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Judicial Interpretation of the "Bill of Rights" for Union Members

The passage of the Landrum-Griffin Act has necessarily presented the courts with problems of interpreting Title I of the act—the "Bill of Rights" for union members. In this article, Mr. Rothman examines the early court decisions in this area and concludes that the expressed fears of the opponents of Title I—that the courts would be flooded with litigation—have failed to materialize. Mr. Rothman's analysis and compilation of these early decisions complements his earlier Article in the Review in which he analyzed the legislative history of the "Bill of Rights" for union members. Although Mr. Rothman's discussion of these early decisions will be of great value to the lawyer, he concludes that the courts have not yet been called upon to deal with the most difficult and far-reaching provisions of the Act.

Stuart Rothman*

INTRODUCTION

Some of the opponents of the "Bill of Rights" (Title I of the Labor Management Reporting and Disclosure Act, often referred to as the Landrum-Griffin labor reform law) feared that this section would pave the way for a flood of litigation in the federal courts. In the first 18 months of the Act there have been report-

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ed decisions in slightly over 30 cases by the lower federal courts, of which three have reached the courts of appeals. This does not seem to be a large number. The great majority of these cases—well over two-thirds—were dismissed by the district courts, usually on the ground that Title I did not encompass the right alleged by the plaintiff or that the plaintiff had not exhausted available intra-union remedies. The few court cases which have raised the question whether or not applicable union rules or regulations are "reasonable" have produced little more than very cursory judicial evaluation of this question—and this in spite of the perplexity among critics and commentators as to the exact meaning to be given this term used to qualify the statutory guarantee of equal rights and freedom of speech and assembly. All three cases reaching a court of appeals had been dismissed in the court below and in two of the three, the appellate court reversed the lower court, indicating at least the possibility that the district courts will later be found to have taken an unduly narrow view of the scope and effectiveness of Title I.

The reported decisions so far rendered under Title I make only a very modest beginning in exploring the ramifications of this new legislation and the potential issues involved therein. And while the legislative history of Title I is hardly as exhaustive or as illuminating as the comparable history of other parts of the Landrum-Griffin Act (LMRDA), relatively few courts have referred to it. In fact, few of the cases have come to grips with the basic abuses which Congress considered during this history.

Perhaps this small volume of litigation should not be considered surprising, since Title I suits must be brought by union members, who frequently are short on financial and legal resources, not to mention the factor brought out in congressional and other debates that members often have reason to fear reprisals if they sue their union. In any event, it is predictable that it will be a very long time before a substantial body of definitive judicial opinion on all important aspects of Title I is available. Nevertheless, the cases which have been decided make an interesting and significant chapter in the development of labor law and it is to these decisions that we now turn. They are grouped according to the relevant subsection of the Bill of Rights.

4. See Rothman, supra note 1.
I. THE BILL OF RIGHTS IN GENERAL

A. SCOPE OF THE BILL OF RIGHTS

One court has held that Title I, at least in so far as the provisions relating to disciplinary action are concerned, not only gave union members a new remedy—the right to sue in federal courts—but also "conferred a new substantive right on members of labor organizations, and imposed a corresponding new liability on the union and its officers." In the Robertson case, the court conceded that the issue was not free from doubt in view of the language of the Act itself and conflicting legislative history on the point. It observed that the meager state court decisions in Louisiana (where the case arose) did not show clearly that Louisiana guarantees the union member the full safeguards against improper disciplinary action contained in Title I; and that the Taft-Hartley Act lacks any direct guarantee against such action. The unconditional grant of the enumerated rights contained in Title I, without regard to any contrary provision in the union's constitution or bylaws, thus seemed to the court to create a new substantive right. In view of this finding, the court held that since legislation creating substantive rights may not be applied retroactively, the plaintiff union members, who had been expelled from their union before the effective date of Title I, were not entitled to relief.

Another court had previously reached the same conclusion regarding retroactive effect, without discussing the issue of substantive rights, in a case where the union had given the plaintiff member a withdrawal card (which he had not solicited) before the effective date of the Act. It should be noted that the issue of retroactivity is not likely to be of any significance in future cases since so much time has elapsed since Title I became effective.

One suit for injunctive relief against a union's alleged failure to prosecute the plaintiff member's grievance under a collective bargaining contract was dismissed for lack of jurisdiction. The court said that Title I (with one exception) makes no mention of a contract or a union member's derivative rights thereunder. The stated exception is section 104 which deals with a union's obligation to

make available copies of labor contracts, but this section was held not to give a member the right to sue to compel a union to enforce such contracts. The court’s opinion in this case contains language which, if not read in context with the entire case, conceivably could be construed as contrary to the ruling in the Robertson case that Title I creates substantive rights. Referring to the plaintiff’s reliance on section 103, which preserves rights and remedies of union members, the court stated that Title I “shall not be construed to subtract from the rights the Union member previously had. This obviously does not add to his rights, and cannot give this Court any additional jurisdiction over this cause of action to that which it previously had.” Since the court had found no Title I right involved, this quoted passage seems to mean merely that section 103 does not itself create any such rights.

One other court has held that the equal-rights provision, section 101(a)(1), was designed to protect the right to vote and participate in union affairs only where that right already exists under the applicable union constitution or charter, and does not confer such right.

The Court of Appeals for the Third Circuit recently handed down a ruling to the effect that the Landrum-Griffin Act does not provide a civil remedy for the vindication of a member’s Title I rights against a person who is not acting in the capacity of official or agent of a labor union when infringing on such rights. In this case the court affirmed the dismissal of a suit which had been brought against two union officials solely in their individual capacities, alleging libel, assault and other unlawful conduct. Exploring the legislative history of the Act, and citing several district court decisions, the court ruled that Title I is concerned solely with union-member relations. According to the court, when a union, or its officials or agents acting for the union, interfere with the rights of individual union members under Title I, these rights may be redressed by a civil action under the Act. But when union members are victims of private misconduct, which incidentally may frustrate their rights as union members, their remedy must be in the state courts, which remain open to them.

Title I was held inapplicable in one case wherein the relief sought in effect attempted to invalidate the actions of a joint employer-employee bargaining committee which, the court found, was

8. Id. at 495.
11. The most significant of these cases are discussed in the text accompanying note 7 supra, and notes 14 & 16 infra.
not a “labor organization” within the meaning of the Act. In another suit, members of a local union unsuccessfully sought an order requiring the international union and its president to issue a charter to the local. The court was of the opinion that there was no proof of oppression or fraud and that intra-union remedies had not been exhausted.

B. Rights of Union Officers

Several interesting cases have arisen in which union officers—past, present, or prospective—alleged that unions were violating their rights under Title I.

This situation was involved in some of the earliest cases brought under Title I, indicating that there was considerable misconception of the new law’s scope. In Strauss v. International Bhd. of Teamsters, a union business agent who had been discharged by the union, filed a petition for injunctive relief. The court assumed that the discharge was based solely on the union’s honest misinterpretation of another part of the Labor Management Reporting and Disclosure Act. Denying an injunction, the court stated:

The right which plaintiff now seeks to protect as against the defendant [Union] is the right to be free from discharge as business agent of a labor union, when that discharge is based solely upon the union’s honest misinterpretation of a new Federal law. The plaintiff was not elected to this position nor does it appear that the position necessarily required his being a member of the local union. ...

Upon a careful reading of the provisions of Title I, it is clear that no such right is encompassed by any section of that title. ...

In short, this Title deals with the union-member relationship and in no way supports jurisdiction of a suit involving the employer (union)-employee (business agent) relationship which is the essence of the present suit. Such a case turns more properly on the common law of employment contracts, or employment “status” as a property right, matters which are outside the scope of Title I.

The court in this case did not refer to the legislative history of Title I, but shortly thereafter another court did so in denying relief against removal of a union committeeman from office. The removal action caused the committeeman to lose job superseniority enjoyed by virtue of his office. He was therefore laid off from his job in a plant, whereupon he brought an action against both the union and the employer. Chief Judge Thomsen wrote a compre-
hensive opinion dismissing the suit for lack of jurisdiction.\textsuperscript{16} He concluded that, as in \textit{Strauss}, the plaintiff was not deprived of any rights he enjoyed as a union member, and “[t]his conclusion is supported by the legislative history of the Act.”\textsuperscript{17} Here Judge Thomsen quoted Senator Kennedy’s floor comment in the Conference Report to the effect that all conferees agreed that Title I’s safeguards against improper disciplinary action [section 101(a) (5)] do not relate to suspension or removal from union office.\textsuperscript{18}

The same principle was applied in a later case\textsuperscript{19} in which a union member alleged he was discharged as field representative for the improper use of a union automobile, and sought damages. The court stated that there was nothing in the plaintiff’s complaint alleging a violation of any duty imposed by law on the union by the Act’s provisions, and pointed out that the Act “creates obligations and duties on the part of a labor organization to its members” and “was never intended to cover the relationship of employer and employee.”\textsuperscript{20} It may be observed that in neither this case nor \textit{Strauss} was there any indication of a claim that the particular discharge came within the purview of the National Labor Relations Act.

A union member who had been nominated but declared ineligible to run for union office likewise was unsuccessful in obtaining relief under Title I. His action to enjoin the conduct of a union election in which he intended to run was dismissed for lack of jurisdiction.\textsuperscript{21} The court held that the right of an individual to stand for office in a union election was guaranteed only by Title IV of the LMRDA (dealing with elections) which may be enforced only by the Secretary of Labor, and then only after an election has taken place; Title I protects only the rights of the nominator, not those of the nominee.

Notwithstanding all these decisions excluding controversies over union office from the scope of Title I, a court in early 1961 held twice that it had jurisdiction under that Title to enjoin the conduct of a special union membership meeting called to elect a temporary


\textsuperscript{17} \textit{Id.} at 480.

\textsuperscript{18} 105 \textit{Cong. Rec.} 17899 (1959). The Conference Committee report had contained the same statement. H.R. \textit{Rep.} No. 1147, 86th Cong., 1st Sess. 31 (1959). There appears no reason why this principle could not have been written into the law itself.


\textsuperscript{20} 45 L.R.R.M. at 2784.

replacement for a union business agent who had been suspended from union membership and removed from office. The court found that the business agent had been improperly suspended and removed for exercising a right guaranteed to him as a member by section 101(a)(4), rather than as an official, and that he was not claiming a violation of Title IV. Because the discipline was for misconduct as a member, this court held inapplicable the line of decisions previously discussed.

C. Rights of "Members"

The language of Title I extends its protection only to union "members," and under section 3(o) of the Act a member "includes any person who has fulfilled the requirements for membership" in a union and who has not withdrawn voluntarily nor has been expelled or suspended after appropriate intra-union proceedings. So far this language has received only limited judicial interpretation, although potentially it involves crucial questions. Expert opinion seems to consider the Act as doing little to disturb the unions' general right to determine membership requirements, so long as job discrimination within the meaning of Taft-Hartley does not take place.

Very recently the Court of Appeals for the Third Circuit held that Title I protected all persons who are members of a union "in substance" whether or not union officials have performed the ministerial acts precedent to formal admission to the union. This case involved an iron worker who was a member in good standing of both the international union and the local union in his neighborhood. After moving to another area within the jurisdiction of a sister local, he applied for a membership transfer and apparently fulfilled all of the intra-union requirements; however, at the time of the suit, the new local had not given him a transfer card despite the lapse of time. The lower court held that section 3(o) applied only to actual members of the specific union involved and had no relation to extrinsic matters such as the right to transfer to or from a union. The court of appeals disagreed. It ruled that the plaintiff

25. Hughes v. Local 11, International Ass'n of Ironworkers, 183 F. Supp. 552 (D.N.J. 1960). This court dismissed for lack of jurisdiction on the ground that the plaintiff's complaint did not set out a valid claim under the Act, a common device in Title I cases. It is interesting to note that the court of appeals held the dismissal for lack of jurisdiction was improper. It held that the assertion of a substantial claim under Title I gives
in his allegations had sufficiently shown that he had complied with all requirements for membership in the new local, which is all that section 3(o) contemplates, and that under the international's constitution, the granting of such membership was compulsory and not discretionary. Furthermore, he alleged he was a member of the international union. To this extent the court's opinion may be of little significance because it appears to be limited to the particular facts and to the sufficiency of the complaint filed with the lower court. The court supported its finding with a somewhat exhaustive reference to legislative history which, it observed, "tends to support the proposition that nothing in the Act, Section 3(o) included, was intended to dictate, in any manner, the requirements that a labor organization might lay down with respect to the acquisition of membership." The court stated that its opinion was not intended to impair the union's right to set up such requirements, but merely to hold that a person's fulfillment of all prescribed requirements makes him a member as defined by section 3(o). Further examination of legislative history of section 3(o) convinced the court that it would not be justified in straining the statutory language "so as to give it a meaning other than that apparent on its face."

Remanding the case to the district court for further proceedings, the court posed at least three issues to be determined there: whether the plaintiff did in fact meet all membership requirements, an issue also involving an inquiry into the new local's requirements; whether he was in fact deprived of his section 101(a)(1) rights to participate in the local's affairs; and whether he has exhausted or should be required to exhaust reasonable hearing procedures within the section 101(a)(4) proviso.

The Court of Appeals for the District of Columbia had occasion, in the course of a Taft-Hartley case, to interpret the scope of members' Title I rights. Involved in this case was an NLRB finding that certain construction employers had violated section 8 (a)(1) and (2) of Taft-Hartley by interference with their employees' Taft-Hartley rights when supervisors, who were members of the rank and file union (a common practice in the building and

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26. As will be described, the court remanded the case to the lower court for a determination of whether he did in fact meet membership requirements.
28. Id. at 818.
construction industry), participated in intra-union affairs. The union argued that sections 101(a)(1) and (2) of Title I gave a supervisor an absolute right to participate actively in union affairs, and called attention to the two definitions of union "members" contained in sections 3(o) and 401(e) of Landrum-Griffin. Therefore, the Board could not validly hold that supervisory conduct in union affairs was in itself a violation of sections 8(a)(1) and (2) of Taft-Hartley. Here the union quoted extensively from Professor Cox's analysis of Landrum-Griffin, in which he expressed the views, among others, that the division of members into voting and nonvoting classes was contrary to Title I and that unions "which admit employers to membership will probably have to choose . . . between granting employers the right to participate in meetings, which has heretofore been denied, and surrendering this method of subjecting employers to the union's rules," since all members are plainly entitled to vote in union elections. At this point it may be observed that Professor Cox uses the term "employers" rather than supervisors, probably referring to owners of companies who, as in the case of the union involved in this case, are constitutionally prohibited from having a voice or vote in union affairs although they are members.

Approving the Board's basic position, the court of appeals held that sections 101(a)(1) and (2) merely amplify and do not change the meaning of employees' basic Taft-Hartley rights. It did not hold that either Taft-Hartley or Landrum-Griffin "gives to any employee a right to have his views adopted by his union; we do hold, however, that both Acts give each and every employee an absolute right to make his views known to his fellows and to urge his position to them." Anything that might tend to inhibit that right is interference under Taft-Hartley; intra-union participation by supervisors does tend to inhibit that right and is not protected by Taft-Hartley. This opinion does not reach the question whether supervisors have an absolute right as members under Title I to express views and participate in union affairs; but assuming they do, such activity may subject their employers to the penalties of Taft-Hartley, thus posing an interesting dilemma. The case just discussed was remanded in part to the Board for a determination whether one particular supervisor, by attending union meetings and voting, improperly participated in union affairs within the meaning of Taft-Hartley, and the court set forth some considerations on the basis of which the Board may be able to clarify the problem here involved.

In one case the court made it clear that the section 101(a)(2) guarantees (and presumably those guarantees of other parts of Title I) do not extend to employees who are not members of the union involved.\(^3\)

### D. Federal Pre-emption

The complex question of the extent to which Title I may oust state courts of jurisdiction, despite the language deliberately contained in section 103 preserving all other state and federal remedies,\(^3\) has not yet been explored by the courts. It does not appear that either federal or state courts have yet been faced with serious contentions that a particular plaintiff came to the wrong forum. One federal court, in holding the plaintiff's claim involved no right guaranteed by Title I, pointed out that he could seek relief in a state court.\(^3\) One state court, in dismissing a suit because internal remedies had not been exhausted, did not pass on the claim that its jurisdiction was ousted by the rule of federal pre-emption;\(^3\) and there appear to have been various state cases in which no such claim was asserted.\(^3\) A Wisconsin court did hold, inter alia, that the proviso to section 101(a)(2)—which preserves a union's right to adopt and enforce certain reasonable rules—did not pre-empt the state labor board's jurisdiction over a charge by union members that their union violated the Wisconsin Employment Peace Act by attempting to collect fines imposed for crossing a picket line.\(^3\)

33. See Rothman, supra note 1, at 217; Cox, supra note 23, at 838.
36. Thus a recent case in New York involved discipline of a union business agent, the very subject matter involved in several Title I cases (discussed in text accompanying notes 5–9 supra). The state court held his removal from office valid since he was not an “officer,” but his discharge as a secretary-treasurer invalid since it constituted arbitrary action and there had been an improper hearing. Miller v. Building Service Employees Union, 2 LAB. REL. REP. (47 L.R.R.M.) 2878 (N.Y. Sup. Ct. March 10, 1961). In a similar New York case, an injunction was denied against disciplinary action of union officers because they had not exhausted intra-union remedies or shown them to be futile. French v. Rarback, 2 LAB. REL. REP. (47 L.R.R.M.) 2891 (N.Y. Sup. Ct. March 28, 1961).
37. Local 248, UAW v. Wisconsin Employment Relations Board, 46 L.R.R.M. 2628 (Wis. Cir. Ct. 1960). But the court's holding in this respect was apparently based on its finding that under NLRB precedent the union conduct was neither forbidden nor protected by § 7 or § 8(b) of the NLRA. On appeal the Supreme Court of Wisconsin reversed (without mention of § 101(a)(2)) on the ground that since the NLRB had found the conduct protected under the NLRA, the state board consequently was preempted of jurisdiction. Local 248, UAW v. Wisconsin Employment Relations Board, 11 Wis. 2d 277, 105 N.W.2d 271 (1960), cert. denied, 365 U.S. 878 (1961).
II. EQUAL RIGHTS

Section 101(a)(1) guarantees all union members "equal rights and privileges" in the nomination and election of union officers and in the determination of union policies at membership meetings "subject to reasonable rules and regulations in such organization's constitution and bylaws."

Several suits brought under section 101(a)(1) have been based on the theory that the right of a union member to nominate and elect candidates for union office includes the right to be a candidate. All these suits, which coincidentally have arisen in the same judicial district, have been dismissed on the ground that matters relating to candidacy are governed solely by Title IV of the LMRDA dealing with elections. In one of these cases the court also ruled that section 101(a)(1) did not create a right to challenge the international union's removal of certain local union members from office pursuant to the allegedly improper imposition of a trusteeship upon the local union; Title III dealing with trusteeships governs this matter.

Injunctions against the holding of union meetings on the ground of interference with section 101(a)(1) rights have been sought in a variety of circumstances. In a case decided very shortly after the Act became effective, the court granted a temporary restraining order enjoining a union from amending its bylaws or conducting any meeting for such purpose, and from nominating candidates for office. The court found that the incumbent union officers would, unless restrained, hold a meeting that night, perpetuate themselves in office by unfair and unlawful procedures relating to bylaws and nominations, and in effect disenfranchise union members and unlawfully prevent nomination of rival candidates. There

It seems obvious that some of the rights conferred by Title I include conduct also protected by § 7 of the NLRA, thereby providing union members (but not nonunion employees) with alternative and concurrent remedies. A member might file a Title I suit and at the same time file a § 8(b)(1)(A) charge with the NLRB, and the former would provide a quicker remedy. Some Title I conduct infringing members' rights would, however, not constitute "restraint and coercion" within § 8(b)(1)(A). Up to the present, the Board has given a broad interpretation to the union rules proviso in the latter section and thereby excluded most intra-union matters from the reach of that section (see, e.g., Minneapolis Star and Tribune Co., 109 N.L.R.B. 727 (1954)), except where union action causes discrimination against an employee.


39. Flaherty v. McDonald, supra note 38. See also Rizzo v. Ammona, 182 F. Supp. 456 (D.N.J. 1960), where the plaintiff union members had not yet resorted to internal union remedies.

was no further reported litigation in this matter and it is assumed that the defendant union conformed to a stipulation (filed with the court's order) providing for nomination and election procedures.

In another proceeding involving union meetings, a union member sought to compel the union officers (a) to nullify the adjournment of a membership meeting and (b) to hold a meeting for the purpose of allowing the membership to vote on the plaintiff's motion to suspend a business agent who had been indicted for bribery and extortion. At a court hearing the union agreed to hold the meeting and permit the vote, whereupon the court held in abeyance the plaintiff's motion for injunctive relief. The meeting was then held but the plaintiff's motion to suspend the agent was ruled out of order, the chairman stating that it was in violation of the union's constitution. Thereafter, the court reviewed the matter and denied a preliminary injunction. The plaintiff was held not to have been impeded in his right to meet and assemble freely and to express views and opinions. (This right, it should be noted, is actually guaranteed by sections 101(a)(2) rather than section 101(a)(1).) The court found some basis for the union's contention that, under its constitution, a mere resolution by the local would not be effective to remove the business agent—an elected officer—since charges would need to be preferred and tried before he could be removed either temporarily or permanently.

In one case the court refused to enjoin the defendant local union from sending delegates to a national convention, ruling that the plaintiff members had waited too long to bring suit. They did not bring the action until shortly before the scheduled date of the convention, and based it on the contention that the meeting at which the delegates were nominated was improperly conducted. The court noted that if prompt application had been made, an injunction could have stopped the alleged illegal procedure before it eventuated in a completed action.

Members of District 50 of the United Mine Workers were denied an injunction against the International's constitutional convention, sought on the ground that, under the District 50 charter, they are not allowed (and for over 20 years had not been allowed) to vote in the International's elections nor participate in its meetings. Section 101(a)(1), said the court, was not intended

42. Ibid.
44. Ragland v. UMW, 188 F. Supp. 131 (N.D. Ala. 1960). This action was later dismissed on plaintiffs' motion. See 42 CCH Lab. Cas. ¶ 16829 (1961).
by Congress to change the internal organizational structure of
unions, and was designed to protect the right to vote and partici-
pate in union affairs only where that right already exists. This
decision is in line with those few prior decisions viewing Title I
as not creating any new rights.\textsuperscript{45}

A local union was held by one court to have violated rights of
its members under section 101(a)(1) by failing to maintain or-
der while two dissident members spoke at a union meeting and by
threatening one member with physical abuse.\textsuperscript{46} The only relief
granted by the court was a declaratory judgment that the union
has no right to interfere with its members' rights, beyond its pow-
ers to enforce reasonable rules. Injunctive relief as to this phase
of the case, which was only one of several issues, was denied be-
cause of a finding that the union indicated a willingness to comply
with its statutory obligations. In the same case the court held that
section 101(a)(1) does not give a union member the right to
examine or inspect union membership lists.

In a case already discussed in detail, section 101(a)(1) was
held applicable to a suit brought by a member of an International
who had attempted to complete transfer from one local to a sister
local.\textsuperscript{47}

III. FREEDOM OF SPEECH AND ASSEMBLY

Section 101(a)(2) provides that "every member . . . shall
have the right to meet and assemble freely with other members . . .
and to express at meetings of the labor organization his
views upon candidates . . . or upon any business properly before
the meeting." However, the section preserves the union's right "to
adopt and enforce reasonable rules" relating to the membership's
responsibility toward the organization as an institution and restrain-
ing members from conduct which would interfere with union
performance of its legal or contractual obligations.

A group of employees, not all of whom were members of the
defendant local union, brought suit alleging that they had been
assembling for the purpose of petitioning the International union
for a local charter in their county, and that the local union and its
agents had disturbed their meetings and intimidated and threaten-
ed them in their job and personal security.\textsuperscript{48} On defendants'

\textsuperscript{45} See text accompanying notes 7–9 \textit{supra}.
\textsuperscript{46} Allen v. Local 92, International Ass'n of Iron Workers, 2 LA. REL.
\textsuperscript{47} Hughes v. Local 11, International Ass'n of Iron Workers, 287 F.2d
810 (3d Cir. 1961), discussed in text accompanying note 24 \textit{supra}.
\textsuperscript{48} Johnson v. Local 58, International Bhd. of Electrical Workers, 181
F. Supp. 734 (E.D. Mich. 1960). On plaintiffs' motion, the suit was sub-
sequently dismissed with prejudice because the plaintiffs represented an em-
motion to dismiss, the court granted the motion as to nonmembers of the union, since the guarantees of section 101(a)(2) extend only to union members. Sustaining the action as it related to union members, the court made several points: section 101(a)(2) is not unconstitutional as outside the scope of the commerce clause of the Constitution in that it regulates union internal affairs. The members' failure to exhaust their procedural remedies within the union did not bar the action, since it appeared that such procedures are "unreasonable" within the meaning of section 101(a)(4) in view of the possibility of long delays in following them, and in view of serious doubts whether the acts sought to be enjoined constitute offenses under the union constitution. All members of the class (union members) have a common right to assemble freely, and the named plaintiffs, being officers and members of the group holding such meetings, fairly and adequately represented such class. The complaint's failure to allege discrimination, past or present, regarding job rights is immaterial, since the complaint does allege intimidation and threats and fear of discrimination in job rights and it is "not apparent how the threatened retaliation by job right discrimination would interfere any less with the right of the plaintiffs to assemble freely than would the threat of physical violence or any other method of interference."

In Allen v. Local 92, International Ass'n of Iron Workers, previously discussed in connection with equal rights, the defendant union was found to have violated section 101(a)(2) by sending a letter to two dissident members ordering them to appear at a membership meeting to explain a letter they had written to the union's executive board requesting an investigation of alleged financial irregularities, and also ordering them to show cause why charges should not be preferred against them. The court held that the members' letter was an expression of views, arguments and opinions protected by section 101(a)(2), that statements made by the two members at a union meeting likewise constituted protected expression of views, and that the union's letter ordering their appearance was an implied if not an express threat of discipline.

Injunctive relief was granted in a case under section 101(a)(2) in which the right to run for union office was drawn into employee group (association) which had been dissolved in favor of another group (an independent union). 46 L.R.R.M. 2855 (E.D. Mich. 1960).

49. 181 F. Supp. at 738.


51. The Allen decision also rules that the right to examine or inspect union membership lists is not encompassed by § 101(a)(2) any more than by § 101(a)(1). Id. at 2220.
question. Certain union members, plaintiffs herein, were suspended for a year or expelled from the local union after having indicated their intention to run for union office in opposition to the incumbent slate. These disciplinary actions had the effect of making the plaintiffs ineligible to run for office for a substantial period of time after the suspension year. The court found reasonable cause to believe that they were being denied the right to meet and assemble freely with other members to express views or arguments.

IV. DUES, FEES AND ASSESSMENTS

Section 101(a)(3) establishes exclusive and detailed procedures whereby a union may increase its dues and initiation fees and levy assessments. In general, majority vote authorization by the union's appropriate electoral body is required.

The first case under this section was decided in September 1960, when a court dismissed an action seeking to restrain a union from assessing or collecting a dues increase and from taking any disciplinary action against the plaintiff members. The action was based on the contention that there had been no majority vote by secret ballot. The court found that under all the circumstances the secret ballot used, which on its face called for a dues decrease but actually constituted an increase because of the imposition of an additional levy per hour of employment, was not intended to and did not deceive or confuse anyone. In view of contract negotiations and a strike, the union's failure to implement the vote for almost four months was held not to invalidate the increase; likewise, the fact that dues were not actually increased as much as authorized was held immaterial. The court further declared that the plaintiffs' failure to vote on the increase or to protest the ballot language estopped them to complain a month after the vote had been implemented.

In a later case, union members were held not entitled to a declaratory judgment that the union's "working assessment" was unlawful under section 101(a)(3), where the assessment was approved by a majority vote at a membership meeting, and reasonable notice had apparently been given of intention to vote on this question and the vote was by secret ballot.
V. THE RIGHT TO SUE

Section 101(a)(4) prohibits a union from limiting the right of any member to institute a court or administrative agency action, providing, however, that before instituting proceedings against a union, the member may be required to exhaust "reasonable hearing procedures" within the union which do not exceed four months in length. This time limit was apparently intended to keep union delay from barring resort to the NLRB before the six-month period of section 10(b) runs out. However, it should be noted that section 103 provides that nothing in Title I shall limit the rights and remedies of a union member under any state or federal law; presumably this means a member could file a charge with the NLRB without going through the internal union procedures.

A considerable number of court decisions have interpreted the scope and meaning of the crucial requirement relating to the exhaustion of internal union remedies. In most of the cases involving an interpretation of section 101(a)(4), the plaintiff was seeking to protect a right asserted to exist under another subsection of Title I; thus, in the ordinary situation, it was not contended that section 101(a)(4) in itself creates an independent right as do the other subsections. This accounts for the fact that there have been so many more judicial interpretations of section 101(a)(4) than of the other provisions of the Title. However, a few cases have involved an alleged independent right under this subsection—the right to sue in another forum such as a state or local court.

Up to January, 1961, when the Court of Appeals for the Second Circuit decided *Detroy v. American Guild of Variety Artists*, most of the decisions gave strict effect to the union's right to require internal union remedies to be exhausted. Three cases,

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56. Thus, one court has held that a union member's right to sue his union must exist before it can be limited by the union and such limitation alleged as a § 101(a)(4) violation; this subsection does not in itself confer jurisdiction over the suit. *Allen v. Armored Car Chauffeurs Union*, 185 F. Supp. 492 (D.N.J. 1960).

57. The exact scope of this right has puzzled leading students of the subject, particularly because § 101(a)(4) fails to distinguish between the limitation on a member's right to sue the union found in union constitutions or practices and the judicially imposed limitation on suits filed without first exhausting intra-union remedies. See *Cox*, *supra* note 23, at 839-41; *Hickey*, *supra* note 3, at 254.


however, took a more limited view of this union right, even before the significant *Detroy* decision. In one of these the union members who brought suit to enjoin union interference with their rights of free speech and assembly under section 101(a)(2) were not required to exhaust intra-union procedures because it appeared that these procedures were "unreasonable"; the court saw a possibility of long delays in following such procedures, and had serious doubts whether the union's conduct would constitute an offense under the union constitution.\(^6\)

In another case, the court held that exhaustion of intra-union procedures was not required because the defendant local union did not prove that its hearing procedures were reasonable.\(^6\) According to the court, the procedures in the international union's constitution relating to members' charges, and their multiple appellate procedures, were not reasonable; the union's grievance procedure is not a "hearing" procedure since no hearing at all is provided for; and the plaintiff could not have appealed an automatic fine assessed against him (without notice or hearing) because he was not notified thereof until after the 14-day period provided in the constitution for such appeals. The court further held that since the 4-month provision in section 101(a)(4) is a *proviso* which creates an affirmative defense, the burden is on the defendant (union) to prove all elements thereof, and that all well-established common law exceptions to the principle of exhaustion of internal union remedies are carried over into section 101(a)(4) by its requirement of reasonableness.

*Sheridan v. United Bhd. of Carpenters,*\(^6\) held that a former union official, suspended from membership and removed from office, who secured a temporary restraining order against holding a union membership meeting to elect his temporary replacement, was not obliged to exhaust intra-union remedies because the union's procedures were in fact unreasonable in operation. The court noted that the union appeal officer had failed to decide the official's appeal from his suspension from membership and removal from office, and also emphasized the unreasonable nature of the union's multi-step appeal procedure—both factors that would preclude the

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official from exhausting his remedies before the election. The court seems, in effect, to say that remedies need not be exhausted if there will not be time to do so before a union's unlawful conduct can be consummated to the point where the individual member would be irreparably injured. Here, the court found that the holding of the election would so injure the plaintiff. This case, it must be observed, involved an official who had been removed because he had filed a municipal court criminal case against a fellow member for assault and battery; thus, he was in effect asserting an independent right to sue under section 101(a)(4).

It is not clear whether this last ruling is inconsistent with decisions holding that Title IV governs elections and precludes relief under Title I.63 In one case which makes no mention of Title I, the court held no immediate or irreparable harm would result if an election was allowed to proceed without plaintiff's name on the ballot for presidency.64 The court observed there were intra-union procedures still available to him to redress his grievances before the election, and Title IV provides him a post-election remedy for setting it aside. The court may have been influenced by what it termed the absence of an allegation that he was properly nominated.

Considering this pattern of lower court interpretation the decision in Detroy65 may have come somewhat as a surprise. The Court of Appeals for the Second Circuit held that exhaustion of intra-union remedies might not be required where, as in Detroy, "the internal remedy is uncertain and has not been specifically brought to the attention of the disciplined party, the violation of federal law clear and undisputed, and the injury to the union member immediate and difficult to compensate by means of a subsequent money award." The court emphasized the uncertainty of the "dubious" internal remedy available to the member and ruled that a showing of absolute futility is not required, as held by the lower court. Here, there was no basis for finding that "reasonable" internal remedies had not been exhausted. This case involved the summary placing of a union member on the union's unfair list for nonpayment of an arbitration award, virtually barring him from employment in the industry. The court directed the issuance of injunctive relief ordering the union to remove him from the unfair list.

In Detroy, the court of appeals made the important ruling that Congress did intend the exhaustion-of-remedies doctrine to apply

to all rights granted by section 101 even where not specifically provided. The court stated that absent a clear congressional directive, the traditional policy of courts' reluctance to interfere in union internal affairs should not be superseded, and observed that the broad language of the section 101(a)(4) proviso included suits instituted against unions in any court on any claim. The court also held that in adjudging the time when a union's action in violation of section 101 is ripe for judicial intervention, the federal courts may develop their own principles and are not bound by rules developed in state courts.

Following Detroy, the lower court in the Sheridan case converted its temporary restraining order into a temporary injunction, relying in part on Detroy. On this occasion the court enlarged on its concept of the meaning of the reasonable procedures proviso of section 101(a)(4). It ruled that the proviso means only that a member who attempts to institute a court proceeding "may be" required by that court to exhaust the internal remedies before invoking court aid; it does not confer on a union the right to demand completion of such remedies before court action is begun nor does it impose an absolute duty on the member to seek intra-union relief before filing court action. In the instant case the member could not exhaust hearing procedures within four months; this, however, does not make them unreasonable per se nor resolve the question whether the court should require their use before beginning suit—a question which depends on the facts of each case. Only if procedures are available within the four-month period and there is no pressing need for prompt adjudication of the member's rights, would it be reasonable to require utilization of the procedures for four months even though final union appellate review in that period is impossible. In Sheridan, the plaintiff had initiated an appeal, and apparently had done all that was required to attempt to exhaust available procedures before starting suit. In granting the injunction against an election, the court emphasized that if the union were now permitted to elect a temporary official, the rank and file members would believe the union was ratifying the plaintiff's removal from office thereby impairing his standing in the eyes of the membership and jeopardizing his candidacy for re-election.

The court in the Sheridan opinion, went to some effort to distinguish prior cases denying relief in absence of exhaustion of remedies. Johnson v. San Diego Waiters Union, Flaherty v.

66. See text accompanying note 62 supra.
United Steelworkers,69 and Rarick v. United Steelworkers\textsuperscript{70} involved elections, as here, but they were attacked under Title IV; here, the plaintiff would have no post-election remedy as provided by that Title. Here the court seems to be holding that an election may be enjoined if no mention is made by plaintiff of Title IV, and a Title I right can be somehow conjured up; but it is not clear why Sheridan had no post-election remedy. With respect to the unfavorable decisions involving union officers,\textsuperscript{71} the court found them inapposite because they did not involve discipline for misconduct as a member.

Relying on Detroy, one district court, in a suit filed under section 101(a)(5) relating to union discipline, denied a motion to dismiss based on plaintiff's failure to allege exhaustion of remedies.\textsuperscript{72} Pointing out that the requirement of exhaustion is not absolute, the court felt it could not determine on a motion to dismiss whether or not reasonable hearing procedures were available and if so, whether they should have been utilized. In this case the plaintiff sought relief against a union's alleged refusal to register or refer him for employment—a matter which would seem to come within section 8(b)(2) of the National Labor Relations Act if the employer is subject to the Board's jurisdiction. In another recent case a suit seeking the issuance of a charter to local union members was dismissed with prejudice because, absent any proof of oppression or fraud, the plaintiff had failed to exhaust intra-union remedies and such failure was not excused by any acts or omissions of the defendants International union and its president.\textsuperscript{73}

VI. SAFEGUARDS AGAINST DISCIPLINARY ACTION

Section 101(a)(5) prohibits a union from disciplining a member except for nonpayment of dues, unless he is served with written specific charges, is given a reasonable time to prepare his defense, and is afforded a full and fair hearing.

The only significant legislative history recorded in connection with this subsection is the Conference Report's explanation that it does not apply to the suspension of a member's status as a union officer since it deals only with suspension of membership;

\textsuperscript{69} 183 F. Supp. 300 (S.D. Cal. 1960).
and this interpretation was re-emphasized on the floor of the Senate.74

Mention has already been made of court decisions relating to a member's removal from office.75 These courts have not usually invoked this legislative history in developing the general proposition that where such removal does not violate the officer's rights as a member, it is not protected by Title I. Illustrative of this line of cases is Strauss v. International Bhd. of Teamsters,76 in which the plaintiff had been removed from office because a conviction for crime made him ineligible to be an official under the union constitution, and Jackson v. The Martin Co.,77 in which the union executive committee's action in removing a convict from office was held not to be "disciplinary action" but a mere finding that he could not hold office because of other provisions of Landrum-Griffin.

But there have been cases where the court found that the removal or other discipline involved did violate the officer's right as a member. Thus, in Sheridan,78 the union's conduct in removing a member from office as business agent was held to constitute "discipline" within the meaning of sections 101(a)(5) and 609,79 since he was disciplined for misconduct as a member rather than any misconduct as business agent. This being the nature of the misconduct, the court held inapposite the prior decisions dismissing suits by officers. And in the Nelson case81 summary disciplinary action against certain union members, who had indicated their intention to run for union office, was based on their alleged conduct in disrupting union meetings by interrupting and heckling officers and, in the case of one member, on alleged dual union membership and communism. Thus, the members' activities had no relation to officerships except that the disciplinary actions had the effect of making them ineligible to run for office.

In a somewhat similar situation, a court restrained the defendant union from disciplining or coercing union officers or members

75. See text accompanying notes 14–26 supra.
79. Section 609 makes it unlawful for a union to fine, suspend, expel, or otherwise discipline any member for exercising any rights guaranteed under the entire Act and makes § 102 applicable to its enforcement.
80. The misconduct constituted the filing of criminal charges against a fellow union member for assault and battery on union property.
by reason of their activities in supporting a campaign to oust the union president and in aiding in the prosecution of a civil action to require the union to come up with an accounting, a referendum and a convention.\textsuperscript{82} In a companion case the union was ordered to restore the \textit{status quo} by reinstating with back pay certain individuals who had been suspended or removed from their union positions and offices; the union was also enjoined from conducting trials on charges brought against some of them for their activities.\textsuperscript{83} In both cases the court found that the plaintiff's activities were protected against reprisal by the Act (apparently referring to Title I).

What constitutes "disciplinary action" within the meaning of section 101(a)(5) has been interpreted in various other situations. A union's placing of a member's name on its unfair list, for failure to pay an arbitration award in favor of an employer for whom he had been under contract to perform, was held by the Court of Appeals for the Second Circuit (contrary to the lower court), to constitute "disciplinary action," since the union, by enforcing contracts between its members and employers, was promoting the welfare of the union group and thereby furthering its own ends.\textsuperscript{84} In another case a local union member won a declaratory judgment to the effect that the local had no right to impose fines, penalties or other discipline (other than for nonpayment of dues) without the section 101(a)(5) safeguards of written notice and hearing, and the union was ordered to make restitution of an "automatic" fine imposed without such notice or hearing.\textsuperscript{85}

In the latter case the court declined to pass on the question whether section 101(a)(5) gives a member accused in a disciplinary matter the right to inspect membership lists in order to safeguard the impartial selection of his union trial jury. This question, according to the court, may not be raised until discipline has actually been imposed. In another proceeding brought by union members after a disciplinary hearing had been held but before any resulting action had been taken, the court held it could not determine if the plaintiffs had been afforded a "full and fair hearing" and dismissed the suit, \textit{inter alia}, for lack of jurisdiction.\textsuperscript{86} This was done in face of the plaintiff's allegation that the union's administrative body responsible for discipline was biased.

\footnotesize{\begin{itemize}
\item \textsuperscript{82} Moschetta v. Cross, 46 L.R.R.M. 2810 (D.D.C. 1960).
\item \textsuperscript{83} Alvino v. Bakery Workers, 46 L.R.R.M. 2812 (D.D.C. 1960).
\item \textsuperscript{84} Detroy v American Guild of Variety Artists, 286 F.2d 75 (2d Cir. 1961), \textit{reversing on other grounds} 189 F. Supp. 573 (S.D.N.Y. 1960).
\item \textsuperscript{85} Allen v. Local 92, International Ass'n of Iron Workers, 2 LAB. REL. REP. (47 L.R.R.M.) 2214 (N.D. Ala. Nov. 22, 1960).
\item \textsuperscript{86} Flaherty v. United Steelworkers, 46 L.R.R.M. 3006 (S.D. Cal. 1960).
\end{itemize}}
One court held that it had jurisdiction over a union member's action against his union for injunction and damages (back pay) based on his alleged removal from his job, where the evidence indicated the member was not discharged by the employer but removed by the union from his job as the result of a union hearing. The member, the court found, was thus "disciplined" by the union within the meaning of section 101(a)(5). However, a preliminary injunction requiring the union to revoke its order removing the member from his job was denied even though the disciplinary procedure had not been conducted in accord with the union's constitution and bylaws and the safeguards of section 101(a)(5). The court ruled that there was no showing that a damage award against the union would not be an adequate remedy or that the member would suffer irreparable injury without an injunction.

It also held that it had no jurisdiction to order the member's reinstatement by the employer, and for lack of jurisdiction, dismissed the action insofar as it sought an injunction against and damages from the employer.

CONCLUSION

It is clear from the above summary of suits so far filed under Title I that the courts have had little occasion to deal with its most difficult or the most far-reaching provisions. For example, little has been heard in court about union members being denied the right to assemble and speak, or about limits being placed on the determination of union policies at union meetings. Almost no complaints have been heard about assessments and increases in dues or initiation fees; and little opportunity has been afforded for interpreting the scope of the "full and fair hearing" which must be given a union member being disciplined.

It is not possible at this posture to determine whether or not labor organizations have made the necessary reforms in their internal procedures to comply with the statute's basic mandates. It is also difficult to determine whether union members have become fully aware of their rights under Title I, or whether legal niceties and costs have proved a serious obstacle to their assertion of these rights. Only time, and fuller study of labor union affairs, can supply the answers to these questions.

88. In one recent case the court decided a motion to dismiss a suit seeking relief against a union's alleged refusal to register or refer plaintiff for employment. This action involved the question of exhaustion of remedies only. Figueroa v. National Maritime Union, 2 LAB. REL. REP. (48 L.R.R.M.) 2017 (S.D.N.Y. March 21, 1961), discussed in text accompanying note 72 supra.