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NOTE

THE CONTROVERSY OVER WHAT STATUTE
OF LIMITATIONS PERIOD SHOULD BE
APPLIED TO CLAIMS ARISING UNDER THE
LABOR-MANAGEMENT REPORTING AND
DISCLOSURE ACT OF 1959

I. INTRODUCTION

Congress enacted the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)\(^1\) in order to preserve the democratic process within labor organizations and to protect the rights and privileges of employees. Under the LMRDA, union members have the right to challenge union activities conducted by labor officials.\(^2\) In addition, internal union activities and financial operations must be fully disclosed to members so that they can determine whether the

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The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; . . . [i]t is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

*Id.* § 401(a).

\(^2\) 29 U.S.C. § 411(a)(1)(1985). "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organizations. . . ." *Id. See also* 29 U.S.C. § 411(a)(2) (1985). "Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions. . . ." *Id.*
union activities were "justifiable, ethical and legal." Although some LMRDA claims can be filed directly in a federal district court on behalf of the employee or employees, a major barrier to a successful claim has been the absence of a statute of limitations period in the LMRDA. Consequently, the courts have had to decide on an appropriate statute of limitations period. As a result, a uniform rule has not been established and different time limitations have been applied to similar LMRDA claims. Some courts have expanded the hybrid Labor-Management Relations Act (LMRA) section 301/duty of fair representation six month statute of limitations period to LMRDA claims. Meanwhile, other courts have complied with the Federal Rules of Decision Act and have applied "the most closely analogous state law" to determine the appropriate time period.

The controversy over the appropriate LMRDA statute of limitations period involves an analysis of the national labor policy to quickly resolve labor disputes as well as the existing statutory differences between the hybrid LMRA section 301/duty of fair representation claims and the LMRDA claims. This note examines the LMRDA statute of limitations alternatives by reviewing prior case law and comparing the legislative intents of the LMRDA and the hybrid claim. As will be explained, the application of the state stat-

4. 29 U.S.C. §§ 411, 439, 440, 501 (1982). Because of the nature of a LMRDA suit, where the union is the defendant, the statute permits the employee to file the grievance directly in court instead of exhausting internal union remedies. Id.
The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. Id.
7. See Rodonich v. House Wreckers Union, 627 F. Supp. 176 (S.D.N.Y. 1985); Agola v. Hagner, 120 L.R.R.M. (BNA) 3279 (E.D.N.Y. 1985); Gordon v. Winpisinger, 581 F. Supp. 234 (E.D.N.Y. 1984); Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986); McQueen v. Maguire, 122 L.R.R.M. (BNA) 2449 (S.D.N.Y. 1986). The Federal Rules of Decision Act requires that the courts apply "the most closely analogous state law" when a federal law has no statute of limitations provision. Therefore, the courts in these cases, have complied with the Federal Rules of Decision Act instead of inventing a new time ban by expanding the LMRA section 301/duty of fair representation hybrid six month statute of limitations period to LMRDA cases. Id.
ute of limitations period is more appropriate in light of the statute and public policy. A state statute of limitations period is consistent with the goals of the LMRDA and proves to be more effective in securing union democracy.

II. LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

The enactment of the LMRDA was the result of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field. The Committee, headed by Senator John L. McClellan, discovered illegal activities were widespread within labor unions. Employees and small employers were being coerced, labor racketeering existed, and union health and pension funds were not being properly monitored. The structure of the union had also changed. Instead of the small employee associations, large and impersonal bureaucratic unions were developing throughout all industries. As a result, many unions lacked the internal structure and procedures needed to ensure efficient and democratic labor practices. Union members became indifferent and union officials began to abuse their power and responsibilities.

The McClellan Committee also revealed that employees' rights

8. BNA, The Labor Reform Law, supra note 1, at 1. [T]he Committee . . . compiled a monumental record of wrongdoing on the part of certain unions and their officers; of coercion of employees and smaller employers through the use of secondary boycotts, hot cargo agreements, and organizational picketing. . . . Id.

9. Id. at 1, 3; See also Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 820 (1960) [hereinafter Cox]. The committee was also concerned with "the misuse of union funds by dishonest officers, with illicit profits, violence and racketeering and in its later days, with secondary boycotts and organizational picketing. . . ." Id. at 820.

10. BNA, The Labor Reform Law, supra note 1, at 155. "Trade Unions have grown well beyond their beginnings as relatively small . . . associations of working men where personal, fraternal relationships were characteristic. Like other American Institutions some unions have become large. . . [and] have acquired bureaucratic tendencies. . . ." Id.

11. Id. See also Cox, supra note 9, at 820. (["T]he [McClellan] Committee also uncovered shocking evidence of internal misgovernment within a small handful of labor organizations. The disclosures built up pressure for reform.") Id. at 820.

12. BNA, The Labor Reform Law, supra note 1, at 1. See also Cox, supra note 9, at 826.

More disturbing than the outright thievery revealed by the McClellan Committee was the evidence of the use of union office for personal profit; for one suspects that the vice of playing both sides of the street, undercover deals, and conflicts of interest infect a good many unions whose officials believe themselves to be personally honest. Id. One example the Committee reported was when Peter Weber, a business manager of Local 825 of the International Union of Operating Engineers "secured a twelve percent interest in Public Constructors, Inc. in exchange for a loan of $2,500." Id. Because the local had a collective bargaining agreement with Public Constructors, Inc., Weber's conduct was in conflict with the interest of the union's members. Id.
were not being recognized by employers. Employers with the assistance of labor racketeers, hired informers to report on employee and union activities. Community campaigns were initiated by employers and carried out by racketeers to defeat union organizations.

Members asserting claims of unfair treatment by the union were usually unsuccessful in the courts. These claims were based on a breach of contract theory naming the union’s constitution and bylaws as the contract. Therefore, if the union’s constitution did not provide union democratic standards or address the member’s assertion, there was no breach of contract and the member was without redress power. The member, additionally, had to exhaust all internal remedies before filing a claim in court. This procedure placed a heavy burden on the member and discouraged individual members from filing complaints against the union official or union official’s activities.

In an effort to correct the abuses that existed within labor organizations, the McClellan Committee proposed legislative recommendations. These recommendations were based on three principles: 1) that there should be minimum interference by the government in the internal affairs of unions. Democratic standards should be established so that unions and their members can be self-governed, 2) that the union’s independence must be observed. Unions and their mem-

13. BNA, THE LABOR REFORM LAW, supra note 1, at 1. The Committee reported that there was “interference with employee's rights by certain 'middlemen' serving as management consultants.” The National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-69 (1982), provides all employees the right to form and join a union without interference and to enjoy the right to bargain collectively with their employer. Id. § 151.

14. BNA, THE LABOR REFORM LAW, supra note 1, at 155, 159. “[E]mployers have often cooperated with and even aided crooks and racketeers in the labor movement at the expense of their own employees.” Id. at 155.

15. Id. “[Employers] have financed community campaigns to defeat union organization.”


17. Id.

18. Id.

19. Id.

20. Id. at 4. The recommendations were:

1. to regulate and control pension and health and welfare funds;
2. to regulate and control union funds;
3. to ensure union democracy;
4. to curb activities of middlemen in labor-management disputes; and
5. to clarify the “no man’s land” with regards to the justification of federal and state agencies.

Id.
bers must monitor and regulate their own affairs, and 3) that remedies for abuse should be enforced against the individual union official. Members should not be held responsible for actions conducted by an officer when the employee was not involved in the decision making process.21

The drafting of the LMRDA addressed the findings and recommendations of the McClellan Committee. As a result, the LMRDA consists of six titles: I. Bill of Rights, II. Report of Officers and Employees of Labor Organization, III. Trusteeships, IV. Elections, V. Safeguards for Labor Organizations, and VI. Miscellaneous.22

Title I, the Bill of Rights, protects an employee’s right to participate in union activities.23 This right provides each employee an equal opportunity to nominate candidates for union office and to vote in union elections.24 The scope of Title I also includes a freedom of speech and assembly right which enables employees to express their personal views about union activities without reprisal.25 In Salzhandler v. Caputo,26 the Second Circuit Court held that a leaflet distributed by a union member was not an act of libel.27 Although the leaflet was libelous, it was for the best interest of the union and was protected by the LMRDA. This decision extended the employee free speech right to acts that would have been actionable in court. The language of the free speech provision is not restrictive and the right applies to union and non-union meetings. A proviso to this right, however, permits labor organizations to establish “reasonable rules” that would prevent members from interfering with the union’s contractual obligations.28

An employee whose Title I rights have been violated can file a

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21. BNA, THE LABOR REFORM LAW, supra note 1, at 156.
23. Id. § 411.
24. Id. § 411(a)(1). See supra note 2.
25. Id. § 411(a)(2). See supra note 2.
27. Id.
28. Bellace, THE LANDRUM-GRIFFIN ACT, supra note 16, at 37. In discussing the “enforceable and reasonable rules” the authors provide the reader with the view of a proponent to the proviso,

[t]hat [the proviso] is a procedural provision. It deals with the right of a private or a semi-private organization to control its meetings by reasonable rules . . . [I]t is not believed that this language on the proviso limits only substantive rights . . . .

Id. (citing 105 CONG. REC. 5810-11 (1959), reprinted in II NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, at 1234(2), 1235(1) (remarks of Sen. Cooper)).
civil action claim against the union in federal court for relief. It was suggested that the National Labor Relations Board (NLRB) had primary jurisdiction over Title I claims because Title I claims are similar to unfair labor practice charges covered by the National Labor Relations Act (NLRA). In *International Brotherhood of Boilermakers v. Hardeman*, the Supreme Court held otherwise and concluded that the LMRDA provided an "alternate forum for disputes that might also fall within the NLRB's jurisdiction.

Violations of employee fundamental rights have prompted courts to grant immediate relief. The court excused a plaintiff from exhausting internal grievance procedures when the court was convinced that a union official had violated the LMRDA. Employee's "Bill of Rights" have been written and are similar to constitutional rights guaranteed to all citizens. Labor organizations have the obligation to operate in a democratic manner to ensure employees their rights to engage in union activities.

Title II, Reporting of Officers and Employees of Labor Organization, requires union officers to disclose information regarding union financial practices and operations to all employees. It was the congressional intent that full disclosure of union activities would act as a deterrent against improper union activities. Furthermore, the statutory requirement would force union officials to maintain accurate records which would become public information. Under Title II, labor organizations need only file their reports to the Secre

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29. 29 U.S.C. § 412 (1982). "Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located." *Id.*


33. *Id.* at 61-62.

34. *Id.* at 62. (citing Garrett v. Dorosh, 77 L.R.R.M. (BNA) 2650 (E.D. Mich. 1971), where the court excused the plaintiff (employee) from the intraunion appeals proceedings and allowed the plaintiff to pursue a claim of "unequal opportunity to nominate a candidate" for the election. The court enjoined the election. *Id.*

35. *Id.* at 82.

36. *Id.* Senator McClellan argued "that labor unions should operate as democratic bodies and that the members should be guaranteed rights similar to those they possessed as citizens so that they would be able to participate freely in the activities of their union." *Id.*


38. *Bellace, The Landrum-Griffin Act, supra* note 16, at 84. The union must disclose information regarding the officers of union, union dues or fees, financial reports and union activities. *Id.* at 84-85; see also 29 U.S.C. §§ 431-32 (1982).

39. *Bellace, The Landrum-Griffin Act, supra* note 16, at 95. Employees have the right to check "on both the accuracy and completeness of statements made by the union [in the reports]." *Id.*
tary of Labor. Any employee seeking to acquire a report must contact the union office. Consequently, the reports are not directly accessible to all employees and only the conscientious employees will request a report. Full disclosure of information which is necessary to ensure union democracy is prevented unless the information is sent directly to all employees. Then the goal of Title II could be adequately obtained.

Title III, Trusteeship, was intended to regulate the instances when an international union could appoint a trustee to a local. Prior to the LMRDA, union officials appointed trustees to locals in order to maintain power over the local activities and the local union funds. Currently, trusteeships can only be established in order to correct "corruption or financial malpractice."

The election provision in Title IV of the LMRDA sets out the procedures in which union officials can be elected to office. The goal of this section is to ensure democratic procedures and to prevent labor organizations from insulating the incumbent from challengers. Specifically, the statute guarantees equal opportunities for union members to be nominated and to run for office against an incumbent. Employees have the right to nominate a candidate without the unreasonable threat that their candidate will be disqualified.

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41. Bellace, The Landrum-Griffin Act, supra note 16, at 96. "In many instances, union members first suspected something was amiss and then sought to confirm their suspicion by looking at Title II reports." Id.
43. Bellace, The Landrum-Griffin Act, supra note 16, at 98. "Although [international unions normally imposed trusteeships to eliminate corruption or to remedy mismanagement in the subordinate body]," the McClellan Committee discovered that trusteeships were being used to consolidate "the power of corrupt union officers, to dissipate "the resources of local unions", and to prevent "the growth of competing political elements within the organization." Id.
45. 29 U.C. §§ 481-83 (1982).
46. Bellace, The Landrum-Griffin Act, supra note 16, at 156. Any member in good standing has the opportunity to challenge the incumbent union official and to be elected to an official position.
All candidates must be given the opportunity and the proper forum to campaign for support among employees.48

III. HYBRID-LMRA SECTION 301/DUTY OF FAIR REPRESENTATION

While the LMRDA addressed internal union affairs, the Labor Management Relations Act (LMRA) had a great impact on the collective bargaining relationship between management and labor organizations.49 Prior to the enactment of the LMRA, the national labor policy, set out by the NLRA, was the guarantee of employees' right to organize and be represented by a labor organization.50 The provisions of the NLRA specifically prohibited employers from interfering with employee rights to self organization.51 The right to be represented gave employees the power they needed to equal the balance in the collective bargaining relationship with the employer.52 However, as employees exercised their NLRA section seven right the power of

48. Bellace, The Landrum-Griffin Act, supra note 16, at 175-89. Title IV provides campaign safeguards. For example:
   1. There can be no interference in campaign mailings, Id. at 176. See also 29 U.S.C. § 481(c) (1982) ("Every . . . labor organization . . . shall be under a duty . . . to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature. . . .'')
   2. Labor unions cannot discriminatorily use membership lists. Id. at 179. 29 U.S.C. § 481(c) (1982). Section 481(c) of the LMRDA states that labor organizations "refrain from discrimination in favor of or against any candidate with respect to the use of list of members. . . .'" Id.
   3. Every candidate has the right to inspect the membership list. Id. at 180. See also 29 U.S.C. § 481(c) (1982). ("Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. . . .'") 29 U.S.C. § 481(c) (1982).
   4. Union funds cannot be used for a candidates campaign. BELLACE, THE LANDRUM-GRiffin Act, supra note 16, at 18; see also 29 U.S.C. § 481(g) (1982). (Section 481(g) states that "[']no money received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election. . . .'" )


50. Id. at 2. See also National Labor Relations Act, section 7, which provides employees rights to "self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collectively bargaining or other mutual aid or protection. . . .' 29 U.S.C. § 157 (1982).


52. Cox, Some Aspects of the LMRDA, supra note 49, at 1. Employees, through collective bargaining, secured the right to participate in the setting of the terms, wages and conditions of employment. Id. at 275.
the labor organizations grew. Subsequently, the national labor policy had to revise the balance of power in the collective bargaining process.

The LMRA provided amendments to the NLRA and prohibited the interference by labor unions with organizational activities. Labor organizations were now held to the same standards as employers to ensure that employees' national rights were safeguarded and a harmonious labor-management relationship could exist.

Section 301 of the LMRA provides judicial enforcement of a collective bargaining agreement. Under common law, unions were an incorporated association and could not be sued in their own names. Individual union officials, however, could be held liable for breach of a collective bargaining agreement in federal district court. Moreover, section 301(a) established a substantive law that all collective bargaining agreements would be binding and enforceable contracts. Therefore, the right to sue for breach of a collective bargaining agreement and to recover damages was derived from the principles of contract law.

Most section 301(a) suits arise when there has been a violation in the arbitration award or when the employees go on strike. Em-
Employers and unions are now held to a high level of responsibility to recognize and enforce their collective bargaining promises.63

Closely related to the enforcement of a collective bargaining agreement is the duty of fair representation. Under this duty, labor organizations must bargain fairly on behalf of all employees without "hostile discrimination."64 In *Steel v. Louisville and Nashville Railroad Co.*,65 the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated labor organization, amended the existing collective bargaining agreement to exclude black firemen from the service.66 Furthermore, when the labor organization entered the new collective bargaining agreement, the union was guaranteed the right to place restrictions on the employment of black firemen on the railroads.67 Acting under this new agreement, the union disqualified black firemen from well paid positions and replaced them with white firemen. The black firemen were later reassigned to lower positions.68 The petitioner, a black fireman, asserted that the union, as the exclusive bargaining representative, had a duty to represent the black firemen "impartially and in good faith . . ."69

The Court in *Steele* held that the Railway Labor Act70 imposed a duty on a bargaining representative to "exercise fairly the power conferred upon it in behalf of all those for whom it acts without hostile discrimination against them."71 Labor representatives who discriminated against their members could be enjoined and employers, bound by the collective bargaining agreement, could no longer benefit from a statutorily prohibited agreement.72

In *NLRB v. Miranda Fuel Co.*,73 the National Labor Relations Board expanded the duty of fair representation to individual members targeted for invidious or capricious reasons apart from membership.74 For the first time, breach of the duty of fair representation

66. *Id.* at 195. The amendment established a procedure where only white firemen could be promoted to serve as engineers. *Id.*
67. *Id.*
68. *Id.* at 196.
69. *Id.*
71. 323 U.S. 192, 203 (1944).
72. *Id.* at 203-04.
73. 140 N.L.R.B. 181 (1962), enforcement denied, 326 F.2d 172 (2d Cir. 1963).
74. *Id.*
violated section 8(b)(1)(A) and 8(b)(2) of the NLRA. As a result, the Board granted itself, not the court, jurisdiction over duty of fair representation claims.

The Supreme Court in *Vaca v. Sipes*, however, held that the federal courts had jurisdiction over suits involving duty of fair representation claims. In reaching this decision, the Court relied on the landmark decision in *Steele* in which the Court initially established the statutory duty of fair representation doctrine. The Court also observed that long after the Board had jurisdiction over unfair labor practice charges, it decided to preempt jurisdiction over duty of fair representation claims because the Board's General Counsel had "unreviewable discretion to refuse to institute an unfair labor practice complaint." Moreover, the Court held that the enactment of section 8(b) of the NLRA was not intended to preempt the court's jurisdiction to enjoin discriminatory conduct by the statutory representative.

The Court in *Vaca* also held that a breach of duty of fair representation occurred when "a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith." A union must, in good faith, decide whether the merits of a grievance should go to arbitration.

The Court, additionally, construed a hybrid LMRA section 301/duty of fair representation claim based on the relationship between the duty of fair representation claims and the enforcement of collective bargaining agreements. An example of this claim would be when an employer breached the collective bargaining agreement by committing a wrongful discharge and the union has refused to fairly process the employee's grievance. The employee can bring a section 301(a) action against the employer for breach of the collective bargaining agreement. As part of the defense, the employee may find it necessary to prove the union breached their duty of fair repre-

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75. *Id.*
76. *Id.*
77. Although the Second Circuit Court denied enforcement of the Board's decision, the Fifth Circuit Court upheld the *Miranda Fuel* doctrine in *Local Union NO. 12, United Rubber Cork, Linoleum & Plastic of America Workers v. NLRB*, 368 F.2d 12 (5th Cir. 1966).
78. *Id.*
79. *Id.* at 181; see also *supra* notes 70-76 and accompanying text.
80. *Id.* at 182.
81. *Id.* at 183.
82. *Id.* at 190.
83. *Id.* at 183-86.
84. *Id.*
85. *Id.* at 186-87.
sentation. This action is still a section 301(a) suit which grants the court jurisdiction.86

IV. STATUTE OF LIMITATIONS

The drafters of the LMRDA failed to include a limitations provision in the statute. As a result it has been unclear as to what statute of limitations period should be applied in such actions. Similarly, the LMRA section 301 was drafted without a statute of limitations period. The controversy over the appropriate LMRA section 301/duty of fair representation statute of limitations period, however, was resolved after a series of cases was decided by the Supreme Court.87

A. The Development of the Hybrid LMRA Section 301/Duty of Fair Representation Statute of Limitations

In UAW v. Hoosier,88 the issue before the Supreme Court was whether a state statute of limitations period should be applied to a LMRA section 301 claim. Petitioner, union, filed a section 301 claim in federal court after the state court decided that the initial action filed was improper under state law.89 The union asserted that the employer breached the terms of the collective bargaining agreement by failing to provide accumulated vacation pay to terminated employees.90 The federal district court applied the six year state statute of limitations period governed by oral contracts. As a result the action was time barred.91

The Supreme Court affirmed the federal district court’s decision and held that the state statute of limitations was properly applied to the section 301 claim.92 The Court relied on early case law, in which the Court had previously held that “state statute of limitations govern the timeliness of federal causes of action unless Congress has specifically provided otherwise.”93 Accordingly, Congress was silent

89. Id. at 698-99.
90. Id. at 698.
91. Id. at 699. The claim was filed for a second time four years after the initial filing, but seven years after the employees were terminated. Id. The contracts not in writing standard was used because the employees had individual oral contracts with the employer in addition to the written contract. A section 301(a) claim need not involve a written contract. Id. at 706. Furthermore, the state law governing oral contracts achieved the national labor policy by resolving disputes quickly. Id. at 707.
92. Id. at 704-05.
93. Id. at 703-04 (citing McCluny v. Silliman, 28 U.S. (3 Pet.) 270, 277 (1830)).
on the statute of limitations period for a section 301 suit, and as a matter of federal law, the appropriate state statute of limitations was to be applied to the case at bar.\textsuperscript{94}

Although the state statute of limitations period would not provide a “uniform standard of timeliness,”\textsuperscript{95} the court was not ready to judicially create a federal uniform law.\textsuperscript{96} Since Congress did not provide a limitation's period, the Court would not infer that Congress intended for the courts to invent a federal uniform time limitations.\textsuperscript{97} The Court further reasoned that failure to invent a uniform limitation period would not affect the function of the collective bargaining process and procedures.\textsuperscript{98}

In \textit{United Parcel Service v. Mitchell},\textsuperscript{99} the Court distinguished the facts from \textit{Hoosier}. Unlike the section 301 claim in \textit{Hoosier}, the respondent in \textit{Mitchell} filed a section 301/duty of fair representation claim against the union and petitioner, employer.\textsuperscript{100} The Court held that the New York State 90 day limitation period for actions to vacate arbitration awards was the appropriate statute of limitations for the section 301 claim.\textsuperscript{101}

The Court explained that in order for the section 301 claim to prevail against the employer, the respondent was required to prove the union breached its duty of fair representation.\textsuperscript{102} A showing that the union did not fairly represent the respondent at arbitration was an “indispensable predicate” to the action.\textsuperscript{103} Based on this requirement the Court held that the section 301 claim was more closely analogous to an action to vacate an arbitration award than to a contract action.\textsuperscript{104} The Court further observed that the 90 day period was consistent with the national labor policy to quickly resolve labor

\begin{thebibliography}{99}
\bibitem{94} \textit{Id.} at 705.
\bibitem{95} \textit{Id.} at 701.
\bibitem{96} \textit{Id.} at 703. An argument against the Court's reasoning is that if various states' various statutes of limitations periods were to be applied to § 301 suits then different time periods would be created in different states. For example, in New York State the statute of limitations period for contract law is six years whereas in California it is four years. \textit{Compare} \textit{N.Y. Civ. Prac. Law} § 213 (McKinney 1972 & Supp. 1987) \textit{with} \textit{Cal. Civ. Pro. Code} § 337 (West 1982).
\bibitem{97} \textit{Id.}
\bibitem{98} \textit{Id.} at 702.
\bibitem{100} \textit{Id.} at 58-59. The union did not join in the employer's petition for certiorari. \textit{Id.} at 60.
\bibitem{101} \textit{Id.} at 64.
\bibitem{102} \textit{Id.} at 62.
\bibitem{103} \textit{Id.}
\bibitem{104} \textit{Id.}
\end{thebibliography}
disputes.\textsuperscript{105}

The majority in \textit{Mitchell} did not discuss whether the same limitations period was applicable to the duty of fair representation claim against the union.\textsuperscript{106} Similarly, the Court did not indicate whether the six month limitation period in section 10(b) of the NLRA was a viable statute of limitations period alternative.\textsuperscript{107}

Justice Stewart, in his concurring opinion, addressed the section 10(b) statute of limitations period.\textsuperscript{108} Justice Stewart described the \textit{Mitchell}-type action as a hybrid claim where the duty of fair representation could not be "separated" from the section 301 claim.\textsuperscript{109} Although the section 301 action was a contract claim, Justice Stewart pointed out that the duty of fair representation claim was derived from the NLRA. Since the two claims were connected, the six month limitations period from section 10(b) was the most appropriate period.\textsuperscript{110}

Justice Stewart also reasoned that section 10(b) was designed to strengthen the collective bargaining relationship by balancing the national interest in industrial peace and an employee's interest to redress grievances settled in the collective bargaining process.\textsuperscript{111} Because the action in \textit{Mitchell} challenged the outcome reached in the collective bargaining process, section 10(b) was appropriate for the duty of fair representation claim.\textsuperscript{112}

In examining the decision in \textit{Hoosier}, Justice Stewart took the position that the Court did not have to apply a state statute of limitations period.\textsuperscript{113} He explained that the Court has already indicated that "state limitations periods will not be applied when their employment would be inconsistent with national policy..."\textsuperscript{114} Justice Stewart quoted the Court in \textit{Occidental Life Insurance Co. v. EEOC}.\textsuperscript{115} "[I]t is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the im-

\begin{thebibliography}{114}
\bibitem{105} Id. at 63.
\bibitem{106} Id. at 75. \textit{See also} Note, The Limitations Period for Section 301 Duty of Fair Representation Suits - How Much Time After Mitchell, 35 Rutgers L. Rev. 887 (1983) [hereinafter Note, The Limitations Period].
\bibitem{107} Id.
\bibitem{109} Id. at 66-67.
\bibitem{110} Id. at 66 n.2.
\bibitem{111} Id. at 66.
\bibitem{112} Note, The Limitations Period, supra note 106, at 898.
\bibitem{114} Id. at 70.
\end{thebibliography}
pmentation of national policies. . .”116 According to Justice Stew-

art, section 10(b) was consistent with the national policy to balance
the collective bargaining relationship and an employee’s desire to set
aside an unjust settlement under the collective bargaining process.117

In an opinion which concurred in part and dissented in part,
Justice Stevens criticized the Court for addressing a duty of fair rep-

resentation claim which was not before the Court.118 Justice Stevens
claimed that since the union did not petition for review, the section
301 claim against the employer was the only issue before the

Court.119

Justice Stevens, however, concurred that the 90 day limitations
period to set aside an arbitration award was appropriate for a section
301 claim.120 He found that if the employee was to prevail against
the employer, the effect would be similar to the reversal of the arbit-

ration award.121

Justice Stevens also disagreed with Justice Stewart’s proposal
that section 10(b) was an appropriate statute of limitations period.122
Justice Stevens claimed that section 10(b) was established before
duty of fair representation claims were recognized and was only in-
tended to resolve unfair labor practice charges.123 Therefore, the ap-

plication of section 10(b) to section 301 claims was inappropriate
because the employer was not being charged with unfair labor prac-
tices.124 Instead, Justice Stevens suggested that a legal malpractice
claim in which a lawyer who allowed the statute of limitations period
to run out without properly filing a claim125 was more closely analo-


to 301 claim.


EEOC, 432 U.S. 355, 367 (1977)).

117. Id.

118. Id. at 71 (Stevens, J., concurring in part and dissenting in part); see also Note, The

Limitations Period, supra note 106, at 895 (although neither party raised the duty of fair
representation claim, only Justice Stewart, in his concurring opinion, suggested that the section
10(b) statute of limitations period be applicable to duty of fair representation cases).


120. Id. at 74.

121. Id. at 72.

122. Id. at 75-76. See also, Note, The Limitations Period, supra note 106, at 900:
He [Stevens, J.] argued that the plain language of the statute indicated that section
10(b) was directed ‘solely to the administrative procedure’ of the NLRA for the
resolution of unfair labor practice charges. In Justice Stevens’ view, nothing in the
statutory language suggests that Congress intended that the six month limitation
period be applied in any other context.

Id. (footnotes omitted).


124. Id. at 76.

125. Id. **“[T]hus by analogy, a lawyer who negligently allows the statute of limitations
to run on his client’s valid claim may be liable to his client even though the original defendant

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gous to a duty of fair representation claim.126

In a hybrid LMRA section 301/duty of fair representation action, the appropriate statute of limitations period for the claim against the union was never resolved until the Supreme Court decided *DelCostello v. International Brotherhood of Teamsters.*127 The Court in *DelCostello* held that the six month statute of limitations period established in section 10(b) of the NLRA would apply to both the claim against the union and the claim against the employer.128 In creating the uniform law, the Supreme Court distinguished the Court's decision in *Hoosier*129 and upheld Justice Stewart's concurring opinion in *Mitchell.*130

In it's decision, the Court recognized that under the Rules of Decision Act, Congress intended that the "most closely analogous statute of limitations under state law” should be applied in the absence of a federal limitation period.131 The Court, however, limited this intention to situations that would not have an adverse affect on federal law.132 The Court concluded that the Rules of Decision Act was enacted to remedy the absence of federal statute of limitations but that the determination of the time period was still left to the judiciary.133

Instead of borrowing state statute of limitation periods, the Court used "timeliness rules" from federal law.134 In the case at bar, the Court found that the six month statute of limitations period in section 10(b) of the NLRA provided a closer analogy to the claim than state law.135 The Court reasoned that the Board had already held that the union's breach of its duty of fair representation was an unfair labor practice.136 Similarly, the Court concluded that an employer's breach of a collective bargaining agreement was an unfair labor practice in that the violation constituted "unfair, arbitrary or discriminatory treatment."137 Therefore, section 10(b) was the appropriate time bar to apply to unfair labor practices. The use of sec-

126. *Id.* at 74.
128. *Id.* at 172.
129. *Id.* at 165. *See also supra* notes 92-98 and accompanying text.
130. *Id.* at 165-66. *See also supra* notes 108-17 and accompanying text.
132. *Id.* at 162.
133. *Id.* at 159.
134. *Id.* at 162.
135. *Id.* at 163.
136. *Id.* at 170.
137. *Id.*
tion 10(b) more importantly provided a uniform statute of limitations period which balanced "the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system."\textsuperscript{138}

Although a federal statute of limitations was applied to the hybrid claim, the Court in \textit{DelCostello} concluded that the use of state law remained the "norm."\textsuperscript{139} The Court did not suggest that the Rules of Decision Act be abrogated. Nonetheless, when a federal statute provides a better analogy than a state law, the federal statute of limitations is the appropriate choice.

\section*{B. The Current Development in the LMDRA Statute of Limitations Period}

The absence of a statute of limitations provision in the LMRDA has prompted a controversy in the federal courts. Although the issue has not yet reached the Supreme Court, the federal district courts and the appellate courts, which have addressed the conflict, have failed to establish a uniform rule. As a result, the courts have applied different time bars to similar LMRDA claims. In some jurisdictions\textsuperscript{140} the courts have looked to federal labor law and have applied the hybrid section 301/duty of fair representation six month statute of limitations period to LMRDA claims. Still in other jurisdictions\textsuperscript{142} the Federal Rules of Decision Act has been observed and the state limitations period has been applied to LMRDA claims. The lack of uniformity has prevented the attainment of the goals of the LMRDA and has created a disruptive environment within the union structure.

One resolution to this problem has been to expand \textit{DelCostello} to all LMRDA claims.\textsuperscript{142} The same analogy made in \textit{DelCostello} between a hybrid claim and an unfair labor practice has been made

\begin{enumerate}
\item \textit{Id.} at 171 (Stewart, J., concurring).
\item \textit{Id.}
\item \textit{Id.} and \textit{See Local Union 1397, United Steelworkers of America v. United Steelworkers of America, 748 F.2d 180 (3d Cir. 1984); Legutko v. Local 816, Int'l Bhd. of Teamsters, 606 F. Supp. 352 (E.D.N.Y. 1985); Turco v. Local Lodge 5, Int'l Bhd. of Boilermakers, Iron Shipbuilders, Goldsmiths, Forgers & Helpers, 592 F. Supp. 1293 (E.D.N.Y. 1984).}
\item \textit{See Local Union 1397, 748 F.2d 180 (3d Cir. 1984); Legutko, 606 F. Supp. 352 (E.D.N.Y. 1985); Turco, 592 F. Supp. 1293 (E.D.N.Y. 1984).}
\end{enumerate}
between the LMRDA claim and the unfair labor practice. In *Local Union 1397 v. United Steel Workers of America*, the Third Circuit Court held that a LMRDA section 102 (freedom of speech) claim was analogous to a NLRA section 8(b)(1) claim. Both addressed the same concern to protect workers from arbitrary treatment by unions who represent the workplace. The court, however, failed to recognize the distinction between the LMRDA, which addressed internal union affairs, and the NLRA which addressed external union affairs. Instead the court found that with any dispute, whether it be internal, to speak against union leadership, or external, the grievance procedure, the union had the responsibility to fairly represent the members.

The similarity in policy considerations between LMRDA claims and hybrid claims also persuaded the Third Circuit to apply the section 10(b) six month statute of limitations period. The application of section 10(b) to hybrid claims guaranteed a balance between the federal interest in a stable collective bargaining relationship and the rapid resolution of labor disputes against the employee’s interest to set aside an unjust settlement. In LMRDA claims, the court was also concerned about a quick resolution to disputes involving a union and an employee. Dissension within a union would only adversely affect the stable bargaining relationship, thereby interfering with the federal labor policy. The application of section 10(b) to LMRDA claims would quickly resolve the disputes while preserving the federal employee interest.

In further support of the 10(b) six month statute of limitations period for LMRDA claims, the court in *Turco v. Local Lodge 5*, expanded the *DelCostello* decision. The court held that the instant LMRDA claim was similar to a breach of duty of fair representation claim. Both were charges made by workers against unions for unfair treatment. Subsequently, the court relied on the Supreme Court’s reasoning that a breach of a duty of fair representation for “unfair, arbitrary or discriminatory treatment of workers by unions”

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143. *Id.*
144. 748 F.2d 180 (3rd Cir. 1984).
145. *Id.* at 183.
146. *Id.*
147. *Id.* at 183-84. This was the same balance that Justice Stewart described in his concurring opinion in *Mitchell*, 451 U.S. at 70-71.
148. *Local Union 137*, 748 F.2d at 184.
150. *Id.* at 1294 n.1.
was governed by section 10(b) for unfair labor practice charges.\textsuperscript{151}

The arguments to expand the six month statute of limitations period for hybrid claims to LMRDA claims are without merit in light of the vast differences in the statutes and legislative intents.\textsuperscript{152} The Court, in\textit{DelCostello}, invented a statute of limitations for the hybrid LMRA section 301/duty of fair representation claim, a claim which challenges “the private settlement of disputes under the collective bargaining agreement.”\textsuperscript{153} The Court was also concerned with the implementation of the federal policy to quickly resolve labor disputes between the union and management.

Under the LMRDA, the collective bargaining agreement and the employer are not involved in the cause of action. In a recent decision,\textit{Rodonich v. House Wreckers Union},\textsuperscript{154} federal district court Judge Cannella pointed out that LMRDA claims do not involve the collective bargaining process in the same way as section 301 claims. The court found that “the internal union nature of LMRDA complaints impact only intangentially on the collective bargaining concerns expressed in \textit{DelCostello}.”\textsuperscript{155}

The court, in\textit{Rodonich}, also concluded that the result of applying a six month statute of limitations period “might be to thwart the congressional purpose in enacting the LMRDA, which was to provide union members with a ‘bill of rights’.”\textsuperscript{156} Consequently, the court found that the state three year statute of limitations which is applicable in federal civil rights actions was more appropriate for the instant LMRDA Title I “bill of rights” claim.\textsuperscript{157} The court reasoned that the statute provided the reasonable time needed to vindicate rights similar to those established in Title I.\textsuperscript{158}

The First Circuit Court in\textit{Doty v. Sewall}\textsuperscript{159} applied the\textit{Rodonich} analysis of LMRDA rights. In\textit{Doty} the court held that the LMRDA was not enacted to protect employee economic interests which were “secured through negotiations between a union, and employer resulting in a collective bargaining agreement.”\textsuperscript{160} The provi-

\begin{itemize}
\item \textsuperscript{151} \textit{Id.}
\item \textsuperscript{152} \textit{See supra} notes 7-86 and accompanying text.
\item \textsuperscript{153} \textit{DelCostello}, 462 U.S. at 165 (quoting \textit{Mitchell}, 451 U.S. at 66) (quotations and brackets omitted).
\item \textsuperscript{154} 624 F. Supp. 678 (S.D.N.Y. 1985).
\item \textsuperscript{155} \textit{Id.} at 682.
\item \textsuperscript{156} \textit{Id.}
\item \textsuperscript{157} \textit{Id.} at 682-83.
\item \textsuperscript{158} \textit{Id.}
\item \textsuperscript{159} 784 F.2d 1 (1st Cir. 1986).
\item \textsuperscript{160} \textit{Id.} at 6-7.
\end{itemize}
sions in the collective bargaining agreement guaranteed the employer and the union grievance and arbitration procedures in order to resolve "issues involving an employees economic loss." 

An employee's civil rights, however, were to be protected by the LMRDA. Civil rights are noneconomic interests "covering such matters as freedom of speech and assembly and equal voting rights." Title I of the LMRDA guarantees employees a "bill of rights" and protection from "autocratic abuses by union officials.

The Colorado District Court in Bernard v. Delivery Drivers, similarly held that LMRDA Title I claims were analogous to constitutional rights protected by section 1983 of the Civil Rights Act of 1871. Relying on a Tenth Circuit Court decision, the court, therefore, applied the state three year limitations period for section 1983 claims to a LMRDA section 412 claim.

The Court in DelCostello was additionally concerned about uniformity in the statute of limitations period for a hybrid claim. Since there were two causes of actions in the hybrid claim (one against the employer and one against the union) the Court was concerned that the claim would be governed by two different limitations periods. Application of the NLRA section 10(b) limitations period provided the Court uniformity to the hybrid claim. The LMRDA claim, however, consists of only one defendant, the union. It is a "straight forward claim against the union or its officers for deprivation of rights." Therefore, the uniformity issue in DelCostello is not present. Only one statute of limitations period would be applicable.

In Gordon v. Winpisinger, the Eastern District Court of New York held that the alleged LMRDA violations had no hybrid claim characterization. The employer was not named as a party to the action. Instead, the plaintiff sued only the union for arbitrary and un-

161. Id. at 7.
162. Id. at 7-8.
163. Id. at 8.
164. Id.
166. Id. at 525. The court relied on the Tenth Circuit Court's decision in Garcia v. Wilson, 731 F.2d 640 (10th Cir. 1984). The Tenth Circuit decided that a uniform application of state limitations period for claims under 42 U.S.C. § 1983 was appropriate for LMRDA § 412 claims.
167. If state law governed, the statute of limitations period for breach of contract would apply to the claim against the employer while the breach of duty of fair representation claim would be governed by § 10(b) of the NLRA. DelCostello, 462 U.S. at 169.
168. Doty, 784 F.2d at 2.
lawful conduct towards its members.\(^{170}\)

Although Congress did not provide a limitations period in the LMRDA, the court does not have the judicial right to create one. The traditional rule of applying state statute of limitations when a federal statute of limitations was not provided by Congress is still good law.\(^{171}\) The Rules of Decision Act provided that: "the laws of the several states except where . . . acts of Congress otherwise . . . provide, shall be regarded as rules of decision in civil actions in the court of the U.S., in cases where they apply."\(^{172}\)

As early as 1895 the federal courts have utilized a state's statute of limitations period when the federal law was silent on the issue.\(^{173}\) It is a federal custom to employ procedures of the state in which the court is located, when there is a procedural question.\(^{174}\) As such, there is no good reason to depart from this long established principle.

The DelCostello Court, itself, emphasized the narrowness of their decision and held:

We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations periods anytime state law fails to provide a perfect analogy.\(^{176}\)

The Court's own language supported the Second Circuit Court's decision in Monarch Long Beach v. Local 812.\(^{176}\) In Monarch, the analysis in DelCostello compelled the court to apply the appropriate state statute of limitations period to a section 303 claim.\(^{177}\) The court narrowly construed DelCostello after finding the six month statute of limitations period was only expanded to hybrid claims which affected labor-management relations.\(^{178}\) The policy considerations that influenced DelCostello\(^{179}\) were not found in the instant

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\(^{170}\) Id. at 238.


\(^{172}\) Id.

\(^{173}\) Campbell v. Haverhill, 155 U.S. 610 (1894).


\(^{175}\) 462 U.S. 151, 171 (1983) (emphasis added).

\(^{176}\) 762 F.2d 228 (2d Cir. 1985).

\(^{177}\) Id. at 231.

\(^{178}\) Id.

\(^{179}\) Id. The hybrid claim policy considerations are to promote the "formation of the collective bargaining agreement and the private settlement of disputes under it." Id. (citing UAW v. Hoosier, 383 U.S. 696, 702 (1966)). In Monarch, however, neither the employer nor
section 303 claim.

After the Monarch ruling the United States District Court for the Eastern District of New York reversed the court’s decision in Agola v. Hagner. The court held that the hybrid claim limited the DelCostello decision. The section 10(b) six month statute of limitations period, therefore, could not be applied to a union member’s claim under LMRDA.

It has also been suggested that LMRDA claims are similar to section 8(b) of the NLRA which was amended to the NLRA by the Taft Hartley Act of 1947. Section 8(b) was enacted to regulate the union’s power over the job rights of employees. Nothing in the statute guarantees workers the LMRDA rights to freedom of speech or to a free and fair election. In NLRB v. Allis-Chalmers Mfg. Co., the Court held that section 8(b) of the NLRA did not apply to internal union disputes arising under Title I of the LMRDA. The Court found that the legislative history indicated that section 8(b)(2) was not intended “to interfere with union self government or to regulate a union’s internal affairs.”

LMRDA Title I rights cannot be governed by the NLRA or the Board. The NLRA contains no provisions to enforce the employees’ rights under the LMRDA. The enactment of the LMRDA provided a private right of action to redress violations of the LMRDA. The federal court, not the Board, has the obligation to enforce these rights.

the collective bargaining process was involved in the claim.
181. Id.
184. 388 U.S. 175 (1967).
185. Id. at 184-85. The Senate Report stated:

The committee did not desire to omit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and do not require the employer to inquire into internal affairs of the union.

Id. at 184-85 (emphasis supplied by the court) (quoting S. REP. No. 105, 80th Cong., 1st Sess., 20, reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 426 (1947)).

186. The NLRA contains no provisions that guarantee workers the right to: 1. nominate candidates for union office; 2. have an equal vote in elections or referendums; 3. meet and assemble freely with other union members; 4. express individual views about union officials or union activities.

187. See, e.g., Trotter v. Int’l Longshoremen’s and Warehousemen’s Union, Local 13, 704 F.2d 1141 (9th Cir. 1983), Copitas v. Retail Clerks, 618 F.2d 1370 (9th Cir. 1980),
A decision on a LMRDA claim not only affects the individual filing the claim, but also has a great impact on the rights of all employees. Therefore, the analogy has been made between the LMRDA claim and a civil rights action. Because Congress did not provide a statute of limitations period in the federal civil rights statute, actions arising under that statute are governed by state statute of limitations periods. Likewise, LMRDA claims should be governed by state limitations periods. Litigating a civil rights action also requires an enormous amount of preparation. In *Burnett v. Grattan*, the court held that "[w]hen a Legislature selects a statute of limitations to govern a particular cause of action, it takes into account the burdens borne by the parties to a suit of that sort. . . ." The application of the six month statute of limitations period to a LMRDA claim would not take into consideration the work involved in litigating an LMRDA claim. Consequently, the statute would be ineffective.

**V. CONCLUSION**

Congress enacted the LMRDA of 1959 in order to provide supplemental protection for the rights of union members not guaranteed by the NLRA. The LMRDA expanded the national labor policy into a new area of employee and labor organization relationships. For the first time, the democratic process within the labor unions has become an important labor interest. To preserve union democracy, Congress has conferred upon union members fundamental constitutional rights. The creation of a six month statute of limitations for LMRDA claims would preclude the drafter's intention. The courts have traditionally complied with the Federal Rule of Decision Act's


190. Id.

191. *Burnett v. Grattan*, 468 U.S. 42 (1984). Counsel must be obtained, investigations must be conducted to draft pleadings under federal law. *Id.* at 52.

192. *Id.*

193. *Id.*

194. Cox, *supra* note 9, at 852. Prior to the enactment of the LMRDA the national labor relations policy was limited to the stabilization of collective bargaining relationships and the quick resolution of labor disputes.
guidelines where a federal statute lacks a statute of limitations provision. There is no reason to depart from these guidelines now.

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