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INTRODUCTION

SOME HISTORICAL REFLECTIONS ON LANDRUM-GRIFFIN

Clyde W. Summers*

When the Landrum-Griffin Act was passed in 1959, its central thrust was clear and unquestioned; the law should protect basic individual rights of members and require unions to observe democratic processes in making decisions and electing officers. Union decisions, whether made directly by the members or indirectly through elected officers, were to be responsive to the desires of the members after full and open debate.

In 1957 when the McClellan Hearings first triggered demand for legislation, the primary focus was on corruption of union officers—sweetheart contracts, misuse of union funds, and abuse of power. By 1958, the focus had begun to shift. The Kennedy-Ives bill,\(^1\) which passed the Senate but died in the House, included financial reporting requirements, regulation of union elections and limitations on union trusteeships. The focus continued to shift, so that by

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1959 there were a plethora of proposals for regulating internal union affairs. The Kennedy-Ervin bill, as introduced in the Senate, refined and strengthened the 1958 bill. Although it reached only certain aspects of union government, its underlying rationale was explicitly stated in the Senate Report:

The internal problems currently facing our labor unions are bound up with substantial public interest. Under the National Labor Relations Act and the Railway Labor Act, a labor organization has vast responsibility for the economic welfare of the individual members whom it represents. Union members, have a vital interest, therefore, in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formulation of union policy. . . . What is required is the opportunity to influence policy by free and periodic elections.

This rationale was given full expression when Senator McClellan introduced on the floor of the Senate his “Bill of Rights for Union Members.” His declared purpose was

to enact laws prescribing minimum standards of democratic process and conduct for the administration of internal union affairs. . . . If this bill should be enacted into law, it would bring to the conduct of union affairs and to union members the reality of some of the freedoms from oppression that we enjoy as citizens by virtue of Constitution . . . .

The Senate’s adoption of the Bill of Rights declared its purpose to go beyond the narrowly drawn terms of the Senate bill, and expressed a fundamental commitment to the basic proposition that the law should guarantee individual rights and democratic processes in unions.

This capsule of history is crucial to remember, for it must continue to inform our interpretation of the Act. The purposes and premises of the Act are expressed in the Bill of Rights. There is more than symbolic significance that Congress designated it as Title I and described it in constitutional terms. The interpretation of all provisions of the statute should, therefore, give dominant weight to the broad terms and fundamental purposes of the Bill of Rights. Meaning is not to be found simply by nice parsing of statutory words and finding restrictive interpretation which defeat its fundamental

purposes.

Such an historical perspective gives critical guidance in reading the statute. It would have quickly discredited the argument, based on a misreading of *Calhoon v. Harvey*, that Title I rights are limited by Title IV of the Act. This cloud on Title I rights, discussed by Arthur Fox was not dispelled for twenty years until the Supreme Court decided *Furniture Drivers Local 82 v. Crowley*.

Recognition of the central thrust of the statute and the character of Title I should readily dispose of the varied problems which arose in the *Fight Back Committee v. Gallagher* litigation discussed by Arthur Schwartz. The tactics used by union officers were designed to prevent union members from making their views known and having an effective voice in union decisions. But the purposes of the statute are not to be defeated by calculated manipulations of union officers who refuse to accept the premise that unions ought to be democratic. The outcome of the litigation is a tribute to Judge Ward that he never lost sight of the court’s responsibility to protect the democratic process from all devices which undermine its reality. This faithfulness to the purpose of the statute contrasts sharply with the Seventh Circuits’ slavishness to bare statutory words and blindness to political reality in *Grant v. Chicago Truck Drivers*, which could find nothing in the statute that required a local union to hold union meetings where members could be informed and discuss union policies and decisions. The Seventh Circuit forgot, or refused to recognize that it was a Bill of Rights and not a tax regulation they were construing.

Paul Levy’s discussion of contract ratification votes underlines the importance of reading the words in the context of the statutory purpose. The “equal right” to vote in referenda is not provided by depriving all members except the officers of a meaningful vote. It requires more than a nominal right to cast a ballot. It is a substantive right to participate in making the decision, rather than to have it made by those in control of the union administration. Equal rights requires substantial, not merely formal, equality in the union’s political process. When the equal rights clause is thus read as one of the

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8. 806 F.2d 114 (1986) (the local had not held a membership meeting in more than ten years).
basic rights in a Bill of Rights, it provides a guide for reaching all aspects of the decision making process.

All of the articles presented in this symposium make significant contributions in developing the implications of the Act because all proceed from the purposes and premises of the Act. The articles work out the reasons and results required if the law is to guarantee a democratic process in union voting, and they do so in the context of the political realities of union structures which give dominance to those in control of the union administration. The bittersweet element is that such articles should be necessary more than twenty-five years after the statute was passed. The message of the statute was clear and unequivocal, and most of the implications were quite evident to those willing to see. Although these authors, and others, have as lawyers devoted themselves to building on the statute to bring more democracy to unions, these articles indicate how slowly the courts have built.

Three stumbling blocks to fulfillment of the statutory purpose are illustrated here. First, one of the stated principles of the Act was "the desirability of minimum interference by government in the internal affairs of any private organization." This principle of "minimum interference" has been relied on by some courts to limit legal protection of the democratic process. Gurton v. Arons,9 quoted by Arthur Schwartz, illustrates the judicial abdication to which protestations of non-interference and lack of expertise have led. Such reliance on minimum interference, however, misconceives the relationship between legal protection of democratic processes and minimum legal intervention in union affairs. These are not competing but intersupporting values. Democratic processes in making union decisions are protected in order to avoid the need for interference with the substance of union decisions and administration. In the words of Senator McClellan:

If we want fewer laws—and want to need fewer laws—providing regulation in this field, we should start with basic things. We should give union members their inherent constitutional rights . . . We should protect the union members in those rights. By doing so we will be giving them the tools they can use themselves.10

This same theme was echoed in the Senate Report: "[g]iven the maintenance of minimum democratic safeguards and detailed information about the union, the individual members are fully competent

to regulate union affairs."^{11}

Full protection of democratic rights is necessary to maintain the principle of minimum intervention; and freedom from intervention can not extend to the denial of democratic rights. In the words of the Supreme Court, "the freedom allowed unions to run their own elections was reserved to those elections which conform to democratic principles written into Section 401."^{12}

Experience demonstrates that failure to protect the democratic process invites more extensive intervention. In a recent Third Circuit case, Local 560 of the Teamsters has been placed under court trusteeship^{13} under the RICO statute.^{14} The Prozenzano Group gained and maintained corrupt control of the Local by totally stifling all opposition and dissent. The absence of democracy enabled them to use the union for extortion, exploitation and oppression. Other proceedings under RICO have been brought against other corrupt local leadership, all where corrupt control was maintained by denial of democratic rights.

Second, effective protection of the right to fair and open elections has stumbled over the intermixture of private and public enforcement. The Secretary of Labor has insisted on exclusive control of all procedures relating to union elections, and, as Arthur Fox has pointed out, this has frequently led to frustration rather than protection of the democratic process. The Secretary has been rebuffed by the Supreme Court in *Trbovich*,^{15} *Bachowski*^{16} and *Crowley*,^{17} but this seems not to have tempered the Department of Labor's preemptive proclivities.

The 1958 Senate bill limited its focus to financial reports, elections and trusteeship. Enforcement responsibility was placed almost entirely in the Department of Labor. By 1959 there was serious dispute whether enforcement should be left entirely in the hands of the Secretary because of the fear of ineffective enforcement. When the Bill of Rights was debated, the proposal to place enforcement in the Secretary was discarded in favor of private enforcement. In addition, section 401(c) was amended to expressly provide for private pre-election suits to enforce rights to distribute campaign literature, section

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403 was changed to expressly preserve the rights of members to bring pre-election suits in state courts, union members and local unions were given the right to challenge trusteeships and fiduciary obligations were enforceable by private suits.

In this context of general congressional preference for private enforcement, the Secretary’s claim to exclusive control over all aspects of union elections should be viewed with skepticism. The presumption should favor private enforcement, not exclusive control by the Secretary. Moreover, section 403, by its terms, makes remedies through the Secretary exclusive only for “challenging an election already conducted,” fulfilling the limited purpose of providing a single proceeding to determine with finality the validity of an election and who should be installed in office. In the words of Senator Kennedy, “In the case of elections, we preempt action for the Federal Government after the election is held.... The day after the election the Secretary of Labor assumes jurisdiction.”

The Secretary’s claim of exclusive control might work no weakness if he were aggressive in protecting individual rights and the democratic process. The assertion of exclusive control, however, is often used, as Arthur Fox points out, to bar individuals and opposition groups from asserting claimed statutory rights. Debilitating procedures and practices of the Department of Labor were long ago documented in an aptly titled comment, “Union Elections and the LMRDA: Thirteen Years of Use and Abuse.” Those procedures and practices have not substantially changed. Lawyers representing opposition groups in unions lack confidence in the Department of Labor, believing that it systemically favors incumbents because of its close ties to, and need to maintain good relations with, controlling union bureaucracies. The Secretary has done nothing to disabuse insurgents of this belief, but, as demonstrated here, has done much to confirm it.

The third, and by far biggest stumbling block, is the determined resistance of some union leaders to both the letter and the spirit of the statute. All of the articles presented in this symposium are disturbing stories of systematic denial of democratic rights and the devising of strategies, even in the face of court orders, to prevent members from having an effective voice or meaningful vote in the decisions of their unions. While professing to follow democratic procedures, the entrenched leaders inflate the form of democracy and

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As these articles demonstrate, legal remedies are often not adequate to discourage violations or repair the damage. Indeed, victory, when it comes after prolonged and proliferated litigation, is often only symbolic, and those who preserve themselves in power by denying democratic rights are largely indifferent to such moral symbols. More disturbing than the conduct of these union leaders is the passiveness of decent and democratic union leaders. None came to the aid or even gave moral support to those who sought in these cases to establish or restore democracy in their unions. By turning their heads they give tacit approval; by their silence they deny their own commitment. To justify their indifference they dismiss or denounce those who actively speak or work to protect and promote democratic processes as unsympathetic to the union movement.

One final word about the authors. All have had long experience in litigating cases under the Act. They speak with personal knowledge of the law in action. They have devoted themselves to representing dissident individuals and opposition groups, a financially unrewarding practice with little glamour and many disappointments. They are the civil liberties lawyers of the union movement. Without them, and other lawyers like them, the guarantees of democratic rights in Landrum Griffin would be a display of empty promises. They have pointed here how those promises can be fulfilled.