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Voluntary Impartial Review of Labor: Some Reflections

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VOLUNTARY IMPARTIAL REVIEW OF LABOR: SOME REFLECTIONS†

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". . . The bureaucratic society is one in which the citizen is remote from the center of power and largely helpless in dealing with it. . . . [C]enters of private power have sprung up that are as bureaucratized as the government and that are as influential, perhaps even more influential, in the lives of the citizens."

— Robert M. Hutchins[1]

THE purpose of this paper is to examine the emerging concept of voluntary impartial review of the decisions of organizational tribunals passing upon internal disputes. Attention will center on the application of this concept to labor unions — the only area in which it has yet been tried.

I. THE FUNCTION OF IMPARTIAL REVIEW

The function of voluntary impartial review is to preserve the integrity of the organization.[2] The danger to be guarded against is that the organization will be perverted to the ends of those who obtain control of it instead of serving the interests of the members for which it exists. This peril is by no means peculiar to labor unions. It is the problem, so central to our time, of the big group and its obscuring, sometimes squelching effect upon its members. Voluntary impartial review is calculated to lessen this vitiating influence — to preserve the *raison d'etre* of the organization. Not only is this effort in obvious accord with the interests of membership, it is also coincident with the interests of the public through whose sufferance and grant the organization exists and is empowered.

What is voluntary impartial review? Let us proceed by example.

† This paper was written prior to passage of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin), signed into law by President Eisenhower on Sept. 14. Some provisions of the act are pertinent to the present subject, notably Title I — "Bill of Rights of Members of Labor Organizations." — W.E.O.

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1 THE SURVIVAL OF THE FREE SOCIETY, The Fund for the Republic, Bul. No. 7, May 1958, pp. 1, 5.

2 I first heard this phrase applied to impartial review by Walter Reuther.

A. *The Public Review Board of the UAW*

The Public Review Board of the United Auto Workers was created on April 8, 1957, by the biennial Constitutional Convention of the union.[3] Its creation required substantial amendments to the union constitution.[4] Some four years before, in 1953, the forerunner in this field had been similarly created by the Upholsterers' International Union.[5] Whether because of the small size of the latter union,[6] the relative narrowness and lack of finality of the jurisdictional grant,[7] or other factors, the Upholsterers' appeal board has had only one case presented to it since its inception.[8] This is in contrast to the twenty-four cases reported by the Public Review Board in its first annual report to the membership of the UAW.[9] Accordingly, one must look to the Public Review Board for the most active experiment in voluntary impartial review.

The jurisdiction of the board is succinctly put in article 31, section 3 of the UAW Constitution:

> "The Public Review Board shall have the authority and duty to make final and binding decisions on all cases appealed to it in accordance with Article 32 of the International Constitution [this article covers appeals generally], and to deal with matters related to alleged violation of any AFL-CIO ethical practices codes and any additional ethical practices codes that may be adopted by the International Union."

In terms of function, then, it is perhaps more helpful than mis-

3 UAW, Proceedings, 16th Constitutional Convention 97-108 (1957).

4 Id. at 99-103 for the major amendments. Art 31, §1 of the UAW Constitution, for example, provides: "For the purpose of insuring a continuation of high moral and ethical standards in the administrative and operative practices of the International Union and its subordinate bodies, and to further strengthen the democratic processes and appeal procedures within the Union as they affect the rights and privileges of individual members or subordinate bodies, there shall be established a Public Review Board consisting of impartial persons of good public repute, not working under the jurisdiction of the UAW or employed by the International Union or any of its subordinate bodies."

5 UIU Gen. Laws, art. XXVI, §6 (b).

6 Approximately 55,000 members, as compared to the UAW membership of over one million. U.S. Bureau of Labor Statistics, Dept. of Labor, Bul. No. 1222, DIRECTORY OF NATIONAL AND INTERNATIONAL LABOR UNIONS IN THE UNITED STATES 45, 31 (1957).

7 The jurisdiction is limited to appeals in disciplinary cases. See note 5 supra. Moreover, a decision of the appeal board upholding a penalty of expulsion is subject to further appeal to the next convention of the union. UIU Gen. Laws, art. XXVI, §6 (a). Neither of these limitations exists in the case of the Public Review Board of the UAW.

8 This information is accurate as of the time of this writing. It is based on information from the legal department of the UIU.

9 This report, covering the eighteen-month period from the creation of the board through September 30, 1958, was published in full by the union in the December 22, 1958, issue of *Solidarity*, the UAW newspaper at pp. 4-7.

leading to refer to the board as a supreme court for the union as to intra-union grievances.[10] More accurately, it is one half of a dual supreme court system, the other half being the convention. Much of the board's jurisdiction is shared with the convention in the sense that the appellant has an election as to which of them he wishes to have pass upon his appeal.[11] Once invoked, however, the jurisdiction of either is final; there is no appeal from one to the other. The uniqueness of such renunciation of power by an organization of the size and consequence of the UAW to a tribunal of outsiders hardly needs remark.

What is the make-up of this tribunal of outsiders? The UAW Constitution establishes that it is to be composed of seven "impartial persons of good public repute."[12] The international president proposes their names to each biennial convention for ratification, subject to the prior approval of the International Executive Board.[13] The initial constituency of the body reflects its character: Rabbi Morris Adler of Congregation Shaarey Zedek, Detroit, Chairman; Magistrate J. A. Hanrahan of the Essex County Magistrate's Court, Windsor, Ontario; Monsignor George G. Higgins of the National Catholic Welfare Conference, Washington, D. C.; President Clark Kerr of the University of California; Judge Wade H. McCree of the Wayne County Circuit Court, Detroit; Bishop G. Bromley Oxnam of the Methodist Church, Washington, D. C.; and Dr. Edwin E. Witte, Professor Emeritus of Economics at the University of Wisconsin.

In a sense, the UAW is the ideal vehicle for the experiment in voluntary impartial review. Since it is free of the gross offenses that blight too many other unions, attention may focus upon the more basic problems of preservation of union integrity, found to some extent in every such organization, however honest and well-

[10] As art. 31, §3 of the UAW Constitution, quoted in the text, indicates, there is a dual character to the Public Review Board's jurisdiction: (1) It serves as the supreme tribunal of the union as to cases appealed to it under the ordinary appellate procedure. (2) It has additional power to act with respect to alleged violations of any AFL-CIO or UAW ethical practices codes. In the first of these roles, the Public Review Board's function is analogous to that of the tribunal of ultimate resort in any other judicial or quasi-judicial system. In the second role, however, the analogy is not as accurate, there being some circumstances under which the Public Review Board can take action on its own motion without the necessity of an appeal. The contours of the latter power are not free of doubt either as a matter of pertinent constitutional language or of board experience to date. For the ethical practices codes now in effect, see note 47 infra.

[11] UAW Constitution, art. 32, §8. All citations are to the constitution as amended at the 1957 convention and in effect at the time of this writing.

[12] Id., art. 31, §§1, 2.

[13] Id., art. 31, §2.

intentioned its leadership. These problems involve the fundamental relationship between union hierarchy and members.[14]

B. *The Need for Impartial Review*

The problems of leadership-membership power format are shared by all democratic institutions. There is one vital difference in this regard, however, between the union and other "private" organizations, on the one hand, and our subdivisions of public government, on the other. The element of an independent judiciary is lacking in the former. And because unions have been insulated to a large extent from scrutiny by the public courts through the reluctance of the courts to interfere with the internal affairs of "voluntary" associations,[15] the expense and delay of public litigation, and the stigma of disloyalty attached to such resort by a union member,[16] their internal functioning has been left relatively unqualified by the "rule of law."[17] The executive officers of the union, particularly the international hierarchy, are left in practical effect to interpret as well as to execute the law of the union. When the ambiguity of the written word and the varietal factual patterns to which it must be applied are considered, the power to interpret superimposed upon the power to execute is the power to rule.

Such is the power potentially wielded by any leadership charged with determination of the extent of its own authority as established by the applicable law. The UAW is no exception. Its constitution provides that the International Executive Board "shall decide all questions involving the interpretation of this Constitution between Conventions"[18] and "shall pass upon all

14 See KERR, UNIONS AND UNION LEADERS OF THEIR OWN CHOOSING, Fund for the Republic Pamphlets—The Free Society (Dec. 1957); Kovner, "The Legal Protection of Civil Liberties Within Unions," 1948 WIS. L. REV. 18; Hardman, "Legislating Union Democracy," THE NEW LEADER, Dec. 2, 1957, p. 3.

15 See Chafee, "The Internal Affairs of Associations Not for Profit," 43 HARV. L. REV. 993 (1930); Summers, "Legal Limitations on Union Discipline," 64 HARV. L. REV. 1049 at 1050-1051 (1951).

16 "Labor's long-standing distrust of the courts is reflected in the provisions in sixty-six constitutions which prohibit members from resorting to the courts until all appeals within the union have been exhausted." Summers, "Disciplinary Powers of Unions," 3 IND. & LAB. REL. REV. 483 at 503 (1950). See also Pacific Maritime Assn., 43 L.R.R.M. 1470 (1959), for an example of job discrimination by a union against an employee who had sued to regain union membership.

17 The phrase "rule of law" is used in this paper primarily to indicate government within the bounds and limitations established by laws, the governing officials deriving their powers therefrom, being controlled thereby and answerable thereunder. For other meanings of the phrase, see 6 AM. J. COMP. L. 518 (1957).

18 UAW Constitution, art. 12, §7.

claims, grievances and appeals from the decisions of subordinate bodies of the International Union. . . ."[19] Before creation of the Public Review Board, the authority of the International Executive Board to interpret the law it is charged with executing was circumscribed only by the overriding authority of the convention, the seat of the ultimate judicial and legislative power within the union. It requires no cynicism to appreciate the inadequacy of a convention of some two-to-three thousand non-law-oriented delegates meeting every two years to qualify in any significant respect the effect of the interim interpretative powers of the executive officers.[20]

[19] Id., art. 12, §8.

[20] The great bulk of this convention work falls to a grievance committee which is made up of nine members appointed from the convention delegates *by the International Executive Board.* UAW Constitution, art. 8, §§18, 19; UAW, Proceedings, 16th Constitutional Convention 26 (1957). [Appointment of such an appeals committee by the officers is the general rule in unions. See Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 at 25 (1950).] This committee reviews the record and hears such further evidence and argument as the parties choose to present. It then reports its conclusions and recommendations as to disposition of the appeals to the convention at large, usually as one of the last items of business and under heavy pressure of time. The convention acts on the basis of these reports and recommendations, which are sometimes augmented by additional argument from the appellants, other parties, and the floor. Although this cumbersome process is not "rubber-stamping," it certainly is not likely that the decisions of the International Executive Board will be disturbed by it, a conclusion supported by the following figures on appeals of such decisions to the last three UAW Conventions:

Appeals Presented	Recommendations of Grievance Committee			Action of Convention on Grievance Committee's Recommendations		Summary of Convention Decisions		
	Affirm	Reverse	Modify	Accepted	Rejected	Affirmed	Reversed	Modified
1957 ___13	12	0	1	13	0	12	0	1
1955 ___ 8	7	0	1	8	0	7	0	1
1953 ___ 9	8	1	0	8	1	7	2	0
—	—	—	—	—	—	—	—	—
Totals __30	27	1	2	29	1	26	2	2

UAW, Proceedings, 16th Constitutional Convention 387-418 (1957); UAW, Proceedings, 15th Constitutional Convention 303-333 (1955); UAW, Proceedings, 14th Constitutional Convention 33-35, 182-230, 331-367 (1953).

The sole rejection by the convention of a grievance committee recommendation came in a case involving a simple issue and unusually strong identification of the delegates with the appellant. The latter had been discharged from his employment for an unauthorized absence of over three days. He claimed to have had a "lady friend" call in to report his illness to the employer, a point controverted by the company. The question of credibility thus raised had been resolved against appellant by the union tribunals, including the International Executive Board. His grievance had accordingly not been processed to the umpire stage by the union. After listening to a persuasive plea by the appellant and to counter-arguments, the delegates rebelled against the felt inclination of the International Executive Board, and of the Grievance Committee in supporting it, to side with the employer in the resolution of a question of credibility. UAW, Proceedings, 14th Constitutional Convention 348 (1953).

For further supporting figures and similar conclusion with respect to appeals to conventions in other unions, see Summers, supra this note, at 15, 25-26. By way of contrast, in the first six appeals decided by the Public Review Board, three resulted in reversals.

In effect, then, absent some technique of separation of powers through impartial review, the executive power in a union runs the union pretty much in accordance with its own ideas of fairness and organizational purpose. This is certainly true between conventions, particularly where the union constitution has a provision like that of the UAW requiring compliance with the decision of the lower tribunal as a condition precedent to the right of appeal.[21] It is almost as true in the judicial area even after the convention has exercised its supreme appellate power.[22] If the convention has any greater vitality in the legislative area, a question afield from the present discussion, all it can do is to affect prospectively the running of the union, again subject to the interpretative power of the executive.

What is needed, then, are techniques for the control of executive power. The executive must rule not only *by* law if the principles of self-government and the rights of the individual are to be preserved, it must rule *under* law.[23]

C. *The Problem of Bigness*

Where the group involved is small enough to permit regular contact among the members and their officials, the members may be expected to contain the officials within the law the members have formulated, and to assure responsiveness, through the personal pressures and town-meeting forums that the small group provides. This becomes progressively more difficult as the organization grows. The member becomes more and more "remote from the center of power" and "helpless in dealing with it."[24] With increase in size comes bureaucracy.

Obviously, bureaucracy is not an evil per se. It is simply a response to the needs of running a large, complex organization. But in its impersonality and big-picture orientation it has a built-in potential for suppressing the individual in the interests of the group, or of the leadership of the group, or of the group as the leadership perceives them. As a consequence, the individual has

21 Art. 32, §1: ". . . in all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified."

22 See note 20 supra.

23 Goodhart, "The Rule of Law and Absolute Sovereignty," 106 UNIV. PA. L. REV. 943 at 947 (1958).

24 Hutchins, in THE SURVIVAL OF THE FREE SOCIETY, The Fund for the Republic, Bul. No. 7, May 1958, pp. 1, 5.

a need for a protecting offset that increases with the size of the organization. This need is most acute where the organization is of most consequence to the member. For this reason, labor unions are apt to be the most crucial, non-public vying-ground for the struggle between the individual and the group of which he is a member.[25]

Impartial review is no panacea for this problem. It is, however, an attempt to deal in some measure with the preservation of legitimate individual interests within and vis-a-vis the group.

D. *The Problem of Paternalism*

All of this sets the stage for what I have come to believe is the bedrock question with respect to internal union government. It, too, has most interesting implications for democracy generally. The question is: to what extent should a union be run from the top? Put another way: how much paternalism can a democratic institution afford? And for how long? This is the bedrock problem, in my opinion, because it is present when no other problem is present, because it is the product of good faith rather than bad faith, because the problem is one of degree and judgment in contrast to the other less subtle internal difficulties, and because it is the one problem almost certain to be encountered in every union or other large organization.[26]

In essence, the problem is one of competition between the values of dynamic paternalism and of self-government. There is much to be said on both sides since leadership is at the zenith of need and potential in a democratic context. The problem resolves itself into the search for a frame of reference which will accommo-

25 For a recent discussion of the problems involved in this struggle and a collection of authorities, see Levitan, "Government Regulation of Internal Union Affairs Affecting the Rights of Members," BNA DAILY LABOR REP. No. 109, pp. 5-11 (June 4, 1958) (Special Supp. No. 13, Library of Congress Legislative Reference Service).

26 Joseph Kovner has said: "The denial of civil liberties to union members is not a problem requiring legal remedies because of willful union tyrannies. It is rather the result of a common human failing of officials, who occasionally believe that they know best what is good for the membership, and frequently maintain that criticism and opposition divide the union and weaken its essential unity." Kovner, "The Legal Protection of Civil Liberties Within Unions," 1948 WIS. L. REV. 18 at 19.

The problem is humorously reflected in a column by Eric Sevareid: "When clerical employees in the national headquarters of the AFL-CIO talked about organizing their own union, one of them, a daughter of George Meany, uttered a remark since become classic: 'Why do you want to do that? Father knows what is best for you.'" Sevareid, "The Other Side of the Coin," THE REPORTER, Sept. 18, 1958, p. 6. See also Paul Jacobs' most pertinent and interesting commentary upon a specific case: "Mr. Hayes Settles a Local Disturbance," THE REPORTER, April 2, 1959, p. 18.

date the virtues of dynamic leadership without vitiating the principles of self-rule. In the case of labor unions, the issue is further complicated by the frequently-asserted conflict between the "fighting mission," with its demand for discipline, and the procedures of democracy.

Upon the answer to the problem put in the preceding paragraphs, in whatever of its forms, depends the whole thrust of impartial review. This is not to say that this tribunal of outsiders should not also be concerned with hands in the till, self-dealing, sham elections, and similarly gross aberrations. It is only to say that the latter are the relatively simple problems, at least in theory, involving application of irrefutable principles. In practice, of course, they are very difficult problems — but not of impartial review so much as of the criminal law. No judicial or quasi-judicial review is calculated to cope with major corruption in a union. Only police work and preventive legislation can deal with this.[27] Nor will a corrupt leadership accept voluntarily a bona fide system of review by outsiders. Major corruption (as opposed to minor corruption by lesser union officials) is not then a realistic concern for voluntary impartial review. Paternalism, on the other hand, with its good-faith base, is not only a proper concern for such review, it is the very essence of the problem of leadership-membership relations which gives occasion for impartial review in the first instance.

The problem posed for impartial review by paternalism is compounded by the necessity of having first to establish the standard to be applied in contending with it. This difficulty is best dealt with as one of scope of review.

II. SOME PROBLEMS IN SCOPE OF REVIEW

A. *The Problem of Standard*

What is the proper standard for voluntary impartial review? In the case of the Public Review Board of the UAW, this is a question not fully resolved by the union constitution or, at this writing, by the board itself. Let us speculate as to the possibilities. I think there are four alternatives, with some obvious compromises available among them. The first is to accept paternalism as a desirable,

[27] George Meany is quoted as having stated: "Until the Senate hearings, we [AFL-CIO leadership] did not know one one-hundredth of the corruption existing in the union movement." Hardman, "Legislating Union Democracy," THE NEW LEADER, Dec. 2, 1957, p. 5.

or at least inevitable, fact and to restrict review to the framework thus established. The second is to refuse to accept a paternalistic frame of reference and to seek criteria instead in the law of the union. The third is to look beyond the law of the union where deemed appropriate to the law in a larger sense, to federal and state constitutions, statutes, judicial decisions. The fourth is to look beyond the law as such to morality as perceived by the members of the reviewing authority.

Now let us examine the implications of acceptance of each of these four frames of reference, in turn. First, if the desirability or inevitability of paternalism be conceded, whether for reasons of unique disciplinary need in the trade union context, membership apathy, or otherwise, the function of impartial review is to assure that it remain benevolent. Such review would tend to accomplish three things: (1) fairness of decision by the standard of benevolent paternalism, externally applied; (2) a degree of anticipatory self-discipline by the executive power of the union; and, of course, (3) preservation of the values of sophisticated, streamlined leadership. The primary drawback to such an approach is that paternalism, however fair-minded, is essentially antidemocratic. The father-child relationship assumes children. Moreover, like any other variety of benevolent autocracy or oligarchy, it holds ever within itself the seed of tyranny and its husk-mate, corruption.

A second approach for impartial review, the one apparently adopted by the Upholsterers for their appeal board,[28] is to hew to the line established by the law of the union. The effort would be to apply the yardstick of at least substantial compliance with that law — in form and in fact. Even purportedly "fair" deviation from the forms of such law would be required to carry a heavy burden of justification; conversely, compliance in form only would not immunize from challenge. The virtues of review of this scope are: (1) the powers of leadership are thus circumscribed by the constitutional accord of the membership, which is the source of the grant, and also by consonant by-laws and resolutions, (2) the power of the reviewing authority itself is similarly restricted, (3) the rights of the members under these provisions are correla-

28 Article XXVI, §6 (b) (iii) of the UIU General Laws provides that the decisions of the appeal board "shall be based solely on the facts and the provisions of these General Laws." As previously indicated, the jurisdictional grant to this board is confined to the review of disciplinary cases. See note 7 supra.

tively protected, and (4) summing up all of the foregoing points in the traditional phrase of democracy, the rule would thus be one *of laws* and not *of men.* The arguments against a review so oriented would come from two directions, I suspect. Some labor people might be inclined to fear it as essentially legalistic, based upon attention to the technical and the trivial and losing sight of the overriding considerations of "fairness" and "justice," and upon the subtly-related ground of the incompatibility of such approach and the fighting mission of the union. They might also contend that even if such an approach is theoretically sound, as a practical matter many union constitutions have been so loosely drawn as not to bear close scrutiny at present. Conversely, some people outside the ranks of labor might be inclined to belittle this approach on the score that autocratic power can hardly be curbed by dams which, through control of delegates and conventions, are arguably designed by the alleged autocrats.

The third approach would involve application of a more basic standard where the circumstances warranted. This standard might be loosely described as "the law of the land." The tribunal would thus have the power to look beyond, to ignore a provision of the union's constitution which does not, for example, square with its idea of due process of law as established by federal and state constitutions, statutes, and judicial decisions. The favorable aspect of such scope of review is that it affords a close approximation of the benefits of review in an attuned public court without the delay, expense, and stigma attaching to judicial review itself.[29]

[29]The vagaries of judicial review of decisions of union tribunals are dealt with in Summers, "Legal Limitations on Union Discipline," 64 HARV. L. REV. 1049 (1951). The usual approach in disciplinary cases (which constitute the great bulk of what cases there are) is to require (1) that the action taken be in accordance with the rules of the organization, (2) that the proceedings pursuant to the rules be conducted in good faith, and (3) that the rules and proceedings not be contrary to natural justice. See Chafee, "The Internal Affairs of Associations Not for Profit," 43 HARV. L. REV. 993 at 1014 (1930). The third factor is frequently put in terms of "reasonableness" or "fairness." See, e.g., Taxicab Drivers Local 889 v. Pittman, (Okla. 1957) 41 L.R.R.M. 2045. "Natural justice" operates not only to fill gaps in the procedural rules of the organization, but also to upset an express rule which is contrary thereto. "The principle is thus a sort of unwritten 'due process' clause which invalidates the statute of the association. Its meaning is equally vague." Chafee, supra, at 1015-1016. Cf. Spayd v. Ringing Rock Lodge, 270 Pa. 67, 113 A. 70 (1921) (expulsion for petitioning legislature for repeal of "full crew law," in violation of union rule, held invalid under state bill of rights); Gilmore v. Palmer, 109 Misc. 552, 179 N.Y.S. 1 (1919) (suspension without hearing under union rule providing for such summary action held invalid). See Crossen v. Duffy, 90 Ohio App. 252, 103 N.E. (2d) 769 (1951).

The need for resort to the courts is accordingly minimized. The chief drawback to this scope of review is that, by definition, it involves going beyond the clear grant of power to the impartial tribunal contained in the union's constitution. Such reaching out for power would tend to undermine the confidence so essential to the successful functioning of any judicial system, but even more so a voluntary one, of those subject to the jurisdiction. The antipathy of organized labor, rooted in history, to the overreaching for power by the courts would tend to aggravate the felt offense.

The fourth approach involves the freest review of all — as far-reaching as the concepts of morality held by the members of the tribunal. In the case of an essentially lay tribunal such as the Public Review Board of the UAW, reasonable contention can be made for such breadth of review. Not only are five of the seven members not law-trained, but the emphasis upon the "public" character of the review suggests a submission of the union's operation to measurement by the public conscience as sampled at a high level. This thought is further substantiated by the specific make-up of the board. Its membership is drawn from three of the main morality-shaping institutions of our society — church, school, and judiciary. Although there is something noble in the idea of review by such lofty standards, it would seem upon analysis to be but another form of paternalism. Or, if you choose, a paternalism superimposed upon paternalism — a kind of grandfather-father-child hierarchy. If right-and-wrongness as conceived by the board is to be the final test, any conflicting provision of the union constitution is obviously deprived of force. One of the by-products of the application of this standard might well be an unnecessarily heavy volume of appeals; no matter how clear a provision of the union constitution was on a given point, no one could be sure whether the impartial tribunal, applying its particular moral insight, would choose to give it effect. This fourth approach would have the prime drawback of paternalism at the union level, the anti-democratic thrust, without the one real compensating value of such paternalism — streamlined, sophisticated leadership.

Of the four suggested standards for impartial review, the second — the law of the union — seems to me the most appropriate as a point of departure. The rule of law is thus brought to bear upon the internal government of the organization through impartial application of the very regulations the membership has agreed

to be bound by. The values of dynamic leadership may thus be contained within the framework of self-rule.

B. *Impartial Review and Organizational Purpose: Of Ends and Means*

It is obvious that the integrity of an organization can be subverted through perversion of its facilities and power to other than the purpose for which it exists. An example of this is where the leadership of a union utilizes the union for self-aggrandizement, such as financial gain and personal power, in a fashion opposed to the interests of the membership. In such circumstances the leaders involved are apt to look upon the union in proprietary fashion. There is, moreover, a subtler variety of proprietorship, growing out of the understandable feeling of having helped to build the union through personal sacrifice and of holding, as a consequence, the interest of a major, if philanthropic, investor. The investment is in a mission, and the missionary impulse is not always consonant with that of democracy. The zeal of the missionary, although insulating against personal aggrandizement and corruption, tends to be at odds with the compromises inherent in democracy. The exception, of course, is where the mission itself is that of bringing a fuller democracy to the group.

What, then, is the purview of impartial review with respect to organizational purpose? It is important here, it seems to me, from the standpoint of the implications of self-government, to recognize the essential merging of ends and means in the concept of organizational "purpose." In the case of a labor union, the end, put one way, is to further the interests of the members vis-a-vis the employer, and perhaps also in a larger sense. But what are the "interests of the members?" I know of no more democratic or otherwise reliable guide to these interests than is set up by the members in their own organic law. This law indicates the general character of the membership interest. It also specifies (or should) the means by which this general, group end is to be particularized and sought after in the specific case. In this way, the "purpose" of the union *in the concrete situation* is always the product of the means established in the union law for developing it; the end thus becomes what the means produce. Moreover, the general purpose itself is always subject to reformulation by the means specified in that law. Included in the means, fully conceived, are the rights of the members *inter se* and vis-a-vis the organization. In a sense, the very

reason for such rights is to define and protect the process of particularizing and reformulation by which the policies of the union are in constant state of determination.[30]

The proper concern of voluntary impartial review seems to me to be the means, not the ends *as such*. For example, it should not be the function of such review to pass upon claims by disgruntled members that the union has acted beyond its powers in pressing a particular collective bargaining demand, such as profit-sharing, assuming the demand to have been developed by the processes set forth in the union law. The basis for such claim of ultra vires might be that profit-sharing is not within the purpose for which the union was created because it does not relate directly enough to wages, hours, and working conditions. I am convinced that voluntary impartial review cannot afford this scope for several reasons. First, such matters are of a political nature in the sense of the "political questions" typically excepted from the jurisdiction of the public courts; they are not properly within the ambit of the judicial function, but are legislative or executive in character.[31] Second, to attempt to contain the organizational thrust in this fashion would tend to restrict internal democracy rather than to facilitate it; this would run counter to the whole purpose of impartial review. Third, exercise of jurisdiction over such matters would draw the impartial tribunal into the political arena, both internal and external, and would, in turn, impeach its impartiality to the point of destruction of membership, leadership, and public confidence; it would no longer be "above the battle." Lastly, as a practical matter, no union could assume the risk of voluntary imposition of impartial review of such scope.

These objections are not encountered in the "means" area. Here, the force of impartial review is in complete accord with the processes of internal democracy and is "above the battle" to the extent consistent with getting the job done. As favorable a climate as possible for fulfilling its function is thereby assured. The legitimacy or illegitimacy of the ends sought by the organization vis-a-

30 Professor Slichter's provocatively simple observation is in point: "Democracy is needed in trade unions because there is room for great differences among the members in the objectives of unions, in their policies, and in the ways in which they conduct their affairs." SLICHTER, CHALLENGE OF INDUSTRIAL RELATIONS 100 (1947).

31 See, generally, Field, "The Doctrine of Political Questions in the Federal Courts," 8 MINN. L. REV. 485 (1924). The treaty-making power is perhaps the most apposite example of political question. Professor Slichter has pertinently noted, "A trade union may be compared to a national government which is engaged in the main in conducting foreign relations." SLICHTER, CHALLENGE OF INDUSTRIAL RELATIONS 22 (1947).

vis outsiders would thus be left where it seems to me to belong, with the public tribunals, Congress, and the larger law.

In the case of the Public Review Board of the UAW, the constitutional amendments creating and empowering it have wisely mooted the problem of jurisdiction over collective bargaining matters by reserving jurisdiction to the union tribunals. The only power expressly granted to the board in this area is that contained in article 32, section 8 (b), which provides:

> "where the appeal concerns the action or inaction relative to the processing of a [shop] grievance, the jurisdiction of the Public Review Board shall be limited to those instances where the appellant has alleged before the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management."

Obviously, where "fraud, discrimination, or collusion with management" is claimed to be present, means rather than ends are involved and the integrity of the union is in issue.

C. *Ambiguity in the Law of the Union*

The question of whether ambiguity in fact exists in the union law, and the further question of how to deal with it, should be resolved, I think, on the basis both of trade-union point of view and of the impact of the larger law.[32] The importance of the larger law derives from at least two considerations. First, since the power of review exists in the civil courts, that law is likely to be, in any event, the ultimate measure of the ambiguous provision.[33]

[32] To similar effect in the general area of labor arbitration, see ELKOURI, HOW ARBITRATION WORKS 132, 136, 169-170 (1952), and arbitration cases there noted.

"But does the Arbitrator have any right to be concerned about the legal consequences of his award? . . . It is the opinion of this arbitrator that he is bound by the Agreement between the parties. However, that Agreement and the legal framework within which it operates are not two separate and distinct entities. Rather, the Agreement is what it means within the legal framework of the society within which it operates." Arbitrator Abernathy in F. H. Hill Co., Inc., 8 LAB. ARB. REP. 62 at 65 (1947), quoted in ELKOURI at 170.

[33] See, generally, Summers, "Legal Limitations on Union Discipline," 64 HARV. L. REV. 1049 (1951). The reviewing courts have not considered themselves bound by the union's interpretation of procedural or substantive provisions of its law but have instead made independent interpretations where the circumstances warranted. E.g., Blek v. Wilson, 145 Misc. 373, 259 N.Y.S. 443 (1932) (provision authorizing local executive board to "hear and determine the matter summarily" improperly construed by union as allowing suspension without providing plaintiff with notice and copy of charges); Smetherham v. Laundry Workers' Union, 44 Cal. App. (2d) 131, 111 P. (2d) 948 (1941) (assault and battery upon another member not a violation of union provision that "no member shall injure the interests of another member by undermining him . . . in wages, or in any other wilful manner . . ."); Leo v. Local Union No. 612 of Intl. Union of Operating Engineers, 26 Wash. (2d) 498, 174 P. (2d) 523 (1946) (soliciting members for rival union not a violation of

In cases where judicial review will actually be sought, there is obvious value in anticipation of the decision likely to be rendered by the court. And in cases where judicial review will not be sought, for whatever reason, it seems in keeping with simple justice that the decision rendered by the impartial tribunal be as close an approximation as possible of what a well-advised civil court might have ruled. The aggrieved member who is impecunious or is unwilling to seek review in the courts because of a sense of loyalty to the union is thus dealt with in similar fashion to the one with funds and inclination for such resort. Second, and perhaps more fundamental, reference to the larger law for criteria would have the added value of defining more sharply the sources of guidance for impartial review and of maximizing the integrity of such guidance. The rule of law would thus be fully promoted.

It may be seen that treatment of the matter of ambiguities in the union law in the manner suggested accomplishes an effective reconciliation in many cases of the second and third approaches, previously mentioned, to the proper scope of impartial review, the criterion of the former being the law of the union and of the latter being the law in a larger sense. Most of the cases of sufficient consequence to result in appeal to the impartial review board will turn upon provisions of the union law which are subject to more than one interpretation as applied to the circumstances in issue. To the extent, then, that the larger law is looked to in such cases for the standards of determination, there is a blending of the criteria of the law of the union and of the larger law. Similarly, to the extent the larger law equates with a properly-conceived morality (as, it is submitted, it either does or should), there is also

union provision against "creating dissension"); Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931) (original civil suit against union officers for misappropriation of union funds not a violation of provision requiring exhaustion of rights of appeal within union). See Summers, supra this note, at 1061-1062, 1077-1079.

The courts may, of course, review more narrowly the decisions of impartial review boards than of other union tribunals. This should tend to be true as a matter of psychology, if nothing more. Even as a matter of articulation of standard, some curtailment of review might be accomplished through analogizing to arbitration awards. The American Civil Liberties Union has, in fact, recommended that the decisions of impartial review boards be made "enforceable by legal action, as a binding arbitration award." ACLU, "Democracy in Labor Unions, A Report and Statement of Policy," first published in 1952 and reprinted in a pamphlet entitled A LABOR UNION "BILL OF RIGHTS," DEMOCRACY IN LABOR UNIONS, THE KENNEDY-IVES BILL—STATEMENTS BY THE AMERICAN CIVIL LIBERTIES UNION, at 25 (Sept. 1958). [This 1958 publication will be cited hereinafter at ACLU, DEMOCRACY IN LABOR UNIONS.] Decisions of arbitrators are narrowly reviewed for such factors as fraud and want of jurisdiction. See UPDEGRAFF AND MCCOY, ARBITRATION OF LABOR DISPUTES 124-127 (1946).

an accommodation of the fourth approach to the scope of impartial review, viz., application of the criteria of morality.

Resort to the larger law for guidance wherever the union law is indecisive would result in resolution of the more fundamental ambiguities on the basis of considerations of due process, civil liberties, and basic public policy. I believe, moreover, that impartial reviewers should be quick to perceive ambiguity wherever such considerations are involved;[34] they should be most reluctant to accord meaning to a provision of the union law which would result in a denial of essential rights.[35] Ambiguities not resoluble at the level of these primary considerations would then be dealt with in the fashion in which meaning must always be given to ambiguity within the framework of reason, through resort to the circumstances. Trade union perspective would here, of course, be vital.

At least two further benefits would seem to follow from the foregoing orientation. First, the emphasis upon the larger law in the area of doubt would tend to underscore the need for law-trained, law-disciplined personnel in impartial review. Second, such emphasis would lead the union hierarchy to a greater reliance upon its own legal staff in the internal area where greater reliance of this sort would prove most salutary. Anticipatory seeking of legal advice by the leadership as to internal matters would be in marked contrast to the situation frequently existing at present where the legal staff of the union is not consulted until after the action has been taken, and then for the purposes of repair.

A corollary to placing the power of interpretation of union law in an impartial review board is to deprive the union executive of the power to shape that law to its own ends through mere interpretation. And where the review board is oriented to a close consideration of that law, in the context of the larger law, it becomes obvious that the executive must either be restricted in the exercise of power or seek a clearer grant from the membership or

34 This accords with the canon of statutory construction against interpretations raising questions of constitutionality. ". . . [E]ven if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Crowell v. Benson, 285 U.S. 22 at 62 (1932).

35 The American Civil Liberties Union has declared that "the recognition of three basic rights of individual workers is the minimum essential to union democracy." These are: (1) the right to participate freely in the processes of self-government, (2) the right to equal treatment with all others governed by the union, (3) the right to a fair trial before being subjected to any penalty or deprived of any rights of membership. ACLU, DEMOCRACY IN LABOR UNIONS at 11.

their delegates. This, in my judgment, is an entirely proper concomitant of the application of the rule of law to internal union affairs. One of three things will result. (1) The leadership will be reluctant to ask for the bald grant of power, either for internal or external political reasons. (2) The leadership will not be reluctant to ask, but the membership will refuse to grant the express power. (3) The leadership will ask and the membership will grant the power. It is difficult to argue against any of these three alternatives from the premise of self-rule.

D. *The Impact of the "Fighting Mission"*

A common argument against fuller democracy for the internal union is that this would be incompatible with the needs of the union as a fighting organization.[36] The army analogy is frequent here. But unions today can hardly be contended to be army-like *all* of the time. If they were, a prime reason for their being would be contravened—the seeking of dignity and self-rule in the employment environment.[37]

Accordingly, an approach must be found that will accommodate the validities of the "fighting mission" and the "hostile climate"[38] without unduly prejudicing democratic values. Analogy to our national society has been suggested.[39] The latter has, in a sense, a fighting mission, the fight for freedom — a continuing struggle, as frequently emphasized. And yet, we do not permit the possibility or even imminence of strife, external or internal, to preclude

[36] See the discussion of this and problems of internal democracy generally in Levitan, "Government Regulation of Internal Union Affairs Affecting the Rights of Members," BNA DAILY LAB. REP. No. 109, pp. 5-11 (June 4, 1958.).

[37] For a forceful statement of this fundamental need of workers and function of unions in an industrialized society, see Katz, "Minimizing Disputes Through the Adjustment of Grievances," 12 LAW AND CONTEM. PROB. 249-252 (1947); Summers, "Union Powers and Workers' Rights," 49 MICH. L. REV. 805 at 820 (1951).

As stated in the ACLU, DEMOCRACY IN LABOR UNIONS, at 10: ". . . unions should be democratic because their principal moral justification is that they introduce an element of democracy into the government of industry. They permit workers to have a voice in determining the conditions under which they shall work. This high objective of industrial democracy can be fulfilled only if unions which sit at the bargaining table are themselves democratic."

[38] For graphic description of these environmental factors, see Summers, "Disciplinary Powers of Unions," 3 IND. & LAB. REL. REV. 483 at 489 (1950); Summers, "Union Powers and Workers' Rights," 49 MICH. L. REV. 805 at 818 (1951).

[39] See Summers, "Union Powers and Workers' Rights," 49 MICH. L. REV. 805 at 819 (1951); Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 at 30-31 (1950); ACLU, DEMOCRACY IN LABOR UNIONS, at 4; Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 at 829, 832-833 (1954); Crossen v. Duffy, 90 Ohio App. 252 at 270-272, 103 N.E. (2d) 769 (1951).

the observance of the values which underlie a democratic society. On the contrary, we deal with this problem in the framework of the very law which gives structure to such a society and protection to the rights of membership therein. Thus, our national government has the power under the Constitution not only to mobilize the citizenry but to declare martial law when the need exists. Under martial law many democratic rights are suspended out of consideration for more basic interests endangered at the moment. But because of concern over the possible permanent loss of the suspended rights through too facile resort to martial law, certain protections have been developed in the process of reconciling the rule of law with the occasional emergency which must be dealt with in streamlined fashion.

Why not a similar accommodation for the union?[40] If under some circumstances the union cannot afford the impedimenta of democracy, why not deal frankly with these in the union constitution? When the union is fighting or girding to fight — when it becomes truly army-like — why not a mobilization or martial-law equivalent, with appropriate built-in protections? Conversely, why operate under a military philosophy when the "fight" is not only cold but conducted in refined fashion under the rule of law established in a long-term collective bargaining agreement, complete with its own judicial system for the resolution of disputes arising thereunder and culminating in impartial arbitration? The choices would seem to be (1) an unqualifiedly democratic approach to internal union affairs, (2) a democratic approach qualified only where necessary and then within well-defined bounds, themselves democratically established, and (3) an approach assertedly democratic but subject to ill-defined qualification imposed from above on the vague basis of a "fighting mission." It is no mere coincidence that (2) is the middle road.[41]

[40] The analogy is not perfect. Arthur Goldberg has pointed out that a salient difference between the union and our political society is that the latter continues no matter who wins a particular election or what other discontent may arise. The union, on the other hand, is perennially subject to complete overthrow, in decertification proceedings, by another union, through employer-encouraged attrition. See Goldberg, "Union Democracy: A Trade Union Viewpoint," an unpublished paper presented at the Fund for the Republic conference on "Labor in a Free Society" at Arden House, Harriman, New York, May 10, 1958. See also Summers, "Union Powers and Workers' Rights," 49 MICH. L. REV. 805 at 818 (1951). Professor Slichter has sharpened the analogy by comparing the union to a national government "engaged in the main in conducting foreign relations." SLICHTER, CHALLENGE OF INDUSTRIAL RELATIONS 22 (1947).

[41] Unions already make substantial use of this approach. Many union constitutions expressly authorize the international officers to suspend the normal government of a local union, take control of its property, and conduct its affairs under some form of trusteeship.

III. THE CHARACTER OF THE IMPARTIAL TRIBUNAL

The *Labor Union "Bill of Rights"* recently adopted by the American Civil Liberties Union incorporates as one of the elements of "due process within the union," applicable in all disciplinary proceedings against union members, a "final review by an outside board."[42] This "Bill of Rights" goes on to state:

> "Such review shall be conducted by an impartial person or persons (1) selected by the membership of the union on a regular or term basis in advance of the filing of charges, or (2) agreed to by the labor organization and the accused, or (3) if no such person or persons have been selected or agreed to, designated, upon request therefore [sic], by an impartial association or group such as the American Arbitration Association, state mediation bodies, or the like."[43]

It should be noted that this admirable statement of principle does not go as far with respect to impartial review as do the provisions of the UAW Constitution empowering the Public Review Board. This is true even though elsewhere in the ACLU's "Bill of Rights" impartial review is also provided of actions by an international union which "deprive a local of its right to conduct its own affairs through trusteeship or other devices."[44] The Public Review Board's jurisdiction is broader in that, in addition to encompassing review of any disciplinary action within the union and of any imposition of, what are called in the UAW, administratorships,[45] it also reaches

> (1) "any other cases in which the International Executive Board has passed upon an appeal from the action of a subordinate body . . .;"[46]

These provisions can be criticized because of vagueness of standards and inadequacy of procedure for determining the fact of necessity which justifies such action. "The vagueness of most constitutional provisions regarding receiverships is exceeded only by their breadth." Cox, "The Role of Law in Preserving Union Democracy," 72 HARV. L. REV. 609 at 639 (1959).

42 DEMOCRACY IN LABOR UNIONS, at 6-7. This "Bill of Rights" was adopted by the ACLU on March 21, 1958. Id. at 3.

43 Id at 7.

44 Id. at 6: "If a reasonable number (such as 20 per cent) of the membership of the local affected requests it, there should be a prompt review of the international union's action [in imposing the trusteeship] by an outside review board."

45 UAW Constitution, art. 32, §8 (a).

46 Id., art. 32, §8 (b).

(2) "matters related to alleged violation of any AFL-CIO ethical practices codes and any additional ethical practices codes that may be adopted by the International Union."[47]

Two observations seem pertinent at this point. First, the maintenance of union integrity requires a jurisdictional grant to the impartial reviewers broad enough to accomplish a separation of the executive power and the ultimate judicial power within the union. Thus only can the union leadership be effectively made subject to the law it is charged with executing. Second, since the impartial reviewing authority thereby has the final responsibility of interpreting the law of the union, there is obvious virtue in stability and continuity of that body. It is in the role of a supreme court for the union, and supreme courts do not function on an *ad hoc* basis. Accordingly, the first of the three alternatives posed by the ACLU as to the character of the impartial tribunal seems most appropriate, at least as applied to the larger, well-established unions.

If, then, it is desirable to have impartial review on other than an *ad hoc* basis, what should be the character of the tribunal? A provocative approach to this question is to ask why would not a permanent-umpire system, as provided for under many collective bargaining agreements, be a more practicable handling of the matter than the seven-man Public Review Board of the UAW or the nine-man Appeal Board of the Upholsterers. The problems of the geographical dispersal of the union members and of bringing the tribunal to the aggrieved member in order to give reality to his paper rights would thus be resolved. But the umpire (as the name itself connotes) is called upon to decide between adversaries of near-equal strength in disputes between union and employer. They mutually select him, they mutually pay him, and he is subject to being unseated at the displeasure of either. In short, all of the obvious factors of influence, conscious and subconscious, operate to objectify him. The considerations are the other way with respect to the tribunal impartially reviewing intra-organizational decisions. Such a tribunal does not decide between near-equals. It

[47] Id., art. 31, §3. In effect, this provision of the UAW Constitution incorporates by reference the AFL-CIO Ethical Practices Codes. Six of these had been promulgated at the time of this writing. Their coverage is indicated by their titles: I. Local Union Charters; II. Health and Welfare Funds; III. Racketeers, Crooks, Communists, and Fascists; IV. Investments and Business Interests of Union Officials; V. Financial Practices and Proprietary Activities of Unions; A. Minimum Accounting and Financial Controls; VI. Union Democratic Processes. AFL-CIO, Codes of Ethical Practices, Publication No. 50 (June 1957).

decides, in one degree or another, between the strong and the weak — the big organization and the little member or the little segment of membership. In a sense, its very function is to protect the weak from the strong. The obvious factors of influence here operate to bias the tribunal, to deneutralize it.

What does this suggest respecting the constituency of the tribunal? We are dealing with a kind of judiciary for the union and a judiciary without independence exists in name only. Moreover, the forces undercutting independence are here at flood-tide. How, then, is independence to be achieved? The following factors should be considered. First, it is probably better that the tribunal be multiple in membership since there is more security against influence in numbers. Second, it is essential that the membership of the union have the determinative voice in the selection of the personnel of the tribunal. Third, the members of the tribunal should be appointed for definite terms, at least as long as the interval between constitutional conventions.[48] Fourth, it is desirable that the members of the tribunal be sufficiently independent of the job itself to make it of not too great consequence to them financially or otherwise.[49] Fifth, although the union provides operating funds, the financial relationship should be set up to assure maximum independence.[50] Sixth, the analogy to the judiciary suggests the value of training in legal discipline. A seventh factor is the highly personal one of strength of character and perspicacity of the individuals under consideration. Eighth, the tribunal's sense of independence will to some extent reflect the power it feels itself to have to enforce compliance with its decisions. Such power must depend to a considerable extent upon the ability to activate pub-

[48] The ACLU has urged that the members of such a tribunal "be appointed for a long term and removable only for misconduct, thereby freeing these boards of the political pressures within the union which make present union procedures inadequate." DEMOCRACY IN LABOR UNIONS, at 25. There is, however, some difficulty to making such appointments for longer than the period between union conventions. The latter are, as in the case of the UAW, the seats of the highest union authority, possessed of plenary constitutional power each time that they meet.

[49] Art. 31, §8 of the UAW Constitution provides that the annual budget presented by the Public Review Board to the union shall include "reasonable compensation" for its members.

[50] For example, art. 31, §8 of the UAW Constitution provides that the Public Review Board shall present to the union its annual budget covering all anticipated items of expenditure. The International Secretary-Treasurer is thereupon "instructed and authorized to deposit quarterly in a depository designated by the Public Review Board to the account of the Public Review Board the necessary funds required by the budget submitted by them."

lic opinion.[51] This, in turn, is dependent upon the opinion the public holds of the members of the tribunal. A final qualifying factor is that while the tribunal's independence of the union is a requisite, antagonism to it is entirely out of order. The purpose of impartial review is not to destroy, but to maintain the integrity of the organization.

The above criteria, applied to the constituency of the UAW Public Review Board, might indicate perhaps an inadequate number of law-trained members. This is not to suggest that the entire membership of an impartial tribunal should be drawn from the bar. There is much to be said for leavening with the lay point of view. This is especially true in the labor area where suspicion as to the law and lawyers continues strong. On the other hand, what we are dealing with in the internal organizational area is not essentially different from what is found in society at large — the problems are those of the relationships between and among individuals and groups of individuals, the strong and the weak, their rights and duties *inter se*. This is the very stuff of law. To deny the value of law training and law discipline in dealing with these internal relationships is to deny it in the national and international communities as well.

If, then, the constituency of the particular board satisfies the criteria of independence, including independence of the job itself, how is it going to get the work done in the face of the demands of the primary occupations of its members? There are the elements of a true dilemma here, especially when viewed in terms of a labor-wide application of voluntary impartial review, since the factors of efficiency and independence tend to counter one another. Where the problem is most apt to manifest itself is in delay in the disposition of cases. There are worse things than slow justice, but delay is of particular concern in relationships as vital and volatile as those usually present in internal union disputes.

While well-conceived procedures can mitigate this difficulty, they cannot obviate it. A case in point is the one not infrequently encountered by the Public Review Board where the appellant desires to present additional evidence to the board. A rule has been formulated permitting the board to receive such evidence in a proper case either directly or through a record made before

[51] The ACLU recommends in this connection that the "union constitution . . . should provide that the order of the [impartial review] board could be enforceable by legal action, as a binding arbitration award." DEMOCRACY IN LABOR UNIONS, at 25.

a hearing examiner. Although the latter procedure protects the busy board members from the time lost in hearing voluminous testimony, it nonetheless leaves them with the burden of decision based upon a review of that record and of written and oral argument before the board itself should the latter be offered.

Another time-saver for the Public Review Board, incorporated into the UAW Constitution itself, permits the disposition of cases by panels of board members numbering no less than three.[52] If it were not for this provision, the functioning of the board would be utterly unresponsive to the needs of the situation. With it, the board has been able to discharge its function, but only with the delay implicit in its being made up of very busy personnel.

The Upholsterers have sought to deal with this practical problem with respect to their appeal board in two ways: (1) they have created a larger tribunal, numbering nine members;[53] (2) they have empowered that tribunal to act with only one member sitting.[54] This double-edged serving of expediency may well be at the expense of factors of greater persuasion. For example, the independence of the tribunal is apt to be diluted, absent other controls, as the responsibility for decision is attributable to fewer men; the moral support of the "team" is thus denied. Moreover, the effectiveness of the tribunal as a supreme court for the union is also diluted with fewer members actually participating in the decisional process: the decision is less likely to reflect the contagion of idea so important to any deliberative group; its precedent, its standard-setting value is weakened, both intrinsically and as a matter of esteem. The disadvantages of *ad hoc* arbitration in a continuing relationship thus tend to apply.[55]

Where are the qualified members for impartial review boards to be found?[56] Independence and availability they must have. Sophistication as to labor and the law they should have. A suggested source of personnel is the faculties of schools of law and

[52] Arts. 31, §5, and 32, §10.

[53] The UIU Constitution does not specify the number of members for the appeal board. However, nine members have been designated. Professor Cox is the chairman. UIU JOURNAL, March, 1957, p. 8.

[54] UIU Gen. Laws, art. XXVI, §6 (b) (iii): "The Chairman [of the appeal board] shall, at his discretion, designate one or more, but not exceeding three, members of the Appeal Board . . . to consider and determine the appeal. . . ."

[55] See ELKOURI, HOW ARBITRATION WORKS 40-41 (1952).

[56] One eminent observer has declared: ". . . the woods are not full . . . of the exceptional breed of 'watchdog committee' the UAW secured. Ultimately, it is illusory to depend on public-spirited citizens to engage *en masse* in laundering union conflicts." Hardman, "Legislating Union Democracy," THE NEW LEADER, Dec. 2, 1957, p. 7.

related disciplines. These schools have a responsibility, in my judgment, to provide a pool of disinterested experts for just such purposes as this. Such persons are devoted to teaching and scholarship. Participation in impartial review should be academically worthwhile, apart from the additional financial and other considerations. They would accordingly benefit in a way which would assure enthusiasm without impairing objectivity.

Another source of personnel for impartial review is the clergy. Few people out of the main stream of organized labor have as sincere concern for and understanding of the human problems in this area as the sizable body of ministers, priests, and rabbis who have found the time and inclination for such contact. They are, moreover, uniquely sensitized by the very nature of their work to the individual and group values which must be counterpoised in the process of impartial review. Their independence of pressures off the merits has often the strength of rare conviction. I know of no better group from which to leaven what I believe should be essentially a law-oriented function.

A third potential source is among the superannuated. Too little use is made of this national resource, in any event. I have in mind professors emeritus, elder statesmen of labor, of government, retired or semi-retired churchmen, judges, newspapermen, writers, lawyers, etc. — in short, those who have the wisdom of experience, the availability of relaxed pursuit of livelihood, the independence of age.

IV. FURTHER PROBLEMS AND BENEFITS OF IMPARTIAL REVIEW

A. *The Problem of Relevance*

There are few experts in relevance trying cases to or sitting on union tribunals. As a consequence, the records are long and the issues often obscured. This reflects the political flavor of the disputes involved, enhanced by the abrasion of close relationship, and the naivete of the parties and the union tribunals with respect to the refinement of issues in a judicial-type proceeding.

Since the context of union cases is political, it is hardly surprising that political considerations should affect union tribunals. What other criteria are available to them? The personnel is anything but law-disciplined; thus, the rule-of-law approach in any effective sense is impeded. The apparent alternatives are two which seem really only varying degrees of one. The first — applied in cases which concededly involve union politics, either in the

narrow, personal sense or in the broader, policy sense — is the politics of the tribunal. The second is that chameleon "fairness." But what is most apt to be the measure of fairness to a tribunal rooted in politics in a case with political undercurrents?[57] And cases without political implications are apt to be rarely encountered among those of consequence for impartial review.

What is the effect of these political considerations upon the presentation to the impartial reviewers?[58] First, they inherit, in the record from below, the divided direction of the proceedings before the union tribunals. Second, they are confronted in the proceedings before them with the same ambiguous criteria of relevance. At both levels, the issues for decision in the immediate case tend to become lost in the larger political issues. The participants — parties, witnesses, and, in the case of the union tribunals, members of the tribunal — often speak for the record with the instinct of political tactitians, justifying past actions and spading for future ones in a fashion little restricted by the issues in the case. In short, all involved are concerned to some extent with making a record *for themselves.*

Nor is this expansion of relevance, with its wasteful and fogging effect upon the particular hearing and the record, readily control-

[57] See Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 at 19, 22-25, 29-30 (1950).

"The judicial machinery by which discipline cases are tried is so interlocked with the political machinery by which policies are made that discipline may become a political football. It will at least be colored by political forces if not a deliberate weapon of political power. The right to an unbiased tribunal will be guaranteed only when unions establish within their structure a truly independent judiciary." ACLU, DEMOCRACY IN LABOR UNIONS, at 20-21.

[58] Strong contention has been made that "no amount of appeal to impartial appellate tribunals can cure the root defect of a biased trial under the restrictive appellate rules that are second-nature in our judicial system today." Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 at 833 (1954). See also Summers, "Legal Limitations on Union Discipline," 64 HARV. L. REV. 1049 at 1082-1084 (1951). Without denying the force of this argument, three qualifying considerations are suggested: (1) Voluntary impartial review can afford more flexibility, breadth, and depth of inquiry for such bias than can the civil courts. (2) To impose the requirement of initial trial before outsiders may be unrealistic in terms of expense and general membership reaction; a "cure" of such invasive proportions might well import its own diseases. (3) It is possible to maximize the impartiality of a union trial tribunal through improved techniques of selection; the UAW, for example, at the 1957 convention which created the Public Review Board also amended its constitutional procedure so as to provide for the selection of trial tribunals by lot from among the members, with a certain number of peremptory challenges being permitted to each side. Art. 30, §7.

The proposal of the ACLU in its Labor Union "Bill of Rights" is that "the trial committee shall be composed of impartial persons who are not, by virtue of office, responsible to the individual or individuals making the charges, or selected, if agreement cannot otherwise be achieved, from an agency or group completely outside the union." DEMOCRACY IN LABOR UNIONS, at 7.

lable within the framework of impartial review. To a large extent, impartial review must inherit the traditions of the union. In the UAW these are most relaxed. Interestingly, there is a real value in such relaxed standards here. The one thing perhaps more important in the work of a tribunal than doing justice is imparting a sense of justice having been done. This objective is frequently thwarted through the stringent application of standards of relevance too subtle for laymen to comprehend. In the courts this concern is mitigated by the fact that all parties are represented by counsel who understand the evidentiary rules being applied and can interpret them for their clients. No such amelioration is available in union proceedings where lawyers are the exception rather than the rule.[59] Nor is it so necessary in the UAW in view of the relaxed procedure followed at the union level. The principle there applied is one of catharsis. Everyone involved is permitted to say pretty much what he chooses to say, subject, of course, to the inhibiting presence of union peers and superiors who may be expected to seek retribution in the expanded political forum. Not only is everyone given the opportunity to "get the load off his chest," he is almost required to do so. A remarkable effect of this in the more successful UAW hearings is that somewhere near the three-quarter mark, the aggrieved become conciliatory. They begin to profess their confidence in the tribunal, the possibility of error on their part, their willingness to accept in good spirit an adverse decision should that result. Between the obvious values of catharsis, on the one hand, and of efficiency, on the other, lies a mild dilemma of voluntary impartial review.

B. *The Passive Benefit*

The prime contribution of the Public Review Board of the UAW, I am convinced, is the mere fact of being. Whatever its scope of review, its very existence exercises a healthful restraint on the hierarchy of the union. The effect of this self-discipline can be perceived in comparative statistics of International Executive Board review of disciplinary cases appealed from the local unions. In the two-year period immediately preceding creation

59 According to Professor Summers, only two of 154 union constitutions studied, that of the UAW and of the Inland Boatmen, expressly allow *legal* counsel to an accused member in disciplinary proceedings. Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 at 17 (1950). "79 unions provide that the defendant shall have counsel. 74 of these specifically provide that he shall be a member in good standing, 3 do not state who he shall be, and 2 expressly permit lawyers." Id., n. 5.

of the Public Review Board, 1955-57, of the fifteen such cases appealed to the International Executive Board, ten were affirmed, two resulted in modification of penalties, and three were reversed. By way of contrast, in the year immediately following creation of the Public Review Board, nine such appeals were heard by the International Executive Board, only two of which resulted in affirmance; two others resulted in modification of penalty, and the other five were reversed.[60] It is thus apparent that the Executive Board affirmed, in terms of percentage, three times as many of the decisions of the local tribunals in such cases in the two-year period before creation of the Public Review Board as it did in the first year thereafter.

There are other, less formal, respects in which the very availability of review by outsiders, who may not "understand," tends to qualify the actions of leadership. Suffice it, for present purposes, to say that all of this qualification is for the good, in my judgment, as measured by the yardstick of maintenance of organizational integrity. The pressures of impartial review are in the direction of adherence to (and re-examination of) the law of the union and the concomitant protection of the individual rights of members thereunder; they are, at the same time, away from the loose practice that is conducive to arbitrariness and politically-oriented exercise of power.

C. *The Counseling Service*

The law of a union is no more self-applying than any other kind of law. For the rights accorded by such law to be meaningful, awareness of their existence and of where and how to realize them is necessary. Ordinarily, this function falls to lawyers, but, as a practical matter, lawyers are not available to union members with respect to intra-organizational affairs. The problem is further accentuated by the incongruous fact that while advice as to rights under the law of society at large is permitted to be given *only* by licensed practitioners,[61] advice as to rights under the law of the union is, by reason of expense, inconvenience, and the stigma attaching within such ranks to law and lawyers,[62] effectively pre-

60 UAW Public Review Board, First Annual Report, note 9 supra, at 5.

61 E.g., Bump v. District Court of Polk County, 232 Iowa 623, 5 N.W. (2d) 914 (1942).

62 See Summers, "Disciplinary Procedures of Unions," 4 IND. & LAB. REL. REV. 15 at 17 (1950).

cluded in most instances from other than fellow workers and union functionaries.

Nor can responsibility for such advice be safely left in all cases with the union officials, chiefly local, to whom the aggrieved member might have reasonable access. They are frequently themselves ignorant of the member's rights in the particular case under the law of the union; they are frequently not disinterested; they are always busy, and frequently too busy, with what they, perhaps rightfully, consider problems of higher priority. In the union-versus-management climate, they are sometimes prone to think of member-versus-union problems as nuisances.

The present-day labor leader's world is group-oriented. He tends to think in terms of collectivity, of security for the group. He is, as a consequence, a questionable custodian of individual rights, at least of individual rights against or affecting the union group itself. Moreover, his inclination is to measure all individual interests in terms of their impact upon the union group.[63] In most cases, fortunately, the group interests are likely to be coincident with the interests of the individual members of the group, fully perceived, the former being simply the collective embodiment of the latter. But at the point of essential conflict the contemporary labor leader is apt to reflect a group set. Adherence to a kind of "party line" becomes the course of virtue, the practice of individualism at best a qualified vice.

In seeking to resolve this conflict, it is easiest to rationalize the extremes. As usual, however, wisdom would seem to lie along a line of nice accommodation. And the very premise of impartial review — that the member needs protection within and against the organization — renders it an appropriate vehicle for approximating this adjustment. A substantial part of its effort may properly be directed toward a counseling service by means of which confused and aggrieved members may obtain information as to their rights within the union, including the right of appeal to the reviewing authority itself.

This would amount to more than a guide service, ideally, since a prior communication to the union, with a request for a follow-up report, might sensitize the available procedures for the aggrieved member. In the case of the Public Review Board such a

63 See Aaron, "Unions and Civil Liberties: Claims vs. Performance," 53 N.W. UNIV. L. REV. 1 (1958); Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 (1954).

program has worked quite effectively in some instances, the degree of success varying with the concern, initiative, and union influence of the international staff member assigned to liaison with the board at the particular time. Some of the most gratifying accomplishments of the board have come in matters never maturing to "cases" before it because of early resolution through informal handling. The potential of an informal program of this sort for bridging the gulf between big organization and little member has barely been touched.

D. *The Matter of Voluntarism*

Obviously, impartial review could be other than voluntary.[64] For example, a governmental agency, perhaps the National Labor Relations Board, could be given jurisdiction over intra-union grievances.[65] Or a kind of industrial court might be created to pass upon the same.[66] Or the reviewing authority might be placed in the Department of Labor, or left with the courts under a broader grant of jurisdiction than they have been traditionally willing to assert.[67] Although the strengths and weaknesses of involuntary review would vary with the technique adopted, it seems to me the potential benefits in the broader sense are these: it could reach all unions subject to federal jurisdiction; it could

[64] For a discussion of some of the possible techniques, see Levitan, "Government Regulation of Internal Union Affairs Affecting the Rights of Members," BNA DAILY LAB. REP. No. 109, 25-26 (June 4, 1958); Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 at 835-838 (1954); Aaron and Komaroff, "Statutory Regulation of Internal Union Affairs—II," 44 ILL. L. REV. 631 (1949).

[65] NLRB proceedings patterned after unfair labor practice procedure have been incorporated in past bills before Congress. See the articles cited in note 64 supra for evaluation and criticism of such an approach. A procedure paralleling the provisions of §10 (k) of the Taft-Hartley Act, providing for determination of a jurisdictional dispute by the NLRB if the parties themselves do not submit it to arbitration or otherwise settle it, has been suggested. See Williams, note 64 supra, at 836: "It is here proposed . . . that the National Labor Relations Act be amended to provide for Board settlement of union discipline cases under a standard of 'just cause,' which power can be exercised only if the union refuses to submit the dispute to an impartial arbitrator for final and binding decision on the same standard of 'just cause.'"

[66] J. B. S. Hardman has suggested a "Court of Intra-Union Relations." "The thought is patterned on the idea of the courts of domestic relations. Discipline and cohesion are essential to the maintenance of unions as effective organizations, even as they are essential in family life. The reasoning that went into the setting up of the family courts is applicable to the problems of union democracy. Labor leaders, in the higher echelons, love to refer to their unions as the labor or union family." Hardman, "Legislating Union Democracy," THE NEW LEADER, Dec. 2, 1957, 3 at 7.

[67] See Aaron and Komaroff, "Statutory Regulation of Internal Union Affairs—II," 44 ILL. L. REV. 631 at 665-674 (1949), for a favorable comment upon the enlargement of judicial review as a technique of supervision. Professor Williams, on the other hand, has summarized the case against this approach. Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 at 835-836 (1954).

establish a uniform scope of review; it could, presumably, provide an independent, competent tribunal and staff to assist it; the matter of enforcement would be resolved. On the opposite side, in addition to public expense, the values of voluntarism might be lost. Perhaps the most significant of these values is assurance of a tribunal sophisticated as to labor matters and not motivated by anti-union considerations.

It is not my purpose at this time to weigh the gain against the loss. I feel obliged to note, however, that just as the hallmark of civilization is "obedience to the unenforceable,"[68] so does an organization manifest its dedication to civility and the principles of democracy by the discipline it voluntarily assumes. And it matures through such dedication in a way not otherwise to be achieved. The UAW is, in this sense, the beneficiary of the process of impartial review it has itself created. I should be concerned were this path of self-growth to be foreclosed.

Accordingly, my hope is that any program of required review which may be adopted will make provisions for self-imposed systems of review.[69] This might be accomplished through legislation empowering a supervisory federal agency to review intra-union grievances based upon alleged denial of the principles of self-government and due process of law. The legislation might provide that the decisions of voluntary tribunals be accorded a strong presumption of validity, perhaps even finality, on any appeal to the supervisory agency, provided the jurisdictional grant, procedures, and indicia of independence of the particular tribunal comply with the standards laid down in the statute and the regulations of the agency.[70] In this way, the values of voluntarism might be preserved

68 Lord Moulton, "Law and Manners," 134 THE ATLANTIC MONTHLY, July, 1924, p. 1, excerpted in CHEATHAM, CASES ON THE LEGAL PROFESSION, 2d ed., 124 (1955).

69 See LESTER, AS UNIONS MATURE 152 (1958). An AFL-CIO impartial review board might, for example, be created with jurisdiction ceded to it by such of the affiliated unions as choose to participate, much after the fashion of the AFL-CIO "No-Raiding Agreement" approach to the problem of jurisdictional disputes. [This pact, providing for submission of such disputes to an impartial umpire, became effective for signatory unions in 1954. See, e.g., United Textile Workers v. Textile Workers Union, (7th Cir. 1958) 42 L.R.R.M. 2605.] If necessary, subordinate impartial tribunals might also be created, perhaps for each of the six departments of the AFL-CIO: Building Trades, Industrial Union, Maritime Trades, Metal Trades, Railway Employees, Union Label.

70 Professor Cox has suggested that the Secretary of Labor might be authorized "to issue periodic certificates exempting a union from governmental enforcement proceedings . . . upon a finding that the union had established an independent appeal board under the auspices of which a union member . . . would receive at least as great protection" as at the instance of the government. Cox, "The Role of Law in Preserving Union Democracy," 72 HARV. L. REV. 609 at 623 (1959).

to the extent consonant with generic impartial review. At the same time, voluntarism is shored up against its inherent weakness — its dependence upon the continuing good will of the very leadership it exists to circumscribe — by the federal sanctions in reserve.

V. CONCLUSION

Detailed consideration of the procedures developed by, and the cases and complaints presented to, the Public Review Board[71] has been purposely omitted in this paper. My aim for the present has been to share a few impressions which may help to establish perspective. I have suggested that the broad function of voluntary impartial review is to maintain the integrity of the organization. Some kind of independent "judiciary" is necessary to accomplish this in large, highly political organizations such as labor unions. The leadership is otherwise left to interpret the law it executes in accordance with its own political interests and its own ideas of what is good for the organization and the membership. The problems of paternalism, special interest, and impersonality are inherent in this context of bureaucracy.

It follows that the primary yardstick of voluntary impartial review is the law of the organization. Where ambiguity forces resort to outside criteria, these should include the larger law and its imports, that is, what civil courts might consider in passing on the matter. This would lead to a better definition of the sources of guidance for impartial review; also, the decisions rendered would approximate those that well-advised courts might be expected to reach on review of the impartial tribunal.

Of the arguments that might be directed against the approach I have suggested, one in particular disturbs me to the point of further consideration. Much has been said and written about the need for protecting the "civil rights" of union members,[72] a concern I profoundly share. Some who espouse this view may find my suggestions too allegiant to the law of the union and thus too restrictive of impartial review. This contention would be grounded, I presume, on the thesis that the framers of the union law cannot

[71] These cases, complaints, and procedures are reported in the Public Review Board's First Annual Report, note 9 supra.

[72] See, e.g., ACLU, DEMOCRACY IN LABOR UNIONS; Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 (1954); Summers, "Union Powers and Workers' Rights," 49 MICH. L. REV. 805 (1951); Kovner, "The Legal Protection of Civil Liberties Within Unions," 1948 WIS. L. REV. 18; Witwer, "Civil Liberties and the Trade Unions," 50 YALE L.J. 621 (1941).

be trusted to evince sufficient legislative concern for basic substantive and procedural rights. Without intending to minimize this apprehension, I should like to advance some counter-considerations that seem to me persuasive.

(1) It is important, initially, to recognize the premise underlying my suggestions, viz., that of *voluntary* impartial review. A program assumed voluntarily has much to commend it, even though it be concededly more limited in scope than an imposed program. More use of the voluntary program may be expected where there is confidence of nice attention by the impartial tribunal to the law of which it is a creature.[73]

(2) The greater the loyalty of the impartial tribunal to the law of the union the more consistent it will be with the pattern of arbitration under collective bargaining agreements.[74] A valuable momentum is thus available for an impartial review of intra-union disputes similarly oriented.

(3) The question of whether the impartial tribunal should look beyond the law of the union is academic in most cases likely to reach it. The tribunal will usually be obliged to look beyond such law, in any event, because of ambiguities within that law as applied to the particular circumstances. An appropriate aggressiveness on the part of the tribunal wherever civil rights are arguably infringed should permit the protection of these rights about as fully through working from within the union law as could be done through an express approach from without.

(4) It is, moreover, delusive to suppose that the impartial reviewers would be in such accord as to "civil liberties," "substantive and procedural due process," and "public policy," as to agree readily on the meaning of any or all of these concepts as applied to particular cases. Lay members of impartial tribunals may reasonably be expected to have differences as to these criteria. Judges and lawyers are in frequent disagreement. The alternative, then, to adherence to the law of the union, except where the latter is for some reason inconclusive, is not apt to be adherence to some

[73] It is significant that the forerunner in this field, the Upholsterers' International Union, has specified that the decisions of its appeal board "shall be based solely on the facts and the provisions of these General Laws." Note 28 supra.

[74] The usual language of arbitral restriction is that the arbitrator "shall have no power to add to, subtract from, or modify any provision" of the agreement. In practice, this is, of course, more a matter of emphasis than of literal limitation. See ELKOURI, HOW ARBITRATION WORKS 30-34, 130-134 (1952); UPDEGRAFF AND MCCOY, ARBITRATION OF LABOR DISPUTES 29 (1946).

simple, well-understood set of precepts. On the other hand, where the union law *plainly* violates some fundamental concept of individual right, the members of the impartial tribunal, even accepting the law of the union as their standard, might properly deny effect to the patently invalid provision[75] and thus anticipate the result should the case be reviewed in the courts.[76]

(5) Voluntary impartial review is not necessarily to be equated with judicial review. All factors considered, more may be accomplished if not too much is attempted. It is no insignificant achievement to assure the integrity of the union process as measured by the union law. The strengths of the union law are thus fully developed and the weaknesses revealed. Moreover, review by the courts, which is still available, is simplified in the issue-sharpening light of the intermediate review.

(6) Emphasis upon the law of the union should tend to focus organizational attention upon such law and its process. The result should be a degree of introspection and re-evaluation not similarly attainable with the accent on criteria imported from outside. The factors of self-discipline and self-growth are thus enhanced.

(7) Where impartial review accepts the law of the organization as its essential standard but resolves all ambiguities in favor of civil rights, such action, if well publicized,[77] should effectively preclude all infringing practices not expressly sanctioned by black-letter provisions in the union law. This would have two healthful consequences: (a) The leadership would be reluctant to ask for, and the membership to enact, such naked infringements. (b) If the civil right is expressly curtailed, despite this deterrence, the curtailment is out in the open for the examination and curative reaction of the full membership, the public, Congress, and the courts. The camouflage of vague constitutional language and little-known leadership decisions would no longer be available.

(8) Finally, if protection of civil rights is to be brought more affirmatively to the internal union, it seems to me that the route

[75] For analogous situations in which arbitrators have refused effect to offending provisions of collective bargaining agreements, see ELKOURI, HOW ARBITRATION WORKS 172-175 (1952).

[76] See note 29 supra.

[77] The decisions of the UAW Public Review Board are issued in full text not only to the parties, broadly defined, but also to all interested news media, and to observers of the labor scene who have so requested. They are further reported to the membership in summary fashion in the board's annual reports pursuant to art. 31, §7 of the UAW Constitution. See note 9 supra.

lies ideally through incorporation of these rights into union constitutions. The initial effort should be to induce unions to adopt model constitutional provisions affirming certain minimal standards of substantive and procedural due process.[78] A definite step in this direction has already been taken in the AFL-CIO Codes of Ethical Practices. Code VI, entitled "Union Democratic Processes," sets forth in general form the "basic democratic rights" which "should be guaranteed" by "any affiliated union." These rights, the more important of which are set forth in the margin,[79] have been incorporated *in toto* in the UAW constitutional provision empowering the Public Review Board "to deal with matters related to alleged violation of any AFL-CIO ethical practices codes."[80] Similar adopion is urged in Code VI upon all affiliated unions "at the earliest practicable time."[81]

The premise of the foregoing considerations is an impartial review voluntarily assumed. It is obviously too much to hope of all union leadership, and perhaps too much to expect of any, that they voluntarily accept a system of review the very function of which is to curtail leadership power. On the other hand, it is not only feasible but desirable, I think, to seek to preserve the values of voluntarism within any system of imposed review. The strengths and weaknesses of the voluntary and the imposed seem singularly complementary.

78 A "Bill of Rights" is a standard omission in union constitutions. See Williams, "The Political Liberties of Labor Union Members," 32 TEX. L. REV. 826 at 832 (1954) for pertinent comment.

79 1. The right to "full and free participation in union self-government," including (a) "to vote periodically [at least once every four years] for his local and national officers, either directly by referendum vote or through delegate bodies," (b) "to honest elections," (c) "to stand for and hold union office," (d) "to voice . . . views as to the method in which the union's affairs should be conducted."

2. The right "to fair treatment in the application of union rules and law," including due process in any disciplinary proceedings.

3. The right to criticize union policies and leaders without, however, undermining "the union as an institution."

4. The right to regular open conventions, at least once every four years.

5. The right to government in accordance with "the provisions of the union's constitution" and "the decisions of the convention."

6. The right to periodic membership meetings of local unions "with proper notice of time and place."

80 Art. 31, §3.

81 It has been suggested that by statute some of the principles of the AFL-CIO codes could be made "Federal standards with which all unions would have to comply, but with latitude in the means by which compliance is accomplished." This latitude would include the establishment of voluntary impartial review boards. LESTER, AS UNIONS MATURE 152, 146-147 (1958).