bargaining agreement provided that if an employee were fired, he could appeal to the union; if the union decided in his favor, the matter would then go to arbitration. In this case, after the employer let it be known that plaintiff was to be fired, the union requested that he first appear before the grievance board. After a summary hearing, the union decided against the member and thereafter he was fired. The defendant union claimed that he was not disciplined as a union member, but rather as an employee by the employer. The court held that the union's failure to follow the procedure of the collective bargaining agreement and its recommendations to the employer did constitute "discipline" within the meaning of Section 101(a)(5).

Some of the acts which are alleged to be "discipline" are within the ambit of the NLRB. Though a few cases have suggested that the NLRB's jurisdiction is exclusive in such cases,¹³¹ the weight of authority seems to be that even where

120 *E.g.*, *Harris v. International Longshoremen's Ass'n*, 321 F.2d 801 (3d Cir. 1963).

121 *E.g.*, *Johnson v. Local 58, IBEW*, 181 F. Supp. 734 (E.D. Mich. 1960).

122 *E.g.*, *Detroit v. American Guild of Variety Artists*, 286 F.2d 75, 81 (2d Cir. 1961).

123 *Ibid.*

124 See, *e.g.*, *Libutti v. Di Brizzi*, 50 CCH Lab. L. Rep. ¶ 19188 (E.D.N.Y. 1964).

125 Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(a)(5), 73 Stat. 523 (1959), 29 U.S.C. § 411(a)(5) (Supp. V, 1964), *supra* note 5.

126 See, *e.g.*, *Summers, American Legislation for Union Democracy*, 25 Mod. L. Rev. 273, 288 (1962).

127 See notes 25-46 *supra*.

128 *Detroit v. American Guild of Variety Artists*, 286 F.2d 75 (2d Cir.), *cert. denied*, 366 U.S. 929 (1961); *Burris v. International Bhd. of Teamsters*, 224 F. Supp. 277 W.D.N.C. 1963).

129 *Lucas v. Kenney*, 220 F. Supp. 188 (N.D. Ill. 1963) (failure to assign jobs); *Allen v. Armored Car Chauffeurs Union*, 185 F. Supp. 492 (D.N.J. 1960) (failure to prosecute grievance).

130 183 F. Supp. 750 (S.D.N.Y. 1960).

131 *McGraw v. United Ass'n of Journeymen of Plumbing*, 216 F. Supp. 655 (E.D. Tenn. 1963); *Forline v. Helpers Local 42*, 211 F. Supp. 315 (E.D. Pa. 1962).

the case may be arguably an unfair labor practice, nonetheless, the explicit Congressional declaration is that members have a right to be free from certain arbitrary union conduct.¹³² Thus in *Rekant v. Shochtay-Gasos Union, Local 446*,¹³³ where the members had voted to share work with the plaintiff, but then after unsatisfactory reports from employers, rescinded the resolution, the Third Circuit held this was only a "mere slap on the wrist," and not discipline.¹³⁴ On the other hand, a district court found that a member had been "disciplined" when the union refused to register him at a hiring hall because of an alleged narcotics conviction 28 years ago.¹³⁵

It has also been held that revocation of a local's charter by the international may constitute "discipline." In *Calabrese v. United Ass'n of Journeymen of Plumbing*,¹³⁶ the court held that, while every revocation of a charter by the international is not discipline under 101(a)(5), nonetheless, it is discipline where the revocation is part of an overall scheme to cancel one charter and create a new local, thus expelling certain members from the union without a hearing.

Few cases have outlined specifically what the procedural safeguards of Section 101(a)(5) must include. In most of the cases involving this section, the fact that the procedure has not been followed is usually acknowledged, and the controversy centers about some other aspect.¹³⁷ There is, however, one particular phrase in this section which seems sure to be the subject of future development, that is, "full and fair hearing."¹³⁸ How far will the courts go in reviewing a union's disciplinary hearing? Several courts seem to have taken a consciously restrictive approach, looking only to see that elemental due process requirements have not been flouted.¹³⁹ Other courts have probed deeper and buttressed their opinions by sallies into the domain of fact and evidence without attempting to articulate the scope of their power of review.¹⁴⁰ In a recent case, a New York district court examined not only the findings on which the union's conclusions were based, but also the evidence underlying the findings and decided that both were inadequate.¹⁴¹ The Second Circuit in *Vars v. International Bhd. of Boilermakers*,¹⁴² held that the evidence before the union's hearing or officer provided no basis for the conclusion that Vars had fraudulently submitted false pay claims. The court, attempting to establish some guidelines, conceded that it does not have the power to review matters of credibility of witnesses, or of strict weight of the evidence, but said that a "close reading of the record is justified to insure that the findings are not without any foundation in the evidence."¹⁴³ It is unlikely that the courts will review merely the form of union hearings, and close their eyes to the sufficiency of the evidence and findings. Once the courts do enter the evidentiary thicket, the problem shifts to a determi-

132 *E.g.*, *Rekant v. Shochtay-Gasos Union, Local 446*, 320 F.2d 271, 275 (3d Cir. 1963); *Parks v. IBEW*, 314 F.2d 886, 922 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963).

133 320 F.2d 271 (3d Cir. 1963), *reversing* 205 F. Supp. 284 (E.D. Pa. 1962).

134 *Id.* at 277.

135 *Figueroa v. National Maritime Union*, 49 CCH Lab. L. Rep. ¶ 18808 (S.D.N.Y. 1964).

136 211 F. Supp. 609 (D.N.J. 1962), *aff'd per curiam*, 324 F.2d 955 (3d Cir. 1963). See also *Parks v. IBEW*, 314 F.2d 886, 920 (4th Cir. 1963), *affirming* 203 F. Supp. 288, 312 (D. Md. 1962).

137 See, *e.g.*, *Rekant v. Shochtay-Gasos Union, Local 446*, 320 F.2d 271, 272 (3d Cir. 1963) (Does this constitute discipline?).

138 *Cf.* 4 DAVIS, ADMINISTRATIVE LAW §§ 28-30 (1958).

139 *Kuykendall v. Local 1763, United Bhd. of Carpenters*, 49 CCH Lab. L. Rep. ¶ 19040 (D. Wyo. 1964); *Phillips v. Teamsters, Local 560*, 209 F. Supp. 768 (D.N.J. 1962); *Rosen v. District Council No. 9, Bhd. of Painters*, 198 F. Supp. 46 (S.D.N.Y. 1961); *Smith v. General Truck Drivers Union*, 181 F. Supp. 14, 20 (S.D. Cal. 1960).

140 See, *e.g.*, *Leonard v. M.I.T. Employees Union*, 225 F. Supp. 937 (D. Mass. 1964) (no substantial evidence).

141 *Cole v. Hall*, 49 CCH Lab. L. Rep. ¶ 19035 (E.D.N.Y. 1964).

142 320 F.2d 576, 579 (2d Cir. 1963), *affirming* 215 F. Supp. 943 (D. Conn. 1963).

143 *Id.* at 578.

nation of what is sufficient evidence; a scintilla of evidence, substantial evidence, some evidence, or something else.¹⁴⁴

In addition to examining the evidence, the "full and fair hearing" requirement could include a review of the competency and impartiality of the union trial board. This would mitigate to some extent one of the inherent defects of union trials, the built-in bias¹⁴⁵ of the boards. In short, "full and fair hearing" seems to be a lever with which the inner sanctum of union trials and discipline can be exposed to extensive judicial review.

VIII. Conclusion

In general the federal courts have limited their intervention in union activities to situations which are expressly delineated in the Bill of Rights. Thus, it is clear that Title I is not a "catch-all" for members' miscellaneous grievances against unions. Where a member's grievance is within the scope of the "Bill," the courts have complied with its spirit, and, before taking judicial action, have given the unions an opportunity to correct the wrong. Whether this indirect approach has or will induce the hoped-for grass roots reformation within unions is a matter not discernible by surveying judicial opinions. It is suggested, however, that if unions themselves fail to make substantial reforms, the courts will tend toward more and more direct action in correcting abuses. This can be accomplished to some extent within the context of the Bill of Rights, *e.g.*, a broad interpretation of the right to vote, a disinclination to require exhaustion, and a detailed review of union disciplinary action.

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¹⁴⁴ Cf. 4 DAVIS, ADMINISTRATIVE LAW § 29 (1958).

¹⁴⁵ See Summers, *American Legislation for Union Democracy*, 25 MOD. L. REV. 273, 288 (1962).