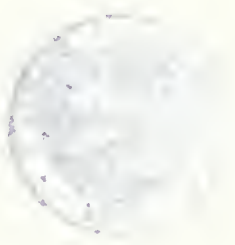
UNION DISCIPLINE AND ITS IMPLICATIONS FOR THE INDIVIDUAL AND FOR MANAGEMENT

By
JEFFREY LYNCH HARRISON



A DISSERTATION PRESENTED TO THE GRADUATE COUNCIL OF
THE UNIVERSITY OF FLORIDA
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

UNIVERSITY OF FLORIDA
1970

Dedicated to

Ann,
all The Folks
and the Doctor

ACKNOWLEDGEMENTS

I would like to thank John H. James, Associate Professor of Management; Charles Fristoe, Associate Professor of Economics; Ralph Blodgett, Professor of Economics; and Ruth McQuown, Associate Professor of Political Science, for their support and cooperation. In addition, I would like to thank Associate Professor Norman G. Keig for his help in selecting a topic and for his encouragement once this had been done.

Special thanks go to Jordan B. Ray, Associate Professor of Management and Business Law. Professor Ray has given valuable technical assistance and encouragement.

I would like also to express my deep gratitude to William V. Wilmot, the chairman of my supervisory committee and Chairman of the Department of Management. Dr. Wilmot has given unselfishly of his time and advice. His personal interest has served as a constant inspiration. In addition, he was instrumental in helping me attain the financial aid necessary to pursue graduate study.

My parents, Mr. and Mrs. Frank M. Harrison, and Dr. Harold Lusskin have helped tremendously through their encouragement and financial aid. Finally, I would like to thank my wife, Ann, for serving as an inspiration and for having patience with me in moments of frustration.

TABLE OF CONTENTS

TABLE OF CONTENTS—*Continued*

LIST OF TABLES

Abstract of Dissertation Presented to the Graduate Council of the University of Florida in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

UNION DISCIPLINE AND ITS IMPLICATIONS FOR THE INDIVIDUAL AND FOR MANAGEMENT

By

Jeffrey Lynch Harrison

August, 1970

Chairman: William V. Wilmot
Major Department: Management

Unions are, or at least are presumed to be, democratic institutions. The concept of democracy implies the existence of certain individual "rights." However, it is critical for a union to present a united front; hence, the need for discipline. This study is concerned with the freedom of unions to exercise disciplinary power and the implications of this discipline for the union member and for management.

As bases for discussion three hypotheses were formulated. First, it was hypothesized that the freedom of unions to exercise discipline has increased since 1935. The second hypothesis stated that union discipline has had the effect of decreasing individual liberty. In addition, it was hypothesized that union discipline has contributed to a decline in management's exercise of what in the past it assumed were its prerogatives.

The methodology involved an examination of four separate but related areas which affect the freedom of unions to discipline their members. First, the relevant legislation was examined. Secondly, the contents of union constitutions were reviewed. The third area of investigation involved an analysis of NLRB and court decisions. Finally, the impact of arbitration and decisions by review boards were considered.

In the area of legislation, it was found that there has been increased regulation of union discipline. Union discipline is specifically regulated by Section 101(a)(5) of the Landrum-Griffin Act. Sections 7 and 8(b)(1)(a) of the Taft-Hartley Act also seemed to have the possible effect of curbing union discipline.

The contents of union constitutions were found to be generally vague. In addition, the constitutions tended to place a great deal of disciplinary power in the hands of the unions. The constitutions usually did not provide for many of the procedural safeguards which are required in federal courts.

The attitude of the NLRB and the courts has generally been to avoid involvement in union disciplinary matters unless a job loss is involved or the disciplinary action is flagrantly arbitrary. This is a result of two factors. First, the courts view the union constitution as a contract between the union and the union members. Secondly,

the NLRB has interpreted Section 8(b)(1)(a) of the Taft-Hartley Act in such a way that an individual seems to lose his rights as guaranteed by Section 7 when he joins a union.

Arbitration was found to have a limited impact on union discipline because it concerns primarily the union-management relationship rather than the union-member relationship. The decisions of review boards were also found to have limited relevance because the boards usually play the role of an appellate body within the union.

It was concluded that the freedom of unions to exercise discipline has not increased. At the same time, though, it was concluded that the effect of union discipline has been to greatly reduce individual freedom. The individual not only loses his status as an individual bargaining unit, but he must face disciplinary action without the protection of many procedural safeguards.

Finally, it was concluded that union discipline has contributed both directly and indirectly to the decline in management's exercise of what in the past it assumed were its prerogatives. Nevertheless, it was recognized that in certain situations management might favor greater union disciplinary power.

CHAPTER I

INTRODUCTION

The Problem and Its Importance

John Stuart Mill

Unless there is unanimously consistent behavior, every objective oriented, democratically governed institution is faced with a continuous problem of making decisions with regard to the extent of individual liberty.

John Stuart Mill, probably the most brillant philosopher on the subject of liberty, felt that "the greatest happiness for the greatest number" is made possible if everyone will "think and act for themselves."[1] Mill's protest against external authority is qualified by the fact that "think and act for yourself" does not mean "think and act as you please." An individual should think and act for himself but he must not endanger the interests of others. It is at this point that a problem arises as to defining the exact amount of individual liberty that is permissible. In Mill's words:

> As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question of whether the general welfare will or will not be promoted by interfering with it becomes open to discussion. But there is no room for entertaining any question

> when a person's conduct affects the interests of no persons besides himself, or needs not effect them unless they like.[2]

Thus, an institution operating under Mill's philosophy is confronted with two problems before the amount of allowable individual liberty can be determined. First, does the person's behavior, in fact, directly prejudice the interests of others or are they prejudiced because the protester wants them to be? This decision determines whether the state, government, society or any other authoritative power has jurisdiction over the situation. Secondly, if it is determined that a person's interests are endangered by the actions of another, the benefits and disadvantages of authoritative intervention must be weighed.

Thus, Mill leaves an indeterminate system in terms of defining the extent of individual liberty. The problem of defining individual liberty exists in any democratic, objective oriented institution, whether or not the institution completely ascribes to Mill's philosophy.

The Union

Although it would be presumptuous to claim that unions abide by the philosophy of Mill, it does appear that they are faced with many decisions similar to those encountered in Mill's society. Specifically, how much individual liberty can be tolerated before the interests

of the other members of the union are in jeopardy? Secondly, will disciplinary action be beneficial or disadvantageous in terms of the general welfare?

In short, unions are, or at least are presumed to be, democratic institutions. The concept of democracy implies the existence of certain individual "rights." However, it is critical for a union to present a united front to others as well as to accomplish its own goals; hence, the need for discipline. It is this problem of union discipline with which this study is concerned.

This problem is by no means new. Forty-two years ago, A. J. Muste called attention to the dual nature of trade unions. He asked the question: Which is more important: democracy with its recognition of internal differences, or discipline at the price of enforced internal unity?[3] Answers to this question vary greatly. John L. Lewis believed that democracy should be subordinated to efficiency.[4] The labor union should be an expedient and administratively efficient organization. The opposite of the argument can be represented by this statement made by Joel Seidman:

> Yet in some cases it may be true that factionalism has weakened union bargaining effectiveness; where this happens, it is part of the price paid for democracy.[5]

Prior to dealing with the main problem, it is appropriate to comment about the origins of union discipline.

Discipline is the result of the unions' position in the economy.[6] Their purpose, to a large degree, is to gain economic benefits for their members. The strength and survival of the union depends on how well it accomplishes this goal. Any act which interferes is a threat to this survival. The necessity for discipline may vary depending on how peaceful union-management relations are, but as long as there is the possibility of a strike, a certain degree of discipline must be maintained. If a strike occurs, the union is virtually at war and discipline is an absolute necessity.[7] As long as there is a possibility of a breakdown in union-management relations, the union is likely to look upon any activity that causes dissension or division, not as an exercise of democratic rights, but as an overt threat to its existence.

Government

Increasing the complexity of determining the individual liberty is the fact that enveloping the union as an institution is the government, which is also involved in the constant process of determining the optimum amount of individual liberty in terms of the general welfare.

This process has resulted in unions finding themselves in a rather unique legal environment. They have progressed from being illegal associations, to being fraternal organizations, to being regarded finally as

public or, at least, quasi-public organizations.[8] They enjoy legislative protection and until recently they have had considerable, indeed, nearly total, legal immunity.[9] While being considered public, unions have maintained requirements and implemented disciplinary actions not unlike those of fraternal or voluntary organizations.

The legislative environment within which unions exist is so tangled that a great variety of court decisions can be justified. For example, Section 101(a)(2) of the Landrum-Griffin Act protects the union when "enforcing reasonable rules as to the responsibility of every member toward the organization. . . ."[10] Needless to say, the word *reasonable* can have a variety of interpretations. To add to this legislative web, Section 8(b)(1) of the National Labor Relation Act prohibits a union "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." Section 7 not only protects the right of any member to engage in "concerted activities" but also "to refrain from any or all such activities."

In short, conflict occurs because a member cannot be restrained or coerced, but the union is legislatively authorized to prescribe rules and regulations.[11] With respect to disciplinary matters, the outcome of the legislation does not provide a clear prescription for court action.

The Study

The above discussion points out the complexities of the problem of union discipline. It is an important area for study for several reasons. First, it may be that the most important foundation of the American society is individual liberty. The degree to which this is regulated by institutions is a matter of interest to all concerned with the survival of individual liberty and the general welfare. Secondly, union discipline is important because it affects the way an individual makes a living. Thirdly, union discipline is important because it can play an important role in the smooth functioning of the business firm. Finally, union discipline is an especially interesting area for study because of the overlap in the rules formulated by management and by trade unions. Even the disciplinary measures are often the same.

No investigation of reasonable length could consider all the implications and extensions of union discipline. This study will consider three areas. First, where do unions stand in their freedom to exercise disciplinary measures in cases that involve or affect employer-employee interaction? More generally, to what extent has individualism been subordinated to collectivism in the labor movement? In conjunction with this, an effort will be made to determine if a trend is evident in the degree of freedom enjoyed by unions in disciplinary matters.

Secondly, it will be interesting to see if unions still have the legal protection of private or voluntary organizations even though membership is often a prerequisite for employment. Especially important are the implications of this in terms of the loss of individual liberty.

Finally, what are the implications for management of union discipline? To what degree have management prerogatives been decreased? What are the economic and legal implications of this for management?

Also, it is hoped that the analysis of union discipline will help in answering or at least in approaching the general question of what role labor is expected to play in American society. Is the practice of business unionism expected or are unions expected to take a greater role in the effort to improve general welfare?

Hypotheses

The following hypotheses represent the general areas under investigation and the matters about which conclusions will be sought.

Hypothesis I.—There has been a trend toward increased freedom in the use of discipline by unions in matters involving employer-employee interaction.

Hypothesis II.—The exercise of union discipline has resulted in the loss of individual freedom.

Hypothesis III.—Union discipline has contributed to the decline of management's exercise of what it assumed in the past were its prerogatives.

Methodology

Acceptance or rejection of these hypotheses and any other general conclusions will be based on investigation in four areas. First, those parts of the major labor laws that affect union discipline will be examined.

Secondly, an analysis will be made of union constitutional provisions for member discipline. When possible this information will be compared over time in order to detect any trends. This information is available through the Department of Labor.

Another area to be investigated will be the decisions of the NLRB and the U. S. Courts. In addition, a survey of the literature will be made to gain the opinions of others as to the significance and implications of particular decisions.

Finally, the decisions of arbitrators and review boards will be considered in order to determine the effects of these decisions on union disciplinary power.

Scope and limitations

There are certain areas that are often considered in the area of union discipline which will not be dealt with in this paper. The question of union democracy will not be considered except as an incidental matter. In addition, the research will only deal with disciplinary actions that have affected the employee on the job and his relationship with the employer. For example, the hypothetical

case involving a member who disrupts a union meeting, and is subsequently fined, is expressly excluded from consideration.

A thorough investigation will only be made of the years since enactment of the National Labor Relations Act (Wagner Act) in 1935. One reason for this is that union discipline was not a matter of major concern until after this time. Also, one of the main sources of information, the NLRB decisions, did not exist prior to this time.

A limitation of the study that should be noted is that the conclusions will be largely based on NLRB and Supreme Court decisions. This, of course, means that consideration will not be made of the great number of instances when union discipline is exercised without protest. It is safe to assume that for every discipline case that is protested, several similar ones are not. This limitation will be partially remedied by the consideration of union constitutional provisions for discipline.

It is not the purpose of this paper to attack the courts, the Congress or the arbitrators on behalf of individualism. To a certain extent any subordination of individual liberty that has occurred is the result of the ratification, by members, of union constitutions that contain disciplinary provisions.

Expected results

It is expected that the freedom of unions to exercise disciplinary measures has been increasing.

This, it is expected, has been mainly a result of favorable Supreme Court and NLRB decisions rather than legislation and union constitutional provisions.

In addition, it is believed that the research will show that increased union freedom has resulted in decreased liberty for the individual. Finally, it is expected that union discipline has decreased the area of management control.

Plan of Study

The following four chapters each deal with a separate area of investigation. Chapter II discusses the legislative environment within which unions exist. In Chapter III, consideration will be made of union constitutional provisions for union discipline. Significant NLRB and court decisions will be dealt with in Chapter IV. Chapter V will discuss the effects of decisions by arbitrators and review boards.

Chapter VI will be concerned with conclusions with regard to Hypotheses I and II and the implications of these conclusions. The conclusions and implications with regard to Hypothesis III will be considered in Chapter VII. The final chapter will summarize the study and include suggestions for further research.

NOTES

1. John Stuart Mill, *On Liberty*, ed. Alburey Castell (New York: Appleton-Century-Crofts, 1947), p. iv.

2. *Ibid.*, p. 75-76.

3. Joel Seidman, "Some Requirements for Union Democracy," *Labor: Readings on Major Issues*, ed. Richard A. Lester (New York: Random House, 1968), p. 162.

4. *Ibid.*

5. *Ibid.*, p. 163.

6. Clyde Summers, "Disciplinary Procedures of Unions," *Industrial and Labor Relations Review*, IV (October, 1950), 15.

7. See Summers for an interesting discussion of the similarity of language of unions on strike and people engaging in war.

8. William M. Leiserson. *American Trade Union Democracy* (New York: Columbia University Press, 1959), p. 191.

9. Roscoe Pound, *Legal Immunities of Trade Unions* (Washington: American Enterprise Assn., Inc., 1958).

10. Irving Kvorsky, "Union Discipline," *Labor Law Journal*, XIX (November, 1968), 669.

11. *Ibid.*, p. 671.

CHAPTER II

LEGISLATIVE ENVIRONMENT

The purpose of this chapter is to describe the legislative environment in which unions exist and operate. Special attention will be paid to any historical trends that are evident in Congressional intent with regard to the union as an entity and, specifically, with regard to union discipline. The major legislation with which this chapter is concerned is the Wagner Act, The Labor Management Relations Act of 1947 (the Taft-Hartley Act) and the Labor Management Reporting and Disclosure Law of 1959 (the Landrum-Griffin Act). Legislation prior to the Wagner Act will be considered as will the significant events in the Common Law area prior to 1935. All cases that deal with union discipline will be considered in Chapter IV.

Pre-Wagner Act

Up to 1926

The earliest labor organizations in America originated during the late eighteenth century.[1] Through the first half of the nineteenth century, unions were regarded as illegal conspiracies. For example, in 1806

an attempt at collective bargaining by the Philidelphia Journeymen Cordwainers was defeated when the participants were convicted of illegally conspiring to raise wages.[2]

In 1842, the Massachusetts Supreme Court decided, in *Commonwealth v. Hunt*, that trade unions, per se, were not illegal, but that their legality was dependent upon their objectives.[3] Although trade unions gained some legitimacy in subsequent years, the injunction was used extensively to curtail their growth and dampen their effectiveness.[4]

The Sherman Anti-Trust Act was passed by the fifty-first Congress in 1890. The intent of the Act was to aid in the maintenance of a competitive market place. The law was worded in such a way that the Supreme Court emerged as the most significant body in determining exactly what the Act meant or did not mean.[5] It is quite possible that the Sherman Anti-Trust Act was not intended to apply to labor organizations.[6] Senator Sherman himself said that he did not intend to include labor organizations. The Act itself, while pending in Congress, contained a specific labor exemption. Of course, the final bill contained no exemption. According to Sanford Cohen, the most plausible explanation of this is that the members of Congress believed that an exemption of labor organizations would have been superfluous in a law addressed against business combinations.[7]

The first Supreme Court test of how the Sherman Anti-Trust Act would apply to labor organizations came in the 1908 *Danbury Hatters* case.[8] The United Hatters of North America instituted a boycott against a hat manufacturer. Appeals were made to union members and to the public to boycott the product. After an $80,000 decline in sales, the firm appealed to the court. The eventual outcome was a test of the applicability of the Sherman Anti-Trust Act to labor organizations. The Court decided against the United Hatters.

The Clayton Act of 1914 appeared to be the saving factor for labor. Supposedly, the Clayton Act would exempt labor organizations from the Sherman Anti-Trust Act. A general improvement in the legal standing of unions was anticipated, but did not materialize. The question was brought up in the 1921 case of *Duplex v. Deering*.[9] The issue in the Duplex case was whether Section 6 of the Clayton Act had legalized the use of secondary union pressures. The union also questioned whether the injunction could still be used in labor disputes. The Supreme Court decided against the union on both questions. Justice Pitney, who wrote the majority opinion, said that Section 6 of the Clayton Act did not provide unions with any legal immunities that they did not enjoy prior to 1914.[10]

Labor was dealt serious setbacks in two more cases during the 1920's. In both the *Second Coronado* case (1925)

and the *Bedford Cut Stone* case (1927) the actions of the union were found to be in restraint of trade.[11] Particularly significant was the fact that a "rule of reason" precedent, established in the 1911 *Standard Oil v. American Tabacco Company* decision, did not help the unionists.

1926 - 1934

Things brightened somewhat for labor during the ten years prior to the passing of the Wagner Act. Although the Railway Labor Act of 1926 was aimed at a specific problem in a particular industry, the Act influenced the wording and the intent of the Wagner Act.[12] The Act was unique in the fact that unions and management cooperated in its formulation. Most significant was the fact that the Act protected both management and workers from "interference, restraints and coercion in the selection of their representatives for collective bargaining." In addition to guaranteeing the right to organize, the Act included a ban on company unions (which was not effective until a 1934 amendment) and provisions regarding grievances, mediation and arbitration.

The Norris-LaGuardia Anti-Injunction Act was passed in 1932. Although relatively mild when compared to subsequent legislation, this Act was the first national labor relations legislation to affect all those employees involved in interstate commerce. In addition, its language was certainly an indication of things to come. The Act states that:

> the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, . . . though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor. . . .

This section provided the basis of subsequent legislation. The Act, in effect, marked the culmination of a laissez faire approach to labor-management relations.[13]

The most significant sections of the Act, in terms of the era in which it was passed, dealt with the "yellow dog" contract and the injunction. The yellow dog contract was used by employers who were opposed to unionization. In order to be hired, an individual had to sign a pledge that he was not a member of a union nor would he join a union while he was an employee. If this contract was violated, the employee could be dismissed. Although upheld by the Supreme Court prior to 1932, the yellow dog contract was termed unenforceable in a federal court by the Norris-LaGuardia Act.

In addition, the Norris-LaGuardia Act greatly curtailed the use of the injunction as an antilabor device. Although not prohibited, the Act (Section 7) provided that the following five conditions must be met before an injunction can be issued:

1. Unlawful acts have been threatened or committed.
2. Injury to property will follow therefrom.

3. Injury to complainant will be greater than injury to defendent unless acts are enjoined.

4. Complainant has no adequate remedy at law.

5. Police are unable or unwilling to furnish adequate protection to complainant's property.[14]

Sections 8, 9, and 10 set up procedural requirements with regard to injunctions.

In summary, it can be noted that the major cases and legislation of the period through 1934 dealt with questions basic to the existence of the union as an entity. Although there were cases prior to 1935 that dealt with union discipline, their importance was minor compared to the other questions of the day. Unions had gained legal legitimacy but they were still fighting for survival. Congress and the courts still regarded unions as private or voluntary organizations and, therefore, the matter of internal affairs was not of particular interest.

The National Industrial Recovery Act and the Wagner Act

National Industrial Recovery Act

In 1933 the National Industrial Recovery Act (NIRA) was passed. The primary aim of the Act was to encourage the formation of industrial associations that would engage in "fair competition."[15] Anti-trust laws were suspended and it was hoped that through "industrial self-government" the firms in an industry would set standards for wages, hours, labor relations and trade policies.

The Act included the now famous Section 7(a) which includes, among other things, the provision that "employees have the right to organize and bargain collectively through representatives of their own choosing, free from interference, restraint or coercion by employers."[16]

To consider the problems of interpretation with regard to Section 7(a) the National Labor Board (NLB) was established. The Board had no enforcement powers or clearly defined objectives and its existence was brief. The National Labor Relations Board (NLRB) was established in 1935 through enactment of Public Resolution Number 44.[17] The NLRB had more power than the NLB but in 1935 it was on the verge of collapse due to jurisdictional and authority problems. The National Industrial Recovery Act itself was declared unconstitutional in 1935.

The Wagner Act

The Wagner Act was passed by Congress on July 5, 1935. As the following description will show, the Railway Act of 1926 and the NIRA of 1933 were heavily drawn upon in the formulation of the Wagner Act.

The policy declaration of the Wagner Act placed heavy emphasis on the importance of the Act in terms of interstate commerce. It stated that antiunion behavior was detrimental for two reasons. First, industrial conflict interfered with the movement of goods. Secondly, inequality

of employee-employer bargaining power "aggravated recurrent business depressions."[18]

Section 7 of the Wagner Act guaranteed the right of employees "to self-organize, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection."

Actually, since *Commonwealth v. Hunt*, it had been legal for employees to organize. The important factor with regard to the Wagner Act was that it listed specific actions by employers that were forbidden. Section 8 of the Act includes the following unfair labor practices by employers:

1. Interference, restraint and coercion of employees as to their rights under Section 7. Sec. 8(a)(1).

2. Domination of unions, including employer interference with the administration of, or the furnishing of financial assistance to labor organizations. Sec. 8(a)(2).

3. Discrimination against employees for union activity as to terms of hire, tenure, or working conditions. Sec. 8(a)(3).

4. Discrimination for filing charges or giving testimony under the Act. Sec. 8(a)(4).

5. Refusing to bargain collectively with an authorized representative of labor. Sec. 8(a)(5).[19]

Through the Wagner Act, the NLRB gained the legitimacy that it lacked previously. The NLRB was authorized to investigate, hold hearings and to issue decisions

and orders with regard to representation and unfair labor practices. Decisions of the courts after the Wagner Act fortified the legitimacy of the Board by upholding orders by the Board to employers to reinstate, with back pay, any individual who had been discharged in violation of the Act.[20]

As in previous legislation, the concern of Congress was not the internal affairs of unions. Of primary concern were the external affairs of unions and the problem of elevating their bargaining power to a point comparable to that of management. As the growth of unionism in the latter 1930's attests, the aim of Congress was fulfilled. Perhaps the only indication of a concern for internal affairs is the fact that the workers had the right to determine by "democratic majority" vote the question of representation. It is very doubtful that there was any intent, even in this requirement, to regulate the internal affairs of unions.

Taft-Hartley Act

From 1935 to 1947, there was a significant change in the attitude of the public toward labor. By 1946, abuses of stewardship, refusal of some unions to bargain in good faith and a rise in the number of labor disputes resulted in a public demand for more restrictive labor legislation.[21] The eventual outcome was the Taft-Hartley Act in 1947. While the Act itself maintained most of the

elements of the Wagner Act, the changes and additions denoted a significant turn in the state of labor legislation.

One change involved the reorganization of the NLRB. The Board was divided into a trial section and an investigative section. The Board makes decisions while the General Counsel (not responsible to the Board) performs the investigations. The intent of this section of the bill is to alter the previous situation in which the NLRB was prosecuter, judge and jury.[22]

The Taft-Hartley Act amended Section 7 of the Wagner Act to give individuals the right to refrain from "any or all of such activities." Thus, the individual has the explicit right not to join or form labor organizations or to take part in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." This, of course, excluded closed shop agreements.

The Taft-Hartley Act provided that there would be a maximum of one recognition election per year. In addition, employers were permitted to express views with regard to organization (Section 8(c)) and this would not be construed as an unfair labor practice unless there is a "threat of reprisal or force or promise of benefit."

A list of union unfair labor practices was added to the Wagner Act by the Taft-Hartley Act. A union engages in an unfair labor practice if it:

1. Coerces or restrains employees in their freedom to engage in or refrain from union activities, or employers in choosing spokesmen. Sec. 8(b)(1).

2. Coerces an employer to discriminate against employees under a union security agreement, except where the employee fails to pay reasonable dues and initiation fees to the union. Sec. 8(b)(2).

3. Refuses to engage in good faith bargaining with the employer or his representative. Sec. 8(b)(3).

4. Engages in conduct, including picketing, that influences nonperformance of work by employees in order to force:

   a. an employer or one who is self-employed to join a labor organization; or to force him to refuse to deal with or handle products of another company; or

   b. another employer to recognize an uncertified union; or

   c. any employer to bargain where any other union has been certified as representative; or

   d. the assigning of work to one craft or group instead of another unless in accordance with an NLRB order. Sec. 8(b)(4).

5. Levies excessive or discriminatory dues and initiation fees if it enjoys a union shop contract. Sec. 8(b)(5).

6. Engages in featherbed practice exactions. Sec. 8(b)(6).

7. Engages in picketing to coerce unionization without seeking any election. Sec. 8(b)(7).[23]

It is important to note that Section 8(b)(1) included a proviso that 8(b)(1) would "not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

In addition, the Taft-Hartley Act contained notification requirements in the case of termination or modification of a collective bargaining agreement before expiration. Sixty days prior to the termination or modification of the collective

bargaining agreement, the party initiating the action must notify the other party. The party must offer to meet and negotiate a new contract and then must notify the Federal Mediation and Conciliation Service of the existence of the dispute within 30 days of the first notice if no agreement has been reached by that time. The contract must continue for 60 days after notification of the Federal Mediation and Conciliation Service and a strike or lockout prior to the end of this period will not be protected by the law.

The Taft-Hartley Act marked the first entrance of the government into the internal affairs of unions. First, the NLRB was available only to internationals and locals whose officers had signed "non-Communist" affidavits.[24] The facilities of the NLRB were also denied to unions which failed to file annual financial reports. In addition, political expenditures were banned as was the closed shop.

Finally, the Taft-Hartley Act applied the national emergency provisions of the Railway Labor Act of 1926 to the nation as a whole. To be termed a "national emergency" a dispute must affect an entire industry or a substantial part of the industry and it must threaten national health and safety. The Act provides for an 80-day injunction if the district court ascertains that both the above conditions are met. After 60 days, the President can make public the positions of both parties. Members of the union vote on whether to accept the last offer by management. At the end

of 80 days, barring Congressional action, both parties are free to continue their activities.

The following additions to the Wagner Act are also included in the Taft-Hartley Act:

1. Employers and unions may both maintain suits in federal courts for damages for breach of collective agreements. Sec. 301.

2. Employers may sue unions for damages arising out of secondary boycotts and strikes for unlawful purposes. Recovery is allowed only out of union assets. Sec. 303.

3. Checkoff of union dues must be authorized in writing. Sec. 302.

4. Employee welfare funds are limited to certain uses and have joint administrative requirements. Sec. (c)(5).[25]

It is evident that the basic intent of the Taft-Hartley Act differed from that of the Wagner Act. According to Sanford Cohen

> the outward purpose of the Taft-Hartley Act was to correct certain flaws in the Wagner Act and to give workers, employers and the general public some protection against unrestrained exercise of union power. Implicitly, the purpose was to remove some of the legal shores supporting to growth of union power and the spread of collective bargaining.[26]

Particularly relevant to this analysis are Sections 7 and 8(a)(3) and (b)(1) and (2). Section 7 as mentioned above was amended to allow the individual to refrain from "collective activities."

Section 8(a)(3)(B) prohibits an employer from discriminating against an employee for nonmembership in a union if he (the employer) believes that membership has

been denied or terminated for reasons other than nonpayment of dues or fees.

Section 8(b)(1)(A) makes it an unfair labor practice for a union to coerce employees in the exercise of rights guaranteed in Section 7. This is subject to the limitations of the aforementioned proviso. Section 8(b)(2) prohibits the union from attempting to cause an employer to discriminate against an individual on the basis of membership if the denial of membership is a result of something other than the nonpayment of dues or fees.

Thus, the amendment to Section 7 and the addition of Sections 8(b)(1) and (2) along with Section 8(a)(3)(B) signify an attempt by Congress to protect, not only management, but also the individual. The specific intent of Congress with regard to these provisions has been a much debated issue. In subsequent Court decisions, judges have been able to justify any interpretation of these provisions by selectively quoting the Senators involved in the passage of the Act.

Questions have especially been raised with regard to the meaning of Section 8(b)(1)(A). Although the clause forbids restraint and coercion of employees, there is a question of whether it still applies to an individual who joins a union. For example, can an individual lose the rights guaranteed in Section 7 by joining a union? The proviso in 8(b)(1)(A) also presents a problem. It provides

that nothing in Section 8(b)(1)(A) would interfere with the union's right to prescribe rules with regard to the "acquisition and retention of membership." A literal interpretation of this could greatly curb the effectiveness of union discipline. All the Senators involved in the passage of the Act agreed that the courts should stay out of the "internal affairs" of unions. This term, though, can be subject to greatly differing interpretations.

The Landrum-Griffin Act

During the post Taft-Hartley years, there existed a political stalemate in Congress between those wanting more restrictive labor legislation and those wanting a relaxation of union restrictions.[27] Two developments caused the pendulum to shift toward more restrictive legislation. First, the McClellan Committee uncovered several examples of corrupt practices by unions.[28] Secondly, the waves of inflation experienced from 1946 through 1958 convinced many people that the cause was union bargaining power. Thus, in 1959, after consideration of several similar but not as far reaching bills, the Landrum-Griffin Act was passed.

Title VII of the Landrum-Griffin Act clarifies Congressional intent in the Taft-Hartley Act. Briefly, these four adjustments are made:

1. Jurisdiction of the NLRB is clarified.

2. Regulation of secondary boycotts and hot cargo arrangements are tightened.

3. The Taft-Hartley provisions with regard to union security and the rights of economic strikers to vote in NLRB elections are liberalized.

4. Additional restrictions were placed on the right of unions to picket for recognition.[29]

The first six titles of the Landrum-Griffin Act deal with the area of inner-union democracy. Three questions are approached. They are the rights of union members, the responsibilities of union officers and safeguards on the use of union funds.[30]

Title I of the Landrum-Griffin Act is the most important for the purposes of this study but first a brief summary of the other titles will be made. Note will be made of the provisions in these titles that are related to union discipline.

Title II deals with reporting and disclosure requirements. Every labor organization is required to file a copy of its constitution and bylaws along with information regarding the names and titles of officers. Information about dues and initiation fees is also required. These records are kept current through annual reports. Of specific interest is Section 201(a)(5) which calls for information regarding "imposition of fines, suspensions and expulsions including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence and appeal procedures."

Title III places restrictions on the use of trusteeships. The McClellan Committee uncovered indications that trusteeships were being used by national unions to exploit locals. Title III requires that every labor organization assuming control over a subordinate body must file a report stating the reasons for the trusteeship. These reasons must correspond to those included in the Act as being legitimate for the use of the trusteeship.

Title IV deals with the general area of elections. National unions are required to hold elections at least every five years. Locals must hold elections at least once every three years. Of particular interest are Sections 401 (c) and (e). Section 401(c) guarantees members of unions who are candidates for union office the right to distribute campaign literature. Therefore, electioneering is removed as a ground for discipline. Section 401(e) includes guarantees with regard to the right to vote and to participate in election campaigns.

Title V is concerned with a variety of safeguards for labor organizations. These deal with the fiduciary responsibilities of union officers, bonding requirements and officeholding by Communists and felons.

Title VI includes miscellaneous provisions. For example, Section 602 prohibits extortionate picketing for the personal profit of any individual. Special note should be made of Sections 609 and 610. Section 609 is entitled

"Prohibition on Certain Discipline by Labor Organizations." It prohibits disciplinary action of any kind against a member for exercising any right guaranteed in the Act. Section 610 prohibits the use of, or the threat of, violence in order to deprive an individual of the rights guaranteed in the Act.

For the purposes of this study, Title I is of primary importance. Title 1 is the "Bill of Rights" for members of labor organizations. The justification for this Section was presented by Senator McClellan when he stated:

> It is through unionization and bargaining collectively that he [the unionist] is able to make himself heard at the bargaining table. It seems that this justification becomes meaningless when the individual worker is just as helpless within his union as he was within his industry, when the tyranny of the all-powerful corporate employer is replaced by the tyranny of the all-powerful labor boss. The worker loses either way.[31]

Among other things, Section 101 provides for the equal rights of members with regard to nominating candidates and taking part in discussions about fees and dues. Of particular interest are Sections 101(a)(2), (4) and (5) and Section 102. Section 101(a)(2) deals with free speech but also includes the provision that nothing should be interpreted to impair the right of a labor organization to prescribe "reasonable rules" for their members.

Section 101(4) protects the right of the individual to sue the union after he has exhausted "reasonable hearing procedures within such organizations." Four months is the maximum period of time that an individual must spend

attempting to gain relief through the union before he can appeal to the courts.

Section 101(a)(5) represents the first direct legislative attempt to control union discipline. The section reads as follows:

> Safeguards Against Improper Disciplinary Action—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Finally, Section 102 stipulates that an individual whose rights (as defined by the Act) have been infringed may bring a civil action in a district court of the United States.

There can be little doubt that the combination of Sections 101(4) and (5) and Section 102 represent a clear effort by the Congress to protect the individual. Yet, even within these three sections there is ample room for court interpretation. For example, what is a "full and fair hearing?" It is evident that the answer to this question and others has been left to the unions and the courts. The union provisions will be considered in Chapter III while the significant decisions of the courts will be considered in Chapter IV.

Summary

This brief summary of the major legislation clearly illustrates that unions have progressed from being viewed as illegal associations, to being viewed as legal fraternal

organizations to finally being considered both legal and "public" but subject to control in the public interest.[32]

The Landrum-Griffin Act represents an end to the traditional practice of treating internal union affairs like the internal affairs of fraternal, social or religious groups.[33] Traditionally, a member of one of these groups had no statutory protection if he felt that he had been dealt with unjustly by the organization. Now the union member does, at least theoretically, have protection. It does appear, though, that the vagueness of the legislation has relegated the matters of union discipline and individual liberty to the courts and to the unions themselves.

NOTES

1. Philip Taft, *Organized Labor in American History* (New York: Harper and Row, 1964), p.3.
2. Sanford Cohen, *Labor Law* (Columbus, Ohio: Charles E. Merrill Books, Inc., 1964), p. 99.
3. *Ibid.*
4. *Ibid.*, p. 103-106.
5. *Ibid.*, p. 116.
6. *Ibid.*, p. 117.
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*, p. 120.
10. *Ibid.*
11. *Ibid.*, p. 131-132.
12. Edwin F. Beal and Edward D. Wickersham, *The Practice of Collective Bargaining* (Homewood, Ill.: Richard D. Irwin, Inc., 1963), p. 152-154.
13. *Ibid.*, p. 157.
14. A. Howard Myers, *Labor Law and Legislation* (Chicago, South-Western Publishing Co., 1968), p. 114.
15. Cohen, p. 145.
16. Meyers, p. 485.
17. Cohen, p. 147.
18. Cohen, p. 149.
19. Myers, p. 511.

20. *Ibid.*

21. Taft, p. 579.

22. Beal and Wickersham, p. 163.

23. Meyers, p. 602.

24. Beal and Wickersham, p. 166.

25. Meyers, p. 602.

26. Cohen, p. 180.

27. *Ibid.*, p. 186.

28. U. S. Congress. Senate, Select Committee on the Improper Activities in the Labor or Management Field, *The Interim Report of the Select Committee on the Improper Activities in the Labor or Management Field*, Report No. 1417, 85th Cong., 2d Sess., 1958.

29. Beal and Wickersham, p. 170.

30. *Ibid.*

31. U. S., *Congressional Record*, 86th Cong., 1st Sess., 1959, CV, Part 5, 61472.

32. Joseph R. Grodin, "Legal Regulation of Internal Union Affairs," *Public Policy and Collective Bargaining*, ed. Joseph Shister (New York: Harper and Row, 1962), p. 182.

33. Cohen, p. 197.

CHAPTER III

CONSTITUTIONAL PROVISIONS

This chapter has two purposes. First, a general summary of union constitutional provisions for disciplinary action will be presented. This part of the chapter will be based on a study of union constitutions made in 1963 by the United States Department of Labor—Bureau of Labor Statistics.[1] The second half of the chapter will be devoted to the analysis of three studies of union constitutional provisions which were made during the past thirty years. An attempt will be made to determine if there are any trends in terms of the constitutional provisions.

Summary of Constitutional Provisions

The 1963 Bureau of Labor Statistics Study

The study summarized in this section was largely based on union constitutions dated prior to the passage of the Landrum-Griffin Act. One-fourth of the constitutions were dated subsequent to passage of the act. While this may bias the presentation to some degree, it is believed that this study does present a rather true picture of general constitutional provisions. As the final section

will show, changes in constitutions that have occurred since 1960 have been rather specific in nature and do not affect the overall picture.

The study itself includes analyses of 158 union constitutions. Membership in the 158 unions is 16.9 million or about 93 per cent of the total membership of all national and international unions with headquarters in the United States. Of the 158 constitutions studied, 156 included provisions for disciplining members.

The study defines union discipline as "the formal procedure established by a union to impose sanctions upon members or officers for violation of duties to the union."[2] Union discipline includes five types of procedures. They are summary, recall, trial, impeachment and trusteeship. Summary procedures include those that allow disciplinary action without a hearing or trial. Recall refers to the practice of removing officers by a membership vote. Trial and impeachment both refer to the imposition of discipline after a hearing before a legally constituted tribunal. Impeachment is used only in the case of international officers. Trusteeship is a means used by a national or international union to discipline a local union rather than an individual.[3] This study is concerned with summary and trial procedures as they affect the union member directly.

One hundred sixteen of the constitutions studied included provisions for both summary and trial procedures.

Thirty-nine included provisions for trial only, while only one union included provisions for summary procedures only. Neither size or affiliation was of significance with regard to determining the type of discipline provided for or the administration of the discipline.

Summary Discipline

Summary discipline is punishment or a penalty which is administered without proceeding through any kind of "due process." Summary discipline is used in two general areas. First, it is used to punish members for the nonpayment of financial obligations (i.e., dues, fees, fines, assessments). Secondly, it is used to discipline individuals who commit offenses other than nonpayment of financial obligations (i.e., dual unionism, neglect of duties). Of the 158 constitutions involved in the study, 155 included provisions for summary discipline. One hundred eleven included provisions for summary discipline in both financial and nonfinancial cases. Thirty-two provided for summary discipline only in cases involving financial obligations and 12 had summary discipline provisions that covered nonfinancial matters only.

Summary discipline for nonpayment of financial obligations

The financial obligations of a union member include dues, assessments and fines. Although several constitutions covered these three in one broad provision, usually dues

and assessments were considered together and separate from fines.

Clauses regarding disciplinary action for nonpayment of dues were most common (143 of 158 constitutions), followed by clauses covering nonpayment of assessments (113) and finally followed by clauses covering nonpayment of fines (83). The fact that clauses for disciplinary action as a result of nonpayment of fines were the least numerous seems to indicate that implicit in the imposition of fines is the existence of measures to compel compliance. A grace period was more likely to be granted in the case of overdue dues than any other financial obligations. This period ranged from one month to one year.

The penalty associated with nonpayment of financial obligations was usually suspension or expulsion. These were typically administered in sequential order. In approximately one-fourth of the constitutions, provisions were made for notifying the individual of his delinquency before disciplinary action was instituted.

Summary discipline for nonfinancial offenses

Of the 156 constitutions including provisions for summary discipline, 115 provided for summary discipline in cases other than those involving financial obligations. Table 1 summarizes the number of constitutions providing for summary discipline for various offenses. While the primary subject of summary discipline was the local union

Table 1. Selected Grounds for Summary Discipline by Level, Persons Affected and Penalties, National and International Union Constitutions

Summary Discipline Provisions	Grounds for Summary Discipline						
	Dual Unionism	Strike-breaking	Secession	Resort to Courts	Union Law Violations	Misappro-priation	False Charges
Level at which action is initiated --	15	11	4	20	46	14	21
Local union ----------	1	1	-	-	8	2	8
International union----------	13	8	4	13	36	12	4
Both levels ----------	1	2	-	7	2	-	9
Persons subject to discipline -------	15	11	4	20	46	14	21
Members ----------	-	1	-	-	3	-	2
Local union officers ----------	2	2	2	-	14	10	-
Members and local union officers --	12	7	1	19	23	2	17
International officers ----------	-	1	-	-	1	-	1
Members, local union, and international officers ----------	-	-	-	1	-	-	1
International and local union officers ----------	1	-	1	-	5	2	-
Penalty applied ----------	15	11	4	20	46	14	21
Automatic fine ----------	-	1	-	2	5	-	6
Automatic suspension ----------	3	1	4	1	28	-	4
Automatic expulsion ----------	10	7	-	16	6	13	-
Penalty at the discretion of the disciplining body ----------	2	2	-	1	7	1	11

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

officer, 82 of the constitutions also had provisions that covered the rank and file member. In most cases, the action was initiated at the international (or national) level but a significant number of local unions also possessed this power.

Grounds.—As the table indicates, there were several grounds for union summary discipline. Discipline that affects the relationship of the individual to the job is called "job discipline." Specific offenses in this area were:

1. Working in a nonunion shop.
2. Accepting a wage which is lower than the union scale.
3. Taking a job away from a fellow union member.
4. Violating union work rules.

Another general area of discipline centered around union loyalty. Two specific violations in this area were dual unionism and strike-breaking. In addition, refusing to strike or aiding a struck employer were punishable offenses in several unions (i.e., The Locomotive Engineers, The Printing Pressmen). Only a small number of constitutions provided for disciplinary action against wildcat strikers.

As the table indicates, 20 constitutions called for the immediate punishment of anyone who appealed to the courts before exhausting the remedies within the union.

Of particular interest is the constitution of the Teamsters which requires that the individual post a bond to the union if he appeals to the courts. The bond would cover the union's court costs and any fine that the individual is ordered to pay by the courts.

In the area of electioneering, a few (10) constitutions provided for summary discipline for: (1) slander, (2) distribution of unauthorized or disapproved circulars and (3) formation of political clubs in which union affairs were discussed outside of regular meetings. Although these rules were supposedly formulated to curtail excessive political rivalry, they can also lessen political opposition.[4]

The summary discipline procedures that may be used in cases of union law violations are extremely important. As Table 1 indicates, 46 constitutions included some type of "catchall" clause. Although the accuser must be specific about a particular violation, the actual "improper" behavior cannot be known except through experience and custom. Some of the larger unions using a "catchall" provision were the Carpenters, the United Mine Workers, the Retail Clerks and the Brotherhood of Electrical Workers.[5] The following clause, from the constitution of the Allied Industrial Workers, is a typical "catchall" provision:

> The International President shall, after investigation in person or through a representative, have power to

> summarily expel or suspend members or officers of subordinate organizations for violation of the International Constitution, Local Union bylaws, or Local Union contract, or for such other causes which are deemed sufficient by him to require prompt and immediate action on his part.[6]

In addition to the discipline areas discussed above, provisions are often included to cover administrative discipline, judicial discipline and personal morals. Administrative discipline deals with the neglect of duties by union officers (i.e., absence from meetings, failure to prepare annual statements). Judicial discipline involves action against one who has falsely accused another. Drunkenness, profanity and similar offenses are covered under the personal morals clauses.

As Table 1 indicates, the most prevalent disciplinary actions were either suspension or expulsion.

Appeals.—The application of summary discipline precludes a hearing or trial prior to punishment of the individual. In some cases, though, the individual can appeal. Actually, less than one-half (56) of the constitutions that provided for summary discipline of individuals for reasons other than nonpayment of financial obligations included provisions for appeals (see Table 2). The Bureau of Labor Statistics report says:

> In the absence of internal appeals machinery, the only recourse of the aggrieved member or local union officer is in the courts. Since litigation is costly and slow, resort to courts remains a doubtful remedy, and moreover, it may be antithetical to the principles of the aggrieved member.[7]

Table 2. Specified Provisions for Appealing Summary Actions, National and International Union Constitutions (Members in Thousands)

Appeal Provisions	Total Studied		Affiliation			
			AFL-CIO		Unaffiliated	
	Unions	Members	Unions	Members	Unions	Members
Constitutions providing for summary discipline	123	12,246.3	96	9,815.1	27	2,431.3
Constitutions providing for appeals	56	7,596.8	48	7,388.9	8	207.9
Appeal	50	7,062.9	43	6,855.4	7	207.5
Automatic review	4	319.3	3	318.9	1	.4
Appeal and automatic review	1	124.6	1	124.6	-	-
Only certain actions reviewed	1	90.0	1	90.0	-	-
Constitutions not providing for appeals	67	4,649.6	48	2,426.2	19	2,223.3

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

Discipline Involving Trials

The local level

Grounds.—Nearly all (156) of the constitutions examined contained trial provisions. These provisions "defined and forbade conduct that interfered with the organization's legal and contractual obligations or that was otherwise inimical to the best interests of the union."[8]

One hundred thirty-nine of the constitutions studied contained "catchall" prohibitions. These "catchall" clauses normally included such phrases as "violating the constitution," or "conduct unbecoming a member." In order to guard against arbitrary use of these clauses, many constitutions included requirements that charges be specified before trial. Seventy per cent of the union members included in the study were protected by a requirement of this nature.

As Table 3 shows, the constitutions contained a great variety of punishable offenses that fall under trial provisions. The offenses listed by particular unions tended to reflect the past experience of the union. For example, the small craft unions emphasized the prohibition of actions which may give rise to job related problems.[9] The International Typographical Union prohibits "engaging in speed, record or other contests."[10]

The most common areas covered were financial integrity, job behavior, union loyalty and electioneering.

Table 3. Prevalence of Selected Offenses Punishable Under National and International Union Constitutions

Offenses	Number of Unions
All constitutions providing grounds	152
General grounds	152
Violation of the constitution	114
Conduct unbecoming a member	42
Bring the union into disrepute	15
Financial	85
Misappropriation	56
Fraud	28
Job discipline	99
Violation of collective agreement	54
Violation of work rules	47
Injure fellow workers	31
Union loyalty	124
Dual unionism	41
Secession	46
Strikebreaking	37
Disclosure of union secrets	26
Subversive activity or support	43
Failure to exhaust internal remedies	64
Electioneering	66
Distribution of unauthorized or slanderous material	60
Falsifying ballots	9
Moral	37
Drunkenness	16
Felony	4

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

The grounds for initiating disciplinary action against members or officers for financial misconduct were usually termed "misappropriation" or "defrauding."

Two-thirds of the constitutions studied contained provisions regarding job behavior. One-half of these included several provisions enforcing the union obligation under the collective bargaining agreement. These sanctions were normally in general terms such as "violating the established union collective bargaining agreement."[11] The same 54 constitutions did include specific prohibition of wildcat strikes. Forty-seven of the 99 constitutions including job behavior trial provisions specifically authorized disciplinary action for violation of work rules. In some cases (primarily construction unions) rule books were published and the constitutions then called for disciplining an individual who violates any of the rules. The area of work rules also included provisions prohibiting acceptance of less than union wages and working with nonunion workers.

As Table 3 indicates, 124 unions included trial provisions for those who were disloyal to the union. Specific violations include dual unionism, secession, strike breaking, disclosure of union secrets, subversive activities and failing to exhaust internal remedies.

In the area of electioneering the constitutions covered two topics. Sixty constitutions prohibited the distribution of "slanderous" literature. Provisions in 9

constitutions explicitly prohibited such misconduct at the polls as disenfranchising voters and misrepresenting returns.

Trial procedures.—One hundred thirty-six of the 158 constitutions studied covering 16 million members included explicit procedural instructions regarding trials at the local union level. Ten more constitutions provided for trials at the local level but did not list procedural details. One hundred constitutions stipulated that officers as well as members could be tried at the local level.

Typically, any member or officer could file a charge against any other member or officer. The unions (125 of 136) erected some safeguards to prevent frivolous actions with regard to filing charges. The safeguards ranged from requiring that charges be, at least, in writing to requiring that the accuser write and sign the complaint and, in addition, post a security deposit which was subject to forfeiture if the charges were proved false. The four general types of safeguards, and their frequency as a per cent of all constitutions providing for trial details, were as follows:

1. Stipulation of the form of charges (i.e., written, specific)—90 per cent.

2. Designation of persons authorized to receive charges—75 per cent.

3. Safeguards to assure true charges (i.e., signatures, penalties for false charges)—60 per cent.

4. Publication of charges and review—25 per cent.

In 51 unions the only requirement was that the charge be in writing. For example, the relevant clause in the constitution of the Office Employees Union was:

> Charges may be brought in writing by an officer or member of the local union or of the international union.[12]

The constitution of the Railroad Signalmen was somewhat more detailed:

> Charges must set forth the specific nature of the offense, the party or parties involved, time, place, and extent of offense, against whom committed, specific laws violated, amount of money or funds involved, if any, and must . . . clearly state with whom charges have been filed.[13]

The Plumbers' Union is one which provided for punishment of an individual who falsely accuses another. Their constitution reads as follows:

> When a member is found guilty by the local union after due notice and trial . . . of filing false charges maliciously and in bad faith . . . he shall be assessed and punished by the local union.[14]

One hundred three of the constitutions which included trial details specified who was to receive the charges. Of these, 62 identified a local union officer while 39 identified a local union body (i.e., Executive Board, Permanent Committee). Twenty-three were actually not very specific in designating the recipient as the "local union." Thirty-three constitutions giving details about trials, were silent

regarding with whom charges were to be filed. Very few unions provided for alternative recipients of charges if the usual recipient was the subject of the charge.

One-fourth of the constitutions provided for a pretrial review of charges. This review served two purposes. First, it was determined if the charges should be dropped on the basis of having no merit. Secondly, the pretrial review would provide an opportunity for information to be gathered that could speed the trial.

Trial Body.—The actual selection of the trial body was treated in many ways. Nineteen of the constitutions did not stipulate how the trial body would be selected. The remaining constitutions (117) clearly designated who was to serve on the trial body. In 61 unions the local's governing body was designated as the tribunal. In 15 unions the local president appointed the trial body. It is interesting to note that in 77 unions the executive officer either served on or selected the trial body.

The remaining 38 constitutions provided that the trial board would be made up of individuals other than the union officers. One-third of these stipulated that trials would be held at regular meetings. Approximately one-third stipulated that the membership would select a committee and the remaining unions provided for a tribunal on the basis of random selection.

Fifty-six unions attempted to provide assurances that the trial committee would be impartial. Table 4 indicates the specifications for impartiality for the various trial authorities. As the table indicates, the most frequent method used to assure impartiality was the exclusion of interested parties from the tribunal (i.e., the accuser, accused, witnesses) when not testifying. In 10 cases these people were not automatically disqualified but their presence could be challenged. It is interesting to note that impartiality clauses were found most frequently in unions authorizing the local governing body to act as the tribunal.

Of the 136 union constitutions specifying trial instructions, only 58 authorized the local trial bodies to make the final decisions. In 59 unions the board could only issue recommendations. In 15 unions the trial board could make a final decision with regard to guilt but it could only make recommendations with regard to penalties.

Table 5 indicates exactly where the final decisions were made. It is interesting to note that in each of the 78 cases in which the final decision was made by a nontrial body, the decision was usually made by the membership at a meeting.

Punishment.—In only 9 cases did the constitutions limit the type of disciplinary action that could be prescribed at the local level.

Table 4. Specifications of Impartiality for Local Union Trial Authorities, National and International Union Constitutions

Type Impartiality Provision	Total Studied	Local Trial Authority						
		Governing Body	Member-ship	President	Panel Method	Committee	Local Union	Other Trial Authority
All constitutions providing local union trial procedures	136	62	28	15	10	9	10	2
Constitutions specifying impartiality provisions	56	27	5	8	9	4	3	-
Interested persons disqualified	38	22	3	6	1	3	3	-
Accused permitted to challenge members on trial body or panel	10	2	1	-	6	1	-	-
Both disqualification and challenge provisions	5	1	-	2	2	-	-	-
Other impartiality provisions	3	2	1	-	-	-	-	-
Constitutions not specifying impartiality provisions	80	35	23	7	1	5	7	2

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

Table 5. Final Decision Authority in Local Union Trials, National and International Union Constitutions
(Members in Thousands)

Decision Authority	Total Studied		Trial Body		National Body	
	Unions	Members	Unions	Members	Unions	Members
All constitutions providing local union trial procedures	136	15,996.4	58	5,945.2	78	10,051.1
Membership meeting or special committee elected at membership meeting	89	9,875.2	18	604.8	71	9,270.4
Local executive board or subcommittee	29	5,010.4	26	4,382.5	3	627.9
Local executive board or special trial body	4	223.8	4	223.8	-	-
Special trial committee selected by a panel method	2	4.9	2	4.9	-	-
Subject to international executive board review and approval	1	6.3	-	-	-	6.3
Local union	7	547.4	6	493.9	1	53.5
Unspecified committee	1	76.2	1	76.2	-	-
Other	3	252.1	1	159.1	2	93.0

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

Seventy-six constitutions established the size of a vote necessary for expulsion and other penalties. Of these, 50 stipulated that the size of the vote would be the same regardless of the penalty (usually a simple majority) and 21 required a greater number of votes for expulsion than for lesser penalties. Sixty unions did not specify the number of votes necessary for a decision.

Of the 76 unions specifying the necessary vote, 60 provided that the base would be either those present at the meeting or those present and voting. The remaining constitutions either did not specify the base to be used or they used as a base all those eligible to vote.

The international union level

One hundred sixteen of the 158 constitutions examined provided for trial of member or local officers at the international (or national) union level. Of these 116 constitutions, 93 had provisions that applied to both members and officers.

One hundred fifteen constitutions permitted the international union to exercise jurisdiction in new cases. In 80 of these, the international's jurisdiction included any offense against the international. The remaining 35 constitutions provided that only specific offenses fell within the jurisdiction of the international. These specific cases were often concerned with the performance of union officers or cases that "vitally affected" the union.

Only 29 constitutions provided for international jurisdiction over cases already pending at the local level. The majority of these stipulated that the internationals had jurisdiction in pending cases which were "emergency" in nature. These included situations in which the local union fails to prosecute or in which bias or hostility would interfere with a fair hearing (see Table 6).

In 95 constitutions specific people were authorized to initiate action. At the same time these constitutions did not specifically deny anyone the right to initiate action. Eighty-one of the 100 constitutions, stipulating the form of charges, required that they be in writing and, in most cases, specific in terms of the offense committed.

Safeguards relating to true charges were less prevalent at the international level than the local level. Table 6 shows the frequency of various safeguards along with the frequency of different forms of charges. Only 14 of the 100 unions providing for charges also provided for pretrial hearings.

At the international level 91 constitutions stipulated that one trial body would hear all cases. Eighty-three vested the executive board or president with this power. The president, in most cases, could delegate this authority. Of the 25 constitutions providing for two or more trial authorities, usually the cases were split between the executive board and the union president.

Table 6. Safeguards Relating to Charges at the International Level, National and International Union Constitutions

Safeguards	Total Unions	Form of Charges		
		Written and Specific	Written Only	Form of Charges Not Stipulated
All constitutions providing for charges in international level trial procedures	100	48	33	19
Constitutions providing safeguards	40	26	12	2
Accusers were subject to penalties for filing false charges	16	8	6	2
Charges must be signed and accusers subject to penalties for filing false charges	10	10	-	-
Charges must be signed	7	2	5	-
Charges must be signed and sworn or notarized	2	2	-	-
Other safeguards	5	4	1	-
Constitutions not providing safeguards	60	22	21	17

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

Only 26 unions made provision for impartiality with regard to the trial board. Twenty-two of these disqualified any "interested" individuals from sitting on the board. Several of these just generally specified that the accused would have an "impartial" trial. One particularly interesting constitution provided that each party involved in the trial would be allowed to choose an equal number of members of the trial board.

Unlike trial bodies at the local union level, international trial bodies had final decision-making authority.

Rights of the Accused

Pretrial rights

Nearly half (81) of the constitutions contained provisions regarding the pretrial status of the accused. In most cases a member could be suspended from the union and an officer from office. One-fourth of these provisions affecting the pretrial status of the accused could not be invoked before charges were filed. Thirty-five constitutions provided for suspension before charges were filed at either level (local or international).

Thirty-four of the provisions allowing suspension prior to filing charges applied to union officers while 12 applied to members. Also, in almost all cases (29), suspension was immediately followed by a hearing. All the

remaining provisions of the 35 called for charges to be filed within a certain time period. In 32 cases power to suspend an individual before charges were filed rested only with the international president or the executive board.

At the local level, local officers were the ones typically subject to suspension after charges were filed. Thirty of the 125 constitutions providing for local union trial procedures included provisions for suspension of officers, while 15 included provisions for suspension of members. With regard to officers and members, the power to suspend was vested to the international president. The other parties with this power were the local executive boards, the local membership or some unspecified local union agent.

At the international level the member was subject to suspension as frequently as the local officers. In 29 of the 113 constitutions providing for trials at the international level, provisions were made for suspension of local officers. In 21 there were provisions for suspension of members.

It is important to note that suspension was usually discretionary and not automatic. Also, only 6 constitutions explicitly forbade suspension of an individual prior to the trial.

Due process

Table 7 indicates the frequency of various "due process" provisions. With regard to this table, it should be noted that the broad constitutional language is frequently supplemented by procedural guides whose contents are not reflected here. Also, it should be noted that there seems to be a general distrust of legal procedure. This fear may be responsible for the absence of many "due process" details. The following excerpt illustrates the general distrust of technicalities:

> The Executive Board . . . shall make every effort to afford due process; provided, however, that by "due process" is not meant strict, burdensome, delaying technicalities but, instead, is meant procedural and substantive process (The Wood, Wire, and Metal Lathers International Union).[15]

The requirement of a "full and fair" hearing can be interpreted to include many of the other safeguards. "Full and fair" hearing was the sole safeguard in a few constitutions; however, in most constitutions it was accompanied by several other specific safeguards. In addition, constitutions not calling for a "full and fair" hearing often provided the same protection through various other provisions.

Of the local and international union trial procedures granting the right to present evidence, almost all of these provided for acceptance of all evidence presented by the accused.

Table 7. Selected Due-Process Safeguards in Local and International Trial Procedures, National and International Union Constitutions (Members in Thousands)

Safeguards	Local Procedures		International Procedures	
	Unions	Members	Unions	Members
All constitutions providing trial procedures at local or international level	136	15,996.4	116	13,515.0
Counsel	96	12,383.7	50	7,033.1
Impartial trial body	58	11,072.4	26	4,643.6
Full and fair hearing	55	7,108.6	37	3,082.6
Introduce evidence	56	7,025.3	39	4,666.9
Invite witnesses	58	6,785.3	29	5,198.6
Testify on own behalf	54	5,824.5	45	7,822.3
Record of proceedings	45	6,995.9	28	4,229.8
Confront and cross-examine witnesses	45	4,889.4	26	3,201.1
Continue or postpone hearing	15	2,086.0	7	460.2
Representation when unable to attend hearing	14	2,997.0	5	1,245.7
Separate witnesses	14	2,363.8	3	639.6
Require testimony under oath	12	1,766.1	4	489.4
Submit written defense	3	338.5	6	1,820.1
Subpoena witnesses	7	135.1	4	111.1
Change venue	4	197.7	1	30.4

Source: U. S. Bureau of Labor Statistics, Bulletin No. 1350.

In addition to several stipulations guaranteeing that the accused may testify, there were many constitutions that specified that the individual could not be compelled to testify.

In those constitutions permitting the accused to call witnesses, the accusee was allowed to invite any witnesses without regard to legislative consideration of competency. A few constitutions specifically excluded certain individuals from being witnesses. For example, the printing trades often excluded the testimony of "rats," individuals who had worked for less than the union wage.

The "right to counsel" was the most frequent safeguard. This clause was usually qualified by the barring of professional attorneys. "Counsel" was typically a fellow union member.

Although several constitutions included provisions that an individual would not be tried repeatedly for the same offense, the concept of "double jeopardy" was different than the usual one. In actuality, the provisions often allowed one retrial either at another level or by a different tribunal at the same level.

Several safeguards were evident in the general area of notification. Notice that charges had been filed was guaranteed in 129 local unions and 71 international union trial provisions. Most trial procedures also guaranteed that the individual would be notified of the trial date.

Appeals

One hundred fifty-three of the 156 constitutions with trial provisions included some provision for appeals. In 142 cases, all trial decisions were appealable. It is interesting to note that not only was the accused able to appeal but, in 47 constitutions, any "interested party" was eligible to appeal a decision. For example, the constitution of the Sheet Metal Workers read as follows:

> Any local union, council, officer . . . or member . . . who is affected by any decision . . . shall have the right to appeal. . . .[16]

The accused was the only one who could appeal in 39 of the 153 appeal provisions. Also, only 52 constitutions provided for a stay of execution pending appeal by a member. Five constitutions allowed a stay of execution with regard to a pending appeal on behalf of an officer.

In 129 constitutions, the final appeal board was the union convention. In actuality, review was usually performed by an appeals committee which would reach a decision and make a recommendation to the convention. Most of the remaining constitutions designated the executive board as the final appeal board. Four unions used outside review boards (see Chapter V).

Time limits

The final general area under membership rights is concerned with time limits. It was not possible to determine from any constitution the total time limit on the

disciplinary process. While the constitutions often specified time limits on individual steps of the total process, it was impossible to add these together to obtain a total time limit. For example, it may be specified that the trial body convene within a certain period of time, but then no time limit would be placed on how much time could pass before a decision was handed down. Only 21 constitutions specified the maximum time allowed to file charges after the offense had been committed. Although nearly all constitutions provided for notification of accused individuals, very few stipulated how much time could pass before this notification must be made. Forty-nine local and 33 international union trial procedures specified the maximum time that can pass before the trial body must convene.

Ninety-two local trial provisions and 57 in international union trial provisions covered the time allowed for preparation of a defense. Usually the accused was permitted at least 10 days between notification and the initiation of hearings.

One-third of the local union trial provisions specified the maximum time permitted to render a decision. Twenty constitutions specified the total time permitted to pass before a verdict must be reached, while 26 specified only the maximum period that could pass for the trial board to make its investigation and recommendations. In these 26

cases, there was no stated limit on how much time could pass before the recommendations of the trial board were considered.

Most constitutions did not specify a time limit on the total appeal process or any step in the process. Twenty constitutions did specify the time within which the appeal board was to convene and 28 specified the total appeal time. Thus, less than one-fifth of the constitutions providing for appeals specified the time limit for the process. Almost all constitutions specified the frequency of meetings for the executive board, one of the common appeal bodies. In addition, the interval between conventions also placed a maximum time period on the appeal process for the 129 unions designating the convention as the final appeal body. This, of course, assumes that the appeal is placed on the agenda.

Constitutional Development

There is some evidence to suggest that union constitutions have become more detailed with regard to safeguards for the individual. As the analysis will show, much of this is a result of the Landrum-Griffin Act.

In 1945, Philip Taft conducted a study similar to the 1963 Bureau of Labor Statistics study summarized above.[17] Taft examined the constitutions of 81 unions

and found the following seven general offenses were the most frequently listed:*

1. Violation of the constitution, bylaws, and laws of the union. (36)
2. Disobeying orders of officers. (6)
3. Slandering an officer or member. (20)
4. Circulating material without permission of the union officers. (21)
5. Creating dissension. (15)
6. Undermining the union. (20)
7. Participating in outside meetings where union business is discussed. (5)[18]

Taft found that 33 unions had specific provisions against violation of trade rules (e.g., working during strikes, working for unfair employers). He added that where specific rules were absent, the union could proceed against an individual on the basis of "undermining" the union.

Stipulations regarding notification, trial procedures, the members of the trial board, witnesses and testimony were almost identical to those discussed above. In addition, appeal procedures, as well as the rights of the accused, were found to be the same as those later used in the 1963 study.

---

*The number in parentheses indicates the number of constitutions of the 81 that contained the provision listed.

With regard to constitutional provisions Taft wrote:

> It is obvious that in many unions it is possible to bring members to trial upon vague charges which can be used to stifle legitimate criticism or demands for reform of union policy or practice. It must be recognized that the character, history and internal relations within the union will largely determine the readiness of the officials to exercise the power given to them.[19]

Perhaps the most interesting statement made by Taft in his analysis is the following:

> The forces of disunion must be held in reasonable check, but protection . . . is also necessary. To meet both these problems the organized labor movement might itself set up an impartial body to review complaints against arbitrary conduct of officials. . . . unless such a step is taken, the unions may be encouraging government intervention in their affairs.[20]

A similar study of union constitutional provisions for discipline was made in 1950 by Clyde Summers.[21] Summers' study involved 154 constitutions. His findings corresponded very closely with those of Taft and the Bureau of Labor Statistics. In his conclusion he makes this rather strong statement with regard to union discipline:

> The whole of union discipline is permeated with vagueness and uncertainty. Punishable offenses are stated in vague terms, and the application of these clauses is highly uncertain. Discipline procedure is only sketchily outlined, with no adequate guides for administration. Practically no attempt is made to define the penalty for each offense. The danger of this uncertainty is twofold. First, the individual member is unable to know in what conduct he can engage with safety or what his rights are if he is accused of an offense. Secondly, those who are charged with administering discipline are left without any clear guides as to the rights of the accused. Laymen need

> clear definitions of offenses and precisely prescribed procedures, but instead they are left almost completely unguided to grope their way through unsorted accusations, evidence, and arguments to a conclusion under conditions that are not conducive to objective thinking.[22]

As mentioned previously, three-fourths of the constitutions used in the study by the Bureau of Labor Statistics were dated prior to 1960. This in itself reveals a lack of any great movement by unions to alter their constitutions on the basis of Landrum-Griffin specifications. Of course, this inaction could be a result, in a few cases, of the fact that the constitutional provisions already correspond to Landrum-Griffin requirements.

The Bureau of Labor Statistics did conduct a study of 70 constitutions of unions which held conventions after passage of the Landrum-Griffin Act.[23] Fifty-five of these constitutions were amended in matters relating to union discipline. Amendments ranged from adding a sentence or changing a phrase for the purposes of clarification to being detailed and substantive.

Chapter II reviewed the relevant parts of the Landrum-Griffin Act. Although it is difficult to generalize as to what specific areas were amended, the area regarding the right to sue and its time limits was the subject of amendment 15 times. For example, the following statement was found in the constitution of the Granite Cutters prior to 1960:

> No officer or member of the Association or any local branch shall resort to court proceedings of any description in any matter pertaining to this organization, its local branches or its membership until all remedies provided for within the International Constitution and the Local Branch Laws have been fully exhausted.[24]

After 1960, the statement was retained but the following provision was added:

> Provided that a member or officer shall not be subject to any charges if he exhausted his remedies for a period not to exceed four months.[25]

A number of unions amended their constitutions to comply with the "right to a fair trial" as mentioned in Subsections 101(a)(5)(A),(B) and (C) of the Landrum-Griffin Act. Fifteen unions increased the requirements with regard to notification. Eighteen unions either added provisions regarding the time allowed to prepare a defense or increased the time already provided for. With regard to the requirement that individuals be "afforded a full and fair hearing" (Section 101(a)(5)(C)), thirteen unions added the actual term to their constitutions. In 12 other unions, hearing safeguards were added.

The actual effect of Section 101(a)(5) should be to abolish or greatly curtail the use of summary discipline. Twenty constitutions were amended to abolish all summary discipline or to eliminate it for some offenses. For example, the constitutions of the Printing Pressmen were amended by the following blanket provision:

> Notwithstanding any other article or subsection of this constitution, any provision thereof which provides for the imposition against an individual member of any penalty, forfeiture, suspension, expulsion, revocation or any other disciplinary action, is hereby amended to require the filing and service of written charges against any member of a subordinate union charged with a violation of any article or section of this constitution and laws, except nonpayment of dues, a reasonable opportunity for such member or subordinate union to prepare a defense which is defined as not less than 15 days following the service of said written charges and a hearing thereon before an impartial trial board constituted in accordance with this constitution and laws. . . .[26]

On the other hand, one union (International Brotherhood of Potters) actually added summary discipline provisions after passage of the Landrum-Griffin Act.

The most recent study of union constitutional provisions was made in 1967 by Philip Taft and Philip Ross.[27] They compared pre-1959 and post-1959 constitutions of 43 unions and found that there had been very few changes. When changes had been made, they were minor in nature. With regard to this they stated:

> It is difficult to avoid the conclusion that, overall, no significant constitutional changes were brought about by Title I. Even where amendments were adopted, the substantive changes they made were minor; and there is no way of telling whether, in truth, the new provision merely added safeguards which were actually already carried out in practice. Moreover, nearly half the unions in our sample made no material change whatever.[28]

They identified three causes for this lack of significant change.[29] First, the Landrum-Griffin Act was not novel in the sense that it contained any far-reaching

or very significant requirements. Secondly, many constitutions already contained provisions that complied with Landrum-Griffin requirements. Finally, the authors believe that unions may have altered their actions without altering their constitutions.

Professors Ross and Taft conclude their study with the following statement:

> Are union members now better off? It is impossible to say, although, upon first impression it appears that the overall effect of Landrum-Griffin must have prevented some abuses by virtue of a greater union sensitivity to constitutional standards. All that appears safe to conclude for the present is that any significant changes in union conduct that came about as a consequence of the LMRDA were not accomplished as a result of constitutional amendments.[30]

It is important to keep in mind that unless the constitution of a particular union is amended to exclude summary discipline, the members of the union may still be subject to summary discipline. For relief, they must appeal to the courts.

Summary and Conclusions

The implications of the constitutional disciplinary procedures for the individual will be discussed in Chapter VI. The purpose here is briefly to summarize what has been presented and to make a few comments as to what actually happens, as a practical matter, with regard to union discipline.

The analysis of union constitutions has revealed that a majority of them still provide for summary discipline. Almost all constitutions include a "catchall" provision which allows discipline for whatever action is interpreted as being "improper." Trial boards, in a majority of cases, consisted of the executive board or individuals selected by the president. Although there was a great variety of "due process" safeguards, rarely was any one safeguard found in a majority of constitutions, and often generalized, such as "fair hearing," served as the only provision for due process. In a great number of constitutions, the individual was subject to disciplinary action before the trial, and, in some cases, before charges were filed.

Only four unions provided for an "outside" review board to consider appeals while the remainder left the matter of final appeals to the membership as a whole. With regard to this, William Leiserson has stated:

> The arrangements for popular voting on the truth or falsity of charges resembles rather the so-called "peoples courts" of Soviet governments. They are defended as a form of direct democracy, but the lessons of history are clear that independent courts and judges are as essential to protect individual rights and liberties against popular majorities as against executive officials and the legislative bodies of governments.[31]

While the Landrum-Griffin Act has apparently caused some reconsideration of disciplinary measures by unions, there is nothing to guarantee that unions will include more

individual suafguards in their constitutions. Thus, the individual, who feels he has been unjustly dealt with, must appeal to the courts themselves. The number who are able to make this appeal is likely to be much less than the number who would like to appeal. In addition, the legislation itself speaks in such nebulous terms as "fair trial" and "reasonable rules." Thus, the individual who has the time and financial resources to appeal to the courts is faced with the prospect of an interpretive decision.

Other Influences

The actual judicial process is likely to be shaped by many influences other than constitutional provisions. The implications of these influences for the individual will be discussed more fully in Chapter VI, but it is appropriate to introduce them at this time. According to Clyde Summers, these influences account for most of the serious defects in the union judicial process.[32]

First, is the "layman influence." This refers to the impatience of the layman with regard to judicial details and legal technicalities. The layman, as opposed to the professional lawyer or judge, often feels that technicalities obstruct the primary aim of determining guilt or innocence. As out analysis has shown, it is the layman who is in charge of the union discipline process.

Second, is the "emotional influence." Discipline cases are often highly charged with emotion. This increases

the difficulty for the layman to make an objective analysis. Finally, there is the "political influence." In many cases, union officers sit in judgment of those who may pose a threat to their jobs.

When these three influences are combined with the rather widespread absence of procedural safeguards and the widespread inclusion of "catchall" clauses, it appears that the individual is frequently not guaranteed an objective and "fair" trial. While it is impossible to determine whether individuals do, in fact, have objective and unbiased trials, it is quite evident that the potential for subjectivity exists.

NOTES

1. This chapter is to a great extent a summary of the publication noted here: U. S., Bureau of Labor Statistics, *Disciplinary Powers and Procedures in Union Constitutions*, Department of Labor Bulletin No. 1350 (Washington: U. S. Government Printing Office, 1963).

2. *Ibid.*, p. 1.

3. A study similar to the one summarized here has been done by the Bureau of Labor Statistics. See Union *Constitution Provisions: Trusteeship*, Department of Labor Bulletin No. 1236 (Washington: U. S. Government Printing Office, 1959).

4. U. S., Bureau of Labor Statistics, *Disciplinary Powers and Procedures in Union Constitutions*, p. 19.

5. *Ibid.*, p. 21.

6. *Ibid.*

7. *Ibid.*, p. 22.

8. *Ibid.*, p. 25.

9. *Ibid.*, p. 27.

10. *Ibid.*

11. *Ibid.*, p. 30.

12. *Ibid.*, p. 40.

13. *Ibid.*, p. 44.

14. *Ibid.*, p. 45.

15. *Ibid.*, p. 98.

16. *Ibid.*, p. 109.

17. Philip Taft, "Judicial Procedures in Labor Unions," *Quarterly Journal of Economics*, LIX (May, 1945), 276-285.

18. *Ibid.*

19. *Ibid.*, p. 284.

20. *Ibid.*, p. 285.

21. Clyde Summers, "Disciplinary Procedures of Unions," *Industrial and Labor Relations Review*, IV (October, 1950), 15-32.

22. *Ibid.*, p. 29.

23. U. S. Bureau of Labor Statistics, *Disciplinary Powers and Procedures in Union Constitutions*, Chap. 8.

24. *Ibid.*, p. 156.

25. *Ibid.*

26. *Ibid.*, p. 161.

27. Ross, Philip and Taft, Philip. "The Effect of the LMRDA on Union Constitutions," *New York University Law Review*, XLIII (April, 1968), 305.

28. *Ibid.*, p. 316.

29. *Ibid.*, p. 318.

30. *Ibid.*, p. 320.

31. William Leiserson, *American Trade Union Democracy* (New York: Columbia University Press, 1959), p. 265.

32. Summers, 20-23.

CHAPTER IV

SIGNIFICANT DECISIONS

In this chapter the National Labor Relations Board (NLRB) and court decisions which have affected union discipline are examined. Emphasis is placed on cases involving the liberty of the individual in the employer-employee relationship. Two general areas are of interest. First, consideration will be made of the attitude of the NLRB and the courts with regard to disciplinary grounds. Secondly, the attitude of the courts with regard to union disciplinary procedures will be reviewed.

A large and fairly consistent body of Common Law had developed prior to 1947 which affected the grounds upon which unions could discipline their members. After passage of the Taft-Hartley Act the major decisions affecting this area have been made by the NLRB and the federal courts in construction of the Taft-Hartley Act.

A large body of Common Law has also developed regarding the procedural aspects of union discipline. In 1959 the Landrum-Griffin Act made this the concern of the federal courts.

In the second and third sections of this chapter, these two basic decision areas are discussed. First, though,

the basic approach of the courts will be indicated through a discussion of Zechariah Chafee's classic 1930 article about nonprofit, private organizations entitled "The Internal Affairs of Associations Not for Profit."[1]

The Internal Affairs of Associations Not for Profit

Bases of Relief

In his 1930 article, Zechariah Chafee discussed three bases upon which an individual can appeal to the courts when he has been disciplined by a voluntary, nonprofit organization of which he is a member. First, he can appeal on the basis of property rights. For example, a member of a voluntary organization (i.e., a church, lodge, trade union) may be regarded as owning an equal share of the assets of the organization. Specifically, a member of a trade union may have property interest in disability or old age benefits. Some courts have held that the individual has a property right in his job or in union membership itself.[2] Thus, a member of a voluntary organization may appeal to the courts to protect his property rights.

The second basis of relief evolves from contractual obligations. An individual who joins an organization contractually agrees to abide by the constitution and bylaws of the organization. The organization also

obligates itself. Therefore, the individual may hold that the contract has been violated.

Finally, an appeal can be made on the basis of the destruction of the relationship between the individual and the organization. The destruction of the relationship can be viewed as a tort and not a breach of contract or deprivation of property rights. Relief based on this principle is exceedingly rare.[3]

In the United States the courts have combined the contract theory and the property rights theory into what Clyde Summers has called "a single conglomerate theory."[4] This theory actually originated in the pretrade union days when the voluntary associations with which the courts were concerned were churches and lodges. According to the theory, property rights are defined by the contract.

Policies of the Courts

Chafee describes, rather colorfully, four possible approaches the courts can take with regard to interference in the internal affairs of voluntary, nonprofit associations.

First, is the "Stranglehold Policy." On the basis of this policy the courts should interfere in cases in which the association has extreme control over the individual and discipline may result in serious consequences such as a loss of employment.

The second approach is the "Dismal Swamp Policy." A court adhering to this policy would attempt to avoid involvement in internal union affairs because of the problems of interpretation and construction of constitutions which may contain language which is unfamiliar to the court.

The "Hot Potato Policy" justifies nonintervention because of the resentment which may result on behalf of the association which is interfered with and the community within which it resides.

Finally, the "Living Tree Policy" is proposed as a basis of nonintervention by those who believe that the health of society will be promoted if groups are allowed to exist and operate without interference. The rationale is that individuals and groups will do more for the general welfare if left alone.

In the United States the courts have allowed relief on the basis of Summers' "conglomerate" property right-contract theory. At the same time they manage to exercise a policy of nonintervention.[5] Thus, the courts have generally had the attitude that they will not question what is in the constitution but they will only act to insure that it is abided by.

This has especially been the general tendency in the Common Law considerations of questions involving grounds for union discipline. As will be seen later, the Taft-Hartley Act has given rise to new questions with regard

to automatic acceptance of the union constitution as a binding contract between the members and the union.

The policy of nonintervention has also been evident in the Common Law considerations of union disciplinary procedures. But in the case of procedures, the courts have been quite adamant about requiring certain minimum safeguards for the individual. As will be demonstrated in the final section of this chapter the Landrum-Griffin Act has brought these matters into the area of statutory law and has made intervention a statutory matter.

Significant Decisions and Disciplinary Grounds

Common Law Considerations

The contract-property right theory

The courts have adhered to the contract-property right theory in deciding whether a union has acted legitimately in disciplining a member.[6] This, as mentioned above, is a carry-over from early preunion days when the voluntary organizations of any consequence were churches and lodges. For example, in an early case (1897) involving the Royal Arch Masons the court stated:

> The contractual relation between the association and one of its members is that which exists by virtue of the rules of the association, and so long as the association acts toward him in accordance with these rules there is no violation of this contract.[7]

Thus, an individual who was granting masonic degrees without certification, as provided for in the constitution and bylaws, was legitimately expelled.

The same doctrine was applied in a 1910 case involving a brewers union.[8] In this instance an individual was expelled because he possessed forged citizenship papers. The constitution provided that anyone could join the union who was a "brewer of honorable character and in possession of one or more citizenship papers."[9] Thus, the individual violated the contract and was expelled.

It should be emphasized that the contract - property right theory acts as a "two-edged sword" in disciplinary matters. While a union can discipline an individual for any contractual violation, it can not discipline an individual for a reason not listed in the constitution. The classic example of this is *Polin v. Kaplan*, a 1931 case involving the Motion Picture Machine Operators Union.[10] In this case, Polin, a union member, was expelled for circulating "false and malicious" statements about the union officers. In ruling that Polin must be reinstated the court said:

> No rule contained in the printed copies of the constitution and by-laws of the union, submitted to us as correctly expressing the same, forbids the circulation among members of statements concerning the union officers, which are libelous, nor does any rule provide, as a penalty for doing so, for the fining or expulsion of the member. . . .[11]

In a more recent case (1941) the court would not allow a union to discipline two members for fighting on the job.[12] In making this decision the court recognized the fact that fighting was not a violation of the union constitution. The court added, though, that it was fully aware that "the constitution and bylaws of a voluntary association, such as a trade union, is the measure of the authority conferred upon the organization to discipline, suspend, or expel its members."[13]

In a 1951 case decided by an Ohio court, the contractual nature of union membership was emphasized when the court ruled that as a contract the union constitution can not be changed unilaterally and made retroactive.[14]

Implied grounds and vague clauses

The majority of courts refuse to look beyond the explicit language of the constitution in deciding whether the grounds for discipline are appropriate. Under this policy the courts have refused to allow discipline for such offenses as failing to pay dues,[15] disobeying union officers,[16] and tampering with ballots[17] when the constitution did not specifically state that these were punishable offenses.[18]

This doctrine has been adhered to consistently and represents the attitude of the courts even today as the following statement from the 1965 federal court decision in *Simmons v. Avisco* attests:

> It is established law that a union cannot discipline its members except for offenses stated in the constitution and by-laws, and that the courts lack the power to recognize "implied offenses" and thereby rewrite the union's constitution and by-laws.[19]

Some courts have distinguished between implied offenses and disciplinary action based on vague clauses.[20] When the clauses are vague the court generally interprets them narrowly.[21] While there are exceptions to this,[22] recent cases have upheld this policy.

In *Polin v. Kaplan*, one of the charges against Polin was that he did not follow the constitutionally designated order of appeal within the union. The appeal procedure was to be used when appealing decisions of lower tribunals to higher parties. Actually Polin was appealing to the courts about the behavior of the union officers. Since the decision of a lower tribunal was not involved, the court held that Polin could not be disciplined for not following the constitutionally provided order of appeal.[23]

In *Smetherham v. Laundry Workers' Union*, cited above, the court refused to allow the union to discipline the fighting members on the basis of the following clause:

> No member shall injure the interest of another member by undermining him . . . in wages, or in any other willful manner. . . .[24]

Recent cases have also upheld this policy. In a 1963 case (*McCraw v. United Association of Journeymen Plumbers*) a federal court would not allow a union to

discipline a member for appealing to the NLRB.[25] The provision under question stated that a member could be disciplined for "resorting to court proceedings of any description" prior to exhausting internal remedies. The court ruled that the clause could not be interpreted to include the NLRB. In addition, the court stated:

> In determining whether discipline was properly imposed, any ambiguity or uncertainty in the constitution must be construed against the union and in favor of the member.[26]

A decision by a federal court in 1964 (*Allen v. International Alliance of Theatrical Employees, etc.*) illustrated a slightly different application of this policy. In this case, an individual was charged under a clause that was rather vague in nature. Although the constitution did contain a specific provision which forbade the actions of the individual, the court ruled that it was necessary to strictly construe the provision under which the individual was charged. The discipline was not allowed. The court stated:

> It is well established that penal provisions in union constitutions must be strictly construed.[27]

A very recent (1968) federal court decision left little doubt as to the attitude of the courts with regard to both implied offenses and vague clauses. In this case, involving the International Brotherhood of Boilermakers, the court decided that the union could not discipline an individual for striking a business agent on the basis of

a clause which stated that an individual could be disciplined for an action which "works against the interests and harmony of the International Brotherhood."[28] The court justified its decision by citing the decision in *Simmons v. Avisco*, forbidding discipline for implied offenses, and by citing the decision in *McCraw v. United Association of Journeymen Plumbers* which called for a narrow interpretation of vague clauses.

Allowable grounds 1900-1947

One should not imply from the above discussion that the courts have been restrictive with regard to allowing union discipline based on specifically stated offenses. The courts have allowed discipline for almost any reason as long as the constitution was clear. Prior to 1947 the courts only refused to enforce contracts which contained provisions that were "illegal, immoral, or contrary to public policy."[29] This actually did not set a rigid guideline but set what Clyde Summers has called "a floor or minimum of decency below which a union must not go."[30]

In 1949 Summers made a study and indicated what offenses were deemed punishable during the pre-Taft-Hartley era.[31] He found that the courts have never questioned the authority of unions to discipline members for nonpayment of dues, fees or assessments as long as the discipline was

in compliance with the constitution.[32] Punishment for dual-unionism was also generally upheld.[33] The courts were not sympathetic to individuals who had been disciplined for their political activities within the union.[34] At the same time, the courts were quick to disallow discipline on the basis of political activity outside the union.[35] This contrast illustrates the desire of the courts to stay out of the internal affairs of unions.

The courts have also generally allowed disciplinary actions against wildcat strikers.[36]

Of special interest for the purposes of this paper is the attitude of the courts with regard to strikebreaking and work rules. The courts in the pre-Taft-Hartley Act era normally allowed discipline for strikebreaking except in cases where the strike had been enjoined.[37] Discipline for violation of union work rules was also usually upheld. For example, the courts allowed discipline in cases in which members had worked longer than forty hours a week,[38] accepted wages that were less than the union scale,[39] worked with nonunion people[40] and worked with nonunion materials.[41]

Perhaps the only real decision problem the courts had prior to 1947 had to do with labor saving devices. In 1943 a New York court allowed a stagehands union to discipline members for working where "canned music" was used.[42] But in 1943, a Florida court did not allow a

painters union to discipline members for using spray guns.[43] According to Summers, the courts, prior to 1947, refused to allow discipline that was a direct limitation of production.[44]

Thus, prior to the Taft-Hartley Act unions were free to discipline members for a variety of offenses. For the most part the courts refused to interfere with the contract that was formed when an individual joined a union.

The Post-Taft-Hartley Era

As noted above, unions were free to exercise discipline except in cases in which provisions were "illegal, immoral or contrary to public policy." While this limit is impossible to define precisely, it is significant because in 1947 "public policy" with regard to unions underwent a change.

It will be recalled that the Taft-Hartley Act amended Section 7 of the Wagner Act to read as follows:

> Employees shall have the right 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 collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership as authorized in Section 8(a)(3).

Section 8(a)(3) provides than an employer may not discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." The section permits union security agreements but does not allow an employer to dismiss an expelled member if the individual has been expelled from the union for any reason other than nonpayment of dues.

The Taft-Hartley Act added Sections 8(b)(1)(A) and (2) to the Wagner Act. Section 8(b)(1)(A) reads as follows:

> It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Section 8(b)(2) makes it an unfair labor practice for a labor organization to attempt to cause an employer to violate Section 8(a)(3) of the Act. Thus, the union may not cause the employer to discriminate against an individual on the basis of union membership unless a union security agreement is in effect. Even in this case, the union can only cause the employer to discriminate on the basis of union membership if nonmembership is a result of the nonpayment of dues. It is evident that the network formed by these provisions could still leave room for interpretive problems. Archibald Cox recognized this in 1947 when he wrote:

> The scope and variety of the foregoing problems suggest that Section 8(b)(1) may plunge the Board into a dismal swamp of uncertainty. A long period of uncertainty and heavy volume of litigation will be necessary before the questions of interpretation can be resolved.[45]

The legislative history of the above sections also leaves much to be desired in terms of the specific intent of Congress. As will be indicated below, judges and NLRB members have been able to justify opposing opinions by selective reliance on the legislative history of these sections.

The attitude of the NLRB and the courts has been to apply a dual approach in determining whether they should interfere in union disciplinary matters. They have refused to become involved in matters which they perceive as being the internal affair of the union. Many of these cases are not of interest for the purposes of the study at hand because the grounds and enforcement of the discipline have no effect on the individual's relationship to his job and the employer. The NLRB and the courts will interfere if the discipline affects the employer-employee relationship. These general guidelines were first formulated in a 1953 case involving the Minneapolis Star and Tribune Company.[46]

When the prospects of a job loss are involved in the union discipline the NLRB will usually act to void the effects of the disciplinary action. In Chafee's terms, the Board will apply the "Stranglehold Policy" when employment is at stake. In this case the employer-employee relationship is definitely affected by the union discipline. When there is not a job loss involved, the application of this dual approach is not so simple because frequently the discipline affects the individual as a union member and as an employee. The eventual solution to the problem seems to be a matter of justifying the philosophical biases of the judges or NLRB members.

With regard to this problem, the weight of authority has been to accept an interpretation of Section 8(b)(1)(A)

and Section 7 which has as its result the inclusion of almost all disciplinary actions in the category of "internal union affairs." This interpretation dictates that the Board or court not intervene. This might be called a broad interpretation of the proviso to Section 8(b)(1)(A) and a narrow interpretation of Section 7.

Although there have been instances in which the Board or courts have entered into union disciplinary matters in which no job loss was involved, for the most part they have only entered into cases that do involve job loss. Thus, the basis of intervention in these cases involving a job loss has not been the disciplinary grounds but the fact that the effect of the discipline is to cause a job loss. At the same time, when a job loss is not involved, the NLRB and the courts have been very reluctant to interfere. The dual approach has thus resulted in continued allowance of all disciplinary grounds including activities that would appear to be protected by Section 7.

There actually is not a chronological aspect to this application of the dual approach. The tendency to guard employment rights has been fairly consistent for the past twenty-three years. The tendency to broadly interpret "internal union affairs" has also been a consistent one except that in recent years this policy has met extensive civil libertarian dissent.

In the following pages, cases will be presented to illustrate the above comments. They are arranged to illustrate the dual approach of the Board and the courts.

Cases involving intervention

The following cases illustrate that half of the dual approach of the NLRB and courts that involves intervention in union discipline. All the cases involve the loss of employment. The first two cases are early examples of instances in which the Board would not allow union discipline to result in a job loss. The third case is the *Minneapolis Star* case in which the dual approach was first formulated. The final four cases also involve the application of one-half of the dual policy. These cases are particularly interesting because in not questioning the grounds for discipline, the Board and courts applied a rather broad interpretation of "internal union affairs."

The Radio Officers Case.—This early case[47] illustrates the role of the Board and courts in guarding the employment rights of the individual. Along with the *Electric Auto-Lite* case it forms the early precedent for one-half of the dual approach to be formulated in *Minneapolis Star*. Willard Fowler, a member of the Radio Officers' Union, filed a complaint with the NLRB, on June 18, 1948, charging that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the Labor Management Relations Act (LMRA, Taft-Hartley Act). The actual sequence of events leading up

to this appeal to the Board began in January, 1948, when Fowler was suspended from the union for not obtaining clearance before accepting employment with the Bull Steamship Lines. As a result of this suspension, Fowler lost his job. A month later he was readmitted to the union but the union would not permit him to work for Bull Steamship Lines even though he and the company repeatedly requested clearance. There was a union security agreement in effect and a constitutional provisionthat a union member must be "cleared" before he may report to a job.

Fowler charged that the union had violated Section 8(b)(1)(A) by coercing him into not exercising his Section 7 right not to take part in activities which support the union. The Section 8(b)(2) charge was based on the fact that the union caused the employer to discriminate against Fowler.

The Board found that the union had violated both Sections 8(b)(1)(A) and 8(b)(2). With regard to the 8(b)(1)(A) violation the Board stated:

> The proviso to Section 8(b)(1)(A) permits a union to enforce whatever rules it may prescribe and thus, incidentally to require participation of its members in particular concerted activities, only to the extent that penalties for infractions of the rules may affect "acquisition or retention of membership."[48]

Thus, the Board recognized that the activity of obtaining clearance was a "concerted activity" which an employee has a right not to engage in. But the Board also contended that the proviso to 8(b)(1)(A) allowed a union to prescribe and enforce rules which remove an employee's Section 7 rights.

In this case, though, the union had overstepped the bounds of allowable discipline in that the penalty had gone beyond the "acquisition or retention of membership" when the employment of Fowler was affected.

With regard to 8(b)(2) the Board found that the union had caused the employer to discriminate against Fowler. This was an unfair labor practice even though a union security agreement was in effect because under a union security agreement a union can only cause an employer to discharge an expelled member if expulsion was based on nonpayment of dues.

This case also established another important point with regard to 8(b)(2) violations. The Board held that union action which causes an employer to discriminate against an individual who is already a union member could be inferred to be an attempt to encourage union membership. Thus, this discrimination, although not specifically aimed at encouraging membership, was an 8(b)(2) violation.

This case was appealed to the Seventh Circuit Court of Appeals in 1952[49] and the Supreme Court in 1954.[50] Both courts upheld the Board. Of special interest was the question of whether the Board was permitted to infer that a union is encouraging membership by forcing an employer to discriminate with regard to the employment of someone who is already a member of the union. Both courts held that this was a legitimate inference.

The Electric Auto-Lite Company Case.—This case[51] was also decided prior to *Minneapolis Star*, but it is

particularly interesting because it reveals that the Board is willing to go beyond the superficial facts in attempting to protect employment rights.

Melvin Eck was an employee of the Electric Auto-Lite Company and a member of the United Auto Workers. In 1948 he filed unfair labor practice charges against the union and the company. When Eck joined the union in 1947 he authorized a check off arrangement in which the company would deduct monthly dues of $1.50 from his pay. According to the union, in September, 1947, the membership had decided to increase monthly dues to $2.00. It was provided that if a member attended the monthly meeting, they did not have to pay the extra 50 cents. This amount did not become due until after a member had not attended a meeting. The international constitution authorized dues of $1.50 per month and did not indicate that the local could increase this. The local was permitted to fine members for non-attendance.

Eck did not attend several meetings and he did not increase the amount the company was permitted to deduct from his pay. In December, 1948, he was suspended from the union and subsequently discharged from work on the basis of a union security agreement.

Eck charged the union with a violation of Section 8(b)(2) of the LMRA and the company with a violation of Section 8(a)(3) of the Act. Together these provisions prohibit the discharge of an employee under a union security

agreement where union membership was denied or terminated for reasons other than the failure of the individual "to tender periodic dues and the initiation fees uniformly regarded as a condition of acquiring or retaining membership."

The Board decided in favor of Eck. Eck was, in effect, expelled from the union for nonpayment of a fine. An individual who is expelled from the union for this reason (or any reason other than nonpayment of dues) can not be discharged from his job even if a union security agreement is in effect. The union had violated Section 8(b)(2) by causing the discharge and the company had violated 8(a)(3) by actually discharging Eck.

The Minneapolis Star and Tribune Company Case.— The dual approach of the Board in union discipline cases was first formulated in this case.[52] It is a unique case in that it involves the application of both halves of the dual approach.

Willard Carpenter was a member of the Teamsters' Union and an employee of the Minneapolis Star and Tribune Company. The Teamsters engaged in a legal strike during late 1952. Carpenter did not participate in the picketing nor did he attend meetings during the strike. When work resumed Carpenter was immediately suspended from the union for a month. Subsequently the company refused to let him work. At the end of the one-month suspension, Carpenter

was permitted to go back to work. In addition to the suspension, he was given a $500 fine and he was dropped to last place on the seniority list. The union controlled the seniority list which determined the order in which members would bid for routes. At times, the seniority list was the controlling factor in determining who would work at all.

Carpenter filed charges that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the LMRA by fining him and by causing him to be laid off for a month. He charged that the company had violated Section 8(a)(3) of the Act by not permitting him to work during his suspension.

The Board made separate decisions on the basis of each of the actions taken against Carpenter. With regard to the seniority adjustment the Board relied on a 1952 case in which the Board had decided that it was an unfair labor practice by the union and the employer for seniority to be administered by the union.[53] In that case the Board found that this arrangement was per se a violation of Sections 8(b)(1)(A), 8(b)(2) and 8(a)(3) of the Act.[54]

With respect to the one-month suspension and discharge, the Board found that the company had violated Section 8(a)(3) of the Act and that the union had violated Sections 8(b)(1)(A) and 8(b)(2). The Board found that the proviso to 8(b)(1)(A) did not permit the union to cause the employer to discharge Carpenter.

The Board allowed the fine. It recognized that Section 8(b)(1)(A) did prohibit the labor organization from coercing an employee, in the exercise of his rights guaranteed in Section 7, to refrain from picketing. The Board did feel that a $500 fine was coercive. But it found that the proviso to 8(b)(1)(A) exempted this coercion from being an unfair labor practice.

The Lummus Company Case.—This recent case[55] provides an example of a situation in which the union let what could have been strictly an internal affair spill over into the area of employment. It can be compared with the following three cases in which one might question whether the union discipline was ever strictly an "internal affair" of the union.

James Kulvin was a member of Local 420 of the United Association of Plumbers. In early 1963, he was seeking employment with the Lummus Company (a construction company in Delaware) with which Local 80 of the United Association of Plumbers, a sister of Local 420, maintained an exclusive hiring hall agreement. Kulvin reported to the hiring hall and asked to be referred to the Lummus Company in order to work as a welder. While at the hiring hall, a business agent recalled that Kulvin had been involved in a fight with a member of the Executive Board of the union. He subsequently refused to refer Kulvin to the job.

Kulvin then went to the job site without referral. The steward at the job told Kulvin to leave and he refused.

After an argument between the steward and the employment manager of the company, Kulvin was refused employment and he left.

Kulvin filed charges with the NLRB that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the LMRA. He also charged the company with a violation of 8(a)(3).

The Board found that the union had engaged in the above unfair labor practices. The Board held that the union could try to force members to respect union officials. In this case, though, the eventual outcome of the discipline was a violation of 8(b)(1)(A) and 8(b)(2).

The Board disagreed with the Trial Examiner and found that the company had also engaged in an unfair labor practice by not permitting Kulvin to work.

The case was appealed to the U. S. Court of Appeals, District of Columbia.[56] The court held that the company had not violated Section 8(a)(3) of the LMRA by refusing employment to Kulvin. The court felt that the union had been primarily responsible for the fact that Kulvin was not hired. The court agreed with the Board on all the other matters.

The United Stone Case.—The *United Stone* case[57] is similar to the above case in that what could have been an internal union affair was allowed, by the union, to spill over into the employment area. In making its decision only on the basis of the possible loss of employment the Board applied a broad interpretation of "internal union affairs."

The Gibsonburg Lime Products Company of Ohio charged that the United Stone and Allied Products Workers' Union had violated Section 8(b)(1)(A). The charge arose when a union official allegedly threatened three union members that their jobs would be in jeopardy if they testified against the union in a grievance hearing. Prior to the alleged threat the individuals had signed a statement agreeing with the employer's description of what had happened in the incident that gave rise to the grievance hearing. After the alleged threat the union members claimed that they could no longer remember what had happened.

In making its decision the Board claimed that the only problem was in deciding whether there had actually been a threat of job loss. According to the Board, "as to applicable law, this case presents no problem."

The Trial Examiner, whose report was accepted in total, said that if the union had threatened employees with a loss of employment, then there was a violation of Section 8(b)(1)(A) with respect to the rights guaranteed in Section 7. He held that in this case it did not matter that the individuals were union members who are bound by certain obligations to other union members. He quoted from an early Supreme Court decision which said:

> The policy of the Act is to insulate employees' jobs from their organizational right . . . designed to allow employees to freely exercise the right to join unions, be good, bad or indifferent members, or abstain from joining any union without impairing their livelihood.[58]

The Trial Examiner went on to say that if the union representative had gone no further than to inform the members that they would be subject to disciplinary action for testifying against the union, then there was not a violation of Section 8(b)(1)(A). He recognized that this would be coercive, but he contended that it would be protected by the proviso to 8(b)(1)(A). With regard to this proviso he stated:

> The proviso privileges a union to discipline its own members as union members, but not as employees, for any reason it sees fit—and what a union may lawfully do, it may, of course, threaten to do.[59]

On the basis of the testimony of the parties involved, it was decided that there was at least an implied threat of a job loss and, therefore, the union had engaged in the unfair labor practice.[60]

The Printz Leather Company Case.—The *Printz Leather Company* case[61] involves a unilaterally determined production quota. Here again the Board applies a broad interpretation of what may be considered "internal union affairs."

Edward Fabiszewski was a member of the International Fur and Leather Workers' Union and an employee of the Printz Leather Company of Philadelphia. In 1950, Fabiszewski charged that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the LMRA. He also charged the company with a violation of 8(a)(3). The charges arose after Fabiszewski was repeatedly warned by union officials and by fellow union members that he was working too fast. Eventually the other workers refused to work with Fabiszewski. The union steward

met with Fabiszewski and told him, in effect, that the union was going to have him laid off. The steward said, "we are dictating around here," and "your kind is not liked by anybody around here." The same afternoon the steward had made these statements, Fabiszewski was discharged.

The Board found that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the LMRA by causing the company to discharge Fabiszewski. In making its decision, the Board recognized that Fabiszewski had refused to engage in a "concerted activity" and that his right to do this was guaranteed by Section 7. The Board also recognized that the proviso to 8(b)(1)(A) could protect the union in depriving a member of these rights but in this case the proviso did not protect the union because Fabiszewski had not been expelled from the union.

Although there was question of how much pressure the union had put on the employer to discharge Fabiszewski, the Board found that the union had violated Section 8(b)(2) and that the company had violated Section 8(a)(3) of the Act.

The Brotherhood of Painters Case.—This case[62] is very similar to the *Printz Leather* case but it involves an even clearer example of an individual being disciplined for earning too much money. The case involves three individuals who were members of the United Brotherhood of Painters and employees of the Spoon Tile Company of Denver. The individuals

charged that the union had violated Sections 8(b)(1)(A) and 8(b)(2) of the LMRA by causing the employer to discharge them.

The individuals were employed by Spoon Tile for some time when the company decided to speed up work by giving the employees an extra hour pay each day. This was done because the construction work in which the company was involved was falling behind schedule. Although there was no mention of any established work rates, it was common practice for the men to leave before the regular quitting time if they had completed "all required work." When they began receiving the extra pay, this practice stopped.

The practice went on for a month before a union representative found out about it and demanded that it be stopped as "it constituted piecework." After this, the extra money was paid on a monthly basis rather than a weekly basis. When union officials found that the men were still receiving the extra pay, they called the men before the Executive Board and they were informed that they were being referred to another job.

A union business agent went to the Spoon Tile Company and informed them that if any of these men were permitted to work, the union would "throw a picket line around the project." Subsequently, the men were discharged.

The Board found that the union had violated Sections 8(b)(1)(A) and 8(b)(2) by causing the employer to discharge the individuals. The reasoning of the Board was identical to that in the *Printz Leather* case.

The case was appealed to the Tenth Circuit Court of Appeals in January, 1957.[63] In upholding the Board, the court stated:

> A union's action in causing an employer to discharge union members who accepted incentive bonus payments from the employer is an unlawful enforcement of union rules, since the use of employment as a tool of discipline is prohibited by the NLRA.[64]

It is interesting to note that the court's opinion was based on the enforcement of the union discipline and not on the fact that the union had acted to remove the rights of the individuals guaranteed in Section 7.

The Allen Bradley Case.—The *Allen Bradley* case[65] is not directly concerned with a disciplinary matter. It is included in this section because if the philosophy of the court in this decision had been followed in other cases it appears that there would have been much more intervention by the courts in disciplinary matters.[66] The reasoning of the court in this decision is very much different than the rationale behind the decisions in the following group of cases. Although this decision has not been overturned, it has been termed "inapplicable" in many subsequent decisions.

The relevant portions of the case deal with an appeal by the Allen Bradley Company to the Seventh Circuit

Court of Appeals. The company appealed an NLRB decision finding them guilty of an unfair labor practice in violation of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act. The Board had found that the company was engaging in an unfair labor practice by insisting that the union bargain over a company proposal limiting the right of the union to discipline members who refused to strike.

The company made the proposal after the union had fined several members for strikebreaking. The company was willing to bargain over the exact wording of the provision but insisted that it be included in the contract before an agreement could be reached. The actual provision included the same guarantees of Section 7 of the LMRA. The union took the position that a clause of this nature was not a bargainable issue as it related solely to the internal affairs of the union. The Board, as mentioned above, decided in favor of the union.

The decision was appealed to the Seventh Circuit Court of Appeals in 1960.[67] The court overturned the decision of the Board. The court said that the problem was to determine if the clause dealt with "rates of pay, wages, hours, or other conditions of employment" or "union rules with respect to the acquisition or retention of membership." If the former were true then the company was right to insist that the clause was a bargainable issue.

If the latter were true, then the union was correct to insist that it was not a bargainable issue.

The court held that the clause related to the desire of the company to use the unimpaired services of its employees. Therefore, it related to "terms and conditions of employment" and was a subject of mandatory bargaining. In making this decision the court distinguished between it and a previous case involving an employer's insistence that the contract include a provision for a secret ballot strike vote on the basis of the employer's last offer before the union could strike.[68] In that case the court held that the clause did only deal with the internal affairs of the union and, therefore, was not a subject for mandatory bargaining.

The Board insisted, in the *Allen Bradley* case, that the clause was not a subject for bargaining as it related to the right of the union to make rules with regard to the acquisition and retention of membership. The court replied that there was nothing in the case to indicate that the fines had anything to do with membership. In answer to this, the Board, in defending its decision, stated that "the imposition of fines is merely a step in determining membership status, nonpayment leads to expulsion."[69]

The court agreed that a union may have broad powers with regard to membership but, the court felt, that there were limits to this power. The court stated:

> However, that power [the power to discipline members], in our view is not absolute. It goes beyond any permissible limit when it imposes a sanction upon a member because of the exercise of a right guaranteed by the Act. Coercive action whether by way of fine, discharge, or otherwise, which deprives a member of his right to work and his employer of the benefits of his services can not be said to relate only to internal affairs of the union.[70]

Thus, the court overturned the decision of the NLRB and held that the proposals presented by the Company represented a proper subject for bargaining. In doing this, the court presented a philosophy with regard to union discipline that was to be relied on extensively in the future, but mainly by those supporting dissenting opinions.

Cases involving nonintervention

The following cases present the other half of the dual approach to union discipline. They involve nonintervention. These cases are presented in chronological order to illustrate the growing dissent to a broad interpretation of "internal union affairs." The first three cases were decided prior to the *Minneapolis Star* case in which the dual appraoch was first developed. They illustrate the early rationale of the NLRB and the courts in their policy of nonintervention. The fourth case is the *Minneapolis Star* case. The remaining four cases illustrate the attitude of the courts in cases involving different disciplinary situations. In addition, their analysis will reveal the rationale behind the growing dissent.

The Conway Express Company Case.—This case,[71] involving a charge filed in late 1947, represents one of the earliest interpretations of the proviso to Section 8(b)(1)(A) of the Taft-Hartley Act. It actually involves two charges by the Conway Express Company against the Teamsters Union. The company charged that the union was violating Section 8(b)(4) of the Taft-Hartley Act by engaging in a secondary boycott. The company also charged that the union had violated Section 8 (b)(1)(A) of the Act by threatening to expel members who continued to work during the boycott.

After reviewing the circumstances of the case, the Board held that the union had not violated Section 8(b)(4) of the Act. For the purposes at hand, the relevant issue is the charge that the union had violated 8(b)(1)(A). There was no question of the fact that the union had actually threatened the members with expulsion.

As there was no threat of a loss of employment but only a threat of a possible loss of union membership, the Board held that the proviso to Section 8(b)(1)(A) had protected the actions of the union. The Board held that the individuals had broken a rule which the union held to be a determining factor with regard to the retention of membership. The Board said that the union is allowed to prescribe rules for "retention of membership" regardless

of the guarantees of Section 7. Therefore, the union had not violated Section 8(b)(1)(A).

The Swiss Colony Case.—This early case[72] is particularly interesting because it involves union disciplinary action against an individual who refused to take part in a strike which was itself a violation of Section 8(b)(4)(A) of the Taft-Hartley Act. It is also interesting because the NLRB did not use a literal interpretation of the proviso to 8(b)(1)(A).

The case involves a secondary boycott. The NLRB decided that the Wine Workers' Union and the Teamsters' Union had violated Section 8(b)(4)(A) of the Taft-Hartley Act. The relevant issue for the purposes at hand is whether the union had violated section 8(b)(1)(A) by threatening to fine members who did not participate in the strike.

The Board was actually primarily concerned with the question of the secondary boycott. As mentioned above, the Board did find that the unions were engaged in a secondary boycott. This particular decision was appealed to the District of Columbia Circuit Court of Appeals and upheld.

With regard to the question of a violation of Section 8(b)(1)(A), the Board decided that a violation of 8(b)(4)(A) was not ipso facto a violation of 8(b)(1)(A). According to the Board the proviso to 8(b)(1)(A) protects

the union in "prescribing and enforcing membership rules, and furnishes a meritorious defense insofar as the union disciplines its members short of seeking to limit their job opportunities."[73] The Board made no mention of the fact that the individuals were not threatened with possible loss of union membership.

The American Newspaper Publishers Association Case.—This case[74] contains many of the same elements found in the previous two cases. It is unique in that it involves union disciplinary action against members working with non-members. It also is particularly significant because it was appealed to a higher court which explained its reasoning in upholding the decision of the NLRB.

After the Taft-Hartley Act prohibited the closed shop, the local unions of the International Typographical Union met and agreed to follow a bargaining policy designed to perpetrate "closed shop" conditions. In effect, the agreement involved an implied threat to employers that union members would walk out if nonunion men were employed. Upon walking out, the union would claim that there had been a "lock out." On the basis of this, the American Newspaper Publishers Association (ANPA) charged that the union had violated Section 8(b)(2) of the Taft-Hartley Act. In addition, the ANPA claimed that the union was violating Section 8(b)(1)(A) of the Act by using the threat of summary expulsion to force members to walk out if nonunion individuals were hired.

The Board found that the union had violated Section 8(b)(2), but it found that the union had not violated Section 8(b)(1)(A). According to the Board, the threat of expulsion was definitely coercive with regard to the rights guaranteed by Section 7. But they found that the "unambiguous language" of the proviso to Section 8(b)(1)(A) exempted this action from the 8(b)(1)(A) provisions. In making this decision the Board stated:

> In our view, by including the proviso, Congress unmistakably intended to, and did, remove the application of a union's membership rules to its members from the proscription of section 8(b)(1)(A), irrespective of any ulterior reasons motivating the union's application of the rules or the direct effect thereof on particular employees.[75]

The Seventh Circuit Court of Appeals heard the case and upheld the Board in 1951.[76] The court stated that the proviso to Section 8(b)(1)(A) meant that "union members could be expelled for any reason and in any manner prescribed by the organization's rules." The court defended this conclusion by relying on the legislative history of the proviso. The court also defended its decision by saying that the fact that Congress had not amended the Taft-Hartley Act since 1947 implied that it approved of the interpretations of the Board.

The contention of the ANPA that expulsion could result in a loss of employment was not held to be relevant.

The Minneapolis Star and Tribune Company Case.— The facts of this case[77] were discussed above. It will be

recalled that the NLRB permitted a union to fine a member for strikebreaking but the Board would not allow the union to alter his seniority or to cause the employer to discharge him. The matter of the fine is of concern here. With regard to the fine, the complainant contended that Sections 7 and 8(b)(1)(A) of the Taft-Hartley Act gave him the right not to strike.

The Board noted that the $500 fine was coercive within the meaning of 8(b)(1)(A). The Board held, though, that the proviso to Section 8(b)(1)(A) allowed this disciplinary action by the union. Although the Board did not so state, it implicitly rejected a literal meaning of the proviso.

The Board contended that the legislative history of the Act supported its decision. In doing so it quoted the following statement of Senator Taft:

> The pending measure does not propose any limitation with respect to the internal affairs of unions. They will be able to fire any member they wish to fire and they will still be able to try any of their members. All that they will not be able to do, after the enactment of this bill is this: If they fire a member for some other reason other than nonpayment of dues, they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion.[78]

As will be seen, the interpretations of Senator Taft were not totally consistent with those of the other Senators, including Senator Holland who actually introduced the proviso to Section 8(b)(1)(A).

The American Iron and Machine Works Company Case.—This case[79] represents an application of the precedents set in the *Swiss Colony* case and the *American Newspaper Publishers Association* case. It differs from these cases slightly in that the union members were threatened with discipline for working with "unfair freight."

The International Association of Machinists (IAM) was involved in a dispute with the American Iron and Machine Works Company. Members of the union would follow the trucks of the company to the loading docks of certain motor freight common carriers. They would picket while the truck was on the premises and ask employees not to handle the American Iron freight.

Many of the dock workers were members of the Teamsters' Union and they were instructed by the union not to handle the "unfair freight." They were threatened with fines for disobeying this order.

The company charged that the Teamsters and the IAM were violating Section 8(b)(4) of the LMRA by engaging in a secondary boycott. In addition, the company claimed that the Teamsters were violating Section 8(b)(1)(A) of the Act by threatening to fine individuals for handling American Iron freight.

The Board found that both unions had violated Section 8(b)(4) of the Act. In addition, the Board found that the Teamsters had not violated Section 8(b)(1)(A) by

threatening to fine members for handling the American Iron freight. Relying on the *Swiss Colony* case, the Board cited the fact that an 8(b)(4) violation was not ipso facto an 8(b)(1)(A) violation. The Board recognized that coercion was evident but it felt that the coercion was exempted by the proviso to 8(b)(1)(A).

The Scofield Case.—The decision made by the NLRB in this case[80] was appealed to the Seventh Circuit Court of Appeals and eventually to the Supreme Court. A final decision was not rendered until August, 1969. In the meantime the two cases to follow this one (*Associated Home Builders*, and *Allis-Chalmers*) were decided by the Board on the basis of their decision in this case. Actually, the Supreme Court affirmation of this case was made on the basis of the Supreme Court's affirmation of the Board's decision in *Allis-Chalmers*, which, as indicated above, was based on the decision rendered by the Board in this case.

For these reasons the *Scofield* case will be discussed twice. Here the rationale of the Board in making its decision will be considered in order to provide a basis of understanding for the remaining two cases. Finally, the case will be discussed again as the last case in this section because it does represent the most recent decision of the Supreme Court on this issue.

The case involves a charge filed by Russell Scofield and several other members of the United Auto Workers' Union

alleging that the union had violated Section 8(b)(1)(A) of the Taft-Hartley Act. The individuals were fined by the union for exceeding the amount of incentive pay that the union permitted them to earn. The union rule involved did not set a production ceiling as such, but it limited the amount a member could earn above the machine rate (the minimum contract rate for a particular job classification). Thus, when an individual produced a certain amount, he could continue to work but, in order to comply with the rule, he could not report, for credit toward his earnings, any items produced in excess of the amount which will give him earnings equal to the maximum amount allowable. The employee "banked" the excess earnings. The excess earnings were paid to the individual when he was sick or could not earn the basic machine rate for some other reason.

The company itself (the Wisconsin Motor Corporation) did not place a limit on the amount an individual could collect immediately. It would pay the individual his full earnings, if he so requested.

In early 1961, the union discovered that Scofield and some others had been violating the union rule. They were fined amounts ranging from $50 to $100 and suspended from the union. The union appealed to the state court to enforce payment of the fines, which it did.[81] Scofield and the others filed unfair labor practice charges in January, 1962.

The Board decided that the union had not violated Section 8(b)(1)(A) of the Act. The Board offered an extensive explanation of its decision. Member Leedom dissented and argued at length that there had been an 8(b)(1)(A) violation.

The Board contended that the proviso to Section 8(b)(1)(A) permitted the union to discipline members as it had. It felt that this interpretation of the proviso was in keeping with previous decisions and legislative intent. The Board cited the decisions in *Minneapolis Star* and *American Newspaper Publishers* to support its contentions.

With regard to legislative intent, the Board emphasized that the addition of the proviso to Section 8(b)(1)(A) was meant to allay any fears that Congress was interfering with the internal affairs of unions. The Board quoted Senator Ball when he explained that the proviso

> is designed to make it clear that we are not trying to interfere with the internal affairs of a union which is already organized. All we are trying to cover is the coercive and restraining acts of the union in its efforts to organize unorganized employees.[82]

Member Leedom made several points in his dissenting opinion. Most of these were rebutted by the Board in their answers to the allegation of the General Counsel (representing Scofield). First, Leedom contended that there had been a violation of Section 8(b)(1)(A) because a fine was coercive and restraint and coercion were forbidden with respect to the rights guaranteed in Section 7. The Board agreed that

coercion was being practiced but it held that the proviso to 8(b)(1)(A) permitted unions to coerce members.

Leedom did not feel that the proviso to 8(b)(1)(A) was intended to allow coercive acts by unions. In support of this, he cited an earlier decision in which the Board had stated that Section 8(b) was to place the same restriction on unions as 8(a) had placed on employers.[83] With regard to this he contended that a more literal interpretation of the proviso was called for. In support of this, he cited an earlier decision of the Board in which it had stated:

> As we read the 8(b)(1)(A) proviso, its sole purpose is to guarantee to unions the privilege, as a voluntary association to determine both who shall be a union "member" and what substantive conditions a "member" must comply with in order to acquire or retain union membership.[84]

Leedom argued that a more literal interpretation of the proviso was also warranted by the legislative history of the proviso. He claimed that Congress meant only what was actually contained in the actual wording of the proviso and, therefore, fines were coercive activities that were not exempted by the proviso. In support of these contentions, Leedom cited the fact that in introducing the proviso, Senator Holland stated that the proponents of Section 8(b)(1)(A) had not intended that section "to affect at least that part of the internal administration which has to do with the admission or expulsion of members, that is, with the question of membership."[85] In addition, Holland stated that the proviso

> would make clear that section 8(b)(1)(A) would have no application to or effect the right of a labor organization

> to prescribe its own rules of membership either with regard to beginning or terminating membership.[86]

Leedom also cited the fact that Senator Ball had described the proviso as specifically covering "the requirements and standards of membership in the union itself."[87] Leedom, himself, went on to say:

> In face of these two authoritative statements from the two men in the Senate most intimately acquainted with the proviso, I can not, as my colleagues do, subscribe to an interpretation based on the more general characterization of certain legislators.[88]

With respect to these points, the majority of the Board contended that there was nothing in the legislative history of the Act that would suggest that Congress would permit a union to expel a member for a violation but not permit the union to fine him for the same offense.

Leedom also dissented on the basis of the decision of the Seventh Circuit Court of Appeals in the *Allen Bradley Company* case (see above).

Leedom agreed that the Board should stay out of the internal affairs of unions, but he felt that the case at hand involved more than the internal affairs of the union. He said that individuals may occupy the dual status of being employees and union members. Matters which affect these individuals only as union members are appropriately called "internal affairs" of the union. But those matters which affect individuals as employees are not internal affairs of the union. The case at hand, he contended, was not a matter of internal union affairs because it was concerned with wages and production.[89]

Leedom concluded his dissent with the following statement:

> Under my colleagues' reading of the proviso it would appear that the union can turn any employment matter or section 7 right into an internal union affair simply by adopting a union rule or bylaw dealing with the subject and disciplining employees thereunder. But there is little evidence that Congress ever intended to permit the subversion of employees' rights by unions under the guise of regulating the conduct of union members. In short I think that when unions use the union membership of employees—membership which may or may not be voluntary—as a means of encroaching on their rights as employees, which Congress did regulate, the unions subject themselves to the sanctions of 8(b)(1)(A) of the Act.[90]

In answer to these points and in further justification of its decision, the Board cited the *Minneapolis Star* case and the *ANPA* case as indicating that the decision of the court in Allen Bradley was not consistent with the usual interpretation of 8(b)(1)(A). The majority of the Board also contended that it would be presumptuous of them to change from their earlier interpretation of 8(b)(1)(A) in light of the fact that the Landrum-Griffin Act had not amended this provision.

Finally, with regard to Leedom's comments quoted above, the Board said that a union rule subjecting a member to a fine if he exceeds a production ceiling does not mean that he is subject to the fine as an employee. The Board contended that nearly all union rules affect a member's employment relationship by the fact that unions exist to bargain over wages, hours and conditions of employment. The Board concluded by saying that the union had deliberately restricted enforcement of the rule to "an area involving the status of a member as a member rather than as an employee."[91]

The Allis-Chalmers Case.—The Allis-Chalmers case[92] represents the most disputed decision in the area of union discipline. It is very significant because of the closeness of the Supreme Court decision and the extreme civil liberation dissent to this decision. Although the Supreme Court's affirmation of the Board's decision in the *Scofield* case did not come until after their affirmation of the decision in *Allis-Chalmers*, the decision of the highest court, in effect, did affirm the Board's decision in the *Scofield* case because the Board's decision in *Allis-Chalmers* was based on the Board's decision in the *Scofield* case.

This 1962 case actually arose out of two separate strike incidents. In both 1959 and 1962, the United Auto Workers' Union called legal strikes against the Allis-Chalmers Manufacturing Company. In both cases several members of the union crossed the picket line and were subsequently fined by the union. After the 1959 incident, the union proceeded against the strikebreakers in the state courts and collected the fines. In 1962, the union threatened again to call on the state courts to enforce the fines. At no time was the employment status or the membership status of the individuals threatened. The company filed charges with the NLRB in 1962 alleging that the union had violated Section 8(b)(1)(A) of the LMRA.

The Board followed their decision in the *Scofield* case and found that there had been no violation of Section 8(b)(1)(A).

Member Jerkin wrote a separate concurring opinion in which he explained some slightly different reasoning for interpreting Section 8(b)(1)(A) as it had been interpreted. He said the individuals were still guaranteed the rights in Section 7 of the Act just as the Constitution of the United States guarantees freedom of speech. But just as the Constitution does not insulate the individual from the consequences of exercising the right of free speech, the LMRA does not insulate the individual from the consequences of exercising his Section 7 rights.

Member Leedom dissented for the same reasons as he dissented in the *Scofield* case.[93]

The decision of the Board was appealed by Allis-Chalmers to the Seventh Circuit Court of Appeals.[94] In September, 1965, the court upheld the decision of the Board. In March, 1966, the court changed its mind and agreed to a rehearing because of the "national significance" of the case and because their previous decision seemed by many to be in conflict with the *Allen Bradley* decision. This time the court reversed the decision of the Board.

The court said that its original decision had been made under the assumption that a literal interpretation of Section 8(b)(1)(A) was not warranted. In changing its mind the court decided that a more literal interpretation was warranted. A fine, it held, could easily be a greater threat than expulsion from the union. Therefore, the proviso allowing the union to make rules with regard to "acquisition

and retention" of membership would not automatically allow the union to fine members. In addition, the court noted that the individuals had never been threatened with expulsion for nonpayment of the fines.

The court further cited the fact that membership is not voluntary for several individuals who were forced to join through a union security provision. The court felt that these people were only obligated to pay dues. They were not obligated to pay fines for engaging in "protective activities."[95]

In concluding, the court said:

> If the Congress did not mean to say what Congress had so clearly said, then Congress itself must indicate that fact by legislative enactment. This court should not attempt to change the wording of this statute by judicial interpretation.[96]

Judges Hastings, Kiley and Suygert dissented. Their reasoning is virtually the same as that used by the Supreme Court in reversing the decision of the Seventh Circuit Court and upholding the original decision of the Board.

The Supreme Court decided the *Allis-Chalmers* case in June, 1967.[97] Justice Brennan wrote the opinion of the Court. In it he rejected the contention of the Seventh Circuit Court that a literal interpretation of Section 8(b)(1)(A) was warranted. The Court felt that Congressional intent dictated that a literal interpretation not be used. The Court based its affirmation of the Board's ruling on four factors.

First, it said that the union constitution is in actuality a contract between the members of the union and the union. It is a traditional practice of the courts to enforce this contract. Therefore, it was not valid to say that the union had violated 8(b)(1)(A) by going to the courts to collect the fines rather than threaten the members with expulsion.

Secondly, the Court felt that the legislative history of 8(b)(1)(A) clearly revealed that a literal interpretation was not warranted. In support of this the Court cited the statements of Senator Taft, which were used by the Board in the *Scofield* case and *Allis-Chalmers* to support this same contention. The Court further contended that 8(b)(1)(A) was actually intended only to curb the union while in the act of organizing. To support this, they quoted Senator Ball as saying:

> The purpose of the amendment is simply to provide that where unions, in their organizational campaigns, indulge in practices which, if an employer indulged in them, would be unfair labor practices.[98]

The Court also cited the fact that when Senator Holland introduced the proviso, eliminating from the reach of Section 8(b)(1)(A) "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership,"[99] Senator Ball replied:

> I merely wish to state that the amendment offered by the Senator to Florida is perfectly agreeable to me. It was never the intention of the sponsor of the pending amendment 8(b)(1)(A) to interfere with the internal affairs or organization of unions.[100]

The third basis of the Supreme Court decision was the fact that the Landrum-Griffin Act recognized that a union member may be "fined, suspended, or expelled."[101] With regard to this, the Landrum-Griffin Act only provided safeguards against "arbitrary" union discipline.

Finally, the majority opinion contended that "full" membership in the union was voluntary. A "full" member was an individual who went beyond the basic requirements of the union security agreement and participated in union activities. The basic requirement of the union security agreement was payment of dues. With regard to this, the Court refused to comment on what the decision would be if the union had fined an individual who in actuality only paid dues.

The actual decision of the Court involved a four to four split with Justice White casting the deciding vote. White wrote a separate concurring opinion which was rather guarded. He indicated that he was doubtful about the general implications of the Court's contention that it was less coercive to collect fines through the threat of court action than through the threat of expulsion. He did agree that this was true of this case. He concurred on the basis of this and because it was common practice to allow unions to discipline strikebreakers.

Justices Douglas, Black, Harlan and Steward dissented. Justice Black wrote the dissenting opinion. The dissenting Justices cited four bases for their opinion.

First, the Justices contended that the Court was assuming that the proviso to Section 8(b)(1)(A) would allow union members to contract away their Section 7 rights to "refrain from any or all of such (union) activities." The dissenting Justices did not feel that this assumption was warranted. In support of this they quoted a statement by Senator Taft in which he said that Section 7 was amended "to make the prohibitions contained in section 8(b)(1) apply to coercive acts of unions against employees who did not wish to join or did not care to participate in a strike or picket line."[102]

The second reason for the dissension of these Justices had to do with the assumption by the Court that a fine was less coercive than expulsion and, therefore, implicitly covered by the proviso to 8(b)(1)(A). The dissenters disagreed with this assumption and said that it was especially not true in a case in which the fine was to be collected through court proceedings. The Justices felt that the Court had wrongly given the union the option of enforcing fines through the threat of expulsion or through the threat of court action. They contended that the addition of the court-enforced fine was a new "weapon" in the "arsenal" of the union which Congress had not provided for. They contended that a court-enforced fine, as opposed to union-enforced fine, was beyond the "internal affairs" of the union.

The dissenting Justices claimed that the Court had, by making this decision, written a new proviso to Section 8(b)(1)(A) which read as follows:

> This paragraph shall not impair the right of a labor organization, nonarbitrarily, to restrain or coerce its members in their exercise of section 7 rights.[103]

As their third basis of dissent, the Justices contended that there was nothing in the legislative history of the Act to warrant the creation of this new proviso. In support of this, they quoted several comments by Senator Taft. In answer to a question by Senator Pepper as to whether unions would now be under the same restrictions as employers, Senator Taft replied:

> If there is anything clear in the development of labor union history in the past ten years it is that more and more labor union employees have come to be subject to the orders of labor union leaders. The bill provides for the right of protest against arbitrary powers which have been exercised by some of the labor union leaders. Certainly it seems to me, that if we are willing to accept the principle that employees are entitled to the same protection against labor leaders as against employers, then I can see no reasonable objection to the amendment. 8(b)(1)(A)[104]

In addition, the dissenters cited the fact that Taft had repeatedly said that the bill was to warn unions "that they do not have the right to interfere or coerce employees, either their own members or those outside the union."[105]

As a fourth point, the dissenters disagreed with the Court with regard to whether the individuals acted voluntarily in subjecting themselves to the fines. The dissenters claimed that Section 8(a)(3) and Section 8(b)(2)

made it clear that a union security agreement could only be used to compel payment of dues. With regard to this they stated:

> If the union uses the union security clause to compel employees to pay dues, characterizes such employees as members, and then uses such membership as a basis for imposing court-imposed fines upon the employees unwilling to participate in a union strike, then the union security clause is being used for a purpose other than 'to compel payment of union dues and fees.' it is now being used to coerce employees to join in union activity in violation of section 8(b)(2).[106]

It will be recalled that the majority had stated that this presented no problem because the individuals involved had participated in union activities other than just payment of dues. The dissenters disagreed contending that most individuals do not know that they must limit their membership in order to avoid union discipline. The dissenters felt that there was no way to know exactly what a person paying dues must refrain from doing in order not to become a "full" member.

In concluding, the dissenters made the following statement:

> Section 7 and 8 together bespeak a strong purpose of Congress to leave workers wholly free to determine in what concerted labor activities they will engage or decline to engage. This freedom of workers to go their own way in this field, completely unhampered by pressures of employers or union, is and has been a basic purpose of the labor legislation under consideration. In my judgment (Justice Black) it ill behooves this Court to strike so diligently to defeat this unequivocally declared purpose of Congress, merely because the Court believes too much freedom of choice of workers will impair the effective power of unions.[107]

The Associated Home Builders Case.—This case[108] was decided on the basis of the NLRB decision in the *Scofield* case and the *Allis-Chalmers* case. It is significant in that it involves an undisguised unilaterally established production quota and it reveals an interesting attitude of the court.

The International Brotherhood of Carpenters attempted to enforce a unilaterally established production quota through the threat of fines. When individuals refused to pay the fines the union attempted to apply their dues to the fines and have the individuals discharged from their jobs for nonpayment of dues under a union security agreement. The Home Builders of Greater East Bay (San Francisco) filed a complaint with the NLRB charging that the carpenters had violated Section 8(b)(1)(A) of the Taft-Hartley Act.

There was no problem with regard to the question of applying the dues of the union members to the fines. All the members of the Board agreed with the Trial Examiner that this was an unfair labor practice.

The majority of the Board took issue with the fact that the Trial Examiner implied that it might be a violation of 8(b)(1)(A) for the union to fine members for overproduction. They concluded that this was not an 8(b)(1)(A) violation. Member Leedom dissented with regard to this latter matter for the same reasons as he dissented in the *Scofield* case.

The case was appealed to the Ninth Circuit Court of Appeals by the Associated Home Builders.[109] The court agreed with the petitioner that the fines for exceeding production

limitations were not protected by the right of the labor organization to prescribe rules for the "acquisition and retention" of membership. The court also agreed that the production ceiling had to do with conditions of employment and, therefore, was not an "internal union affair."

In addition the court questioned whether it was wise for the Board to rely on the decision in the *Scofield* case in making its decision. The court cited the fact that the *Scofield* case was based on the decision in the *American Newspaper Publishers* case. After the *American Newspaper Publishers* case the same court which had upheld the Board, in that case, made the *Allen Bradley* decision which cast considerable doubt on the authority of the *American Newspaper Publishers* decision. Thus, the court not only criticized the decision of the Board in the case at hand but also the decision in the *Scofield* case.

The court said that the fine was coercive and that it was not protected by the proviso to Section 8(b)(1)(A). But, the court noted that the decision in *Allis-Chalmers* seemed to indicate that individuals may give up their Section 7 rights when they join a labor organization. Rather than become involved in this controversy, the court refused to make a decision but sent the case back to the NLRB for a decision as to whether the union had violated Section 8(b)(3) of the Act by not bargaining over the production quotas.

Although the Home Builders had not claimed that there had been a violation of 8(b)(3), the court said the Board should have investigated this.

The Scofield Case.—The Board's decision in this case was discussed previously as it was on the basis of that decision that the decisions in *Allis-Chalmers* and *Associated Home Builders* were made.

This case was appealed to the Seventh Circuit Court of Appeals.[110] This was the same court that had been overturned by the Supreme Court in *Allis-Chalmers*. In view of the Supreme Court's decision in *Allis-Chalmers*, the court upheld the Board's ruling in the *Scofield* case.

The court decided that its decision in the *Allen Bradley* case was not applicable because, in actuality, no one in the case at hand was deprived of his right to work and no employer was deprived of his employee's services.

Judge Knoch dissented and said that he felt the fines were in fact an unfair labor practice. He contended that the Court acted too hastily in applying the *Allis-Chalmers* decision in light of the closeness of that decision.

In August, 1969, the Supreme Court affirmed the decision of the Circuit Court.[111] The Court held that the same reasoning as it applied in *Allis-Chalmers* was applicable here. The Court offered little more of substance, but it did indicate that it would not hesitate to interfere with union discipline if the discipline "invades or frustrates the overriding policy of the labor laws."

Justice Black dissented for many of the same reasons he dissented in *Allis-Chalmers*.

Concluding Comments with Regard to Grounds

The above cases indicate that the NLRB and the courts have continued a policy of nonintervention in union disciplinary matters unless an individual's employment is affected. The decisions involving Section 7 and Section 8(b)(1)(A) give support to the contention, by Justice Black, that the Board and the courts have, in effect, interpreted the proviso to 8(b)(1)(A) to read as follows:

> This paragraph shall not impair the right of a labor organization, nonarbitrarily, to restrain or coerce its members in their section 7 rights.

Of course, in the *Scofield* case Justice White wrote that the Court stood ready to prohibit any discipline for union rules which "frustrate the overrriding policy of the labor laws." Apparently, though, there are very few things a union can not require an individual to do with respect to the employer-employee relationship. In the cases above, unions have been permitted to discipline workers for strike-breaking, working with "unfair" materials, working with nonmembers and exceeding unilaterally established production quotas. In some cases, the activity of the union itself has been held to be unfair on other grounds, but the right of the union to discipline its members in pursuit of these "unfair" activities has not been questioned.

Thus, the change in "public" policy made in 1947 has had little effect on union discipline. The only effect has been to stop the enforcement of union discipline when enforcement would mean a loss of employment. For the most part, the Board and courts have continued the policy of viewing the union constitution as a contract between the union members and the union.

It should not be concluded from the above analysis that the courts have never prohibited union discipline. The scope of this study covers union discipline as it relates to employer-employee relationships. It is only within this area that the above conclusions are valid. The courts have disallowed union discipline in some instances and, ironically, these cases usually involve matters that are "internal" to the union in a very literal sense.[112]

Significant Decisions and Disciplinary Procedures

In considering procedural matters, the courts do not distinguish between cases in which the employer-employee relationship is involved and those involving just the internal affairs of the union. Therefore, many of the cases to be mentioned here will not involve the employer-employee relationship. The conclusions arrived at through the analysis of these cases, though, hold true for all cases, whether they involve the employer-employee relationship or not.

Until 1959 there was no federal legislation that dealt with disciplinary procedures. Thus, prior to 1959,

all questions of this nature were decided on a Common Law basis. This will be the concern of the next section of this chapter. In 1959 the Landrum-Griffin Act made union disciplinary procedures the concern of the federal courts. Section 101(a)(5) is the only section of the Act that affects union discipline in matters involving the employer-employee relationship. This is only because the section affects all disciplinary matters. The decisions of the federal courts in interpretation of Section 101(a)(5) will be discussed in the final section of this chapter.

It should not be concluded from the above statements that the Landrum-Griffin Act has only affected union discipline through procedural requirements. Many provisions of the Act involve union discipline by providing for certain "rights" of union members. Most of these rights, though, are only concerned with the internal affairs of the union. Therefore, they are not treated here.

Procedural Requirements Under Common Law

Prior to 1959 the courts acted rather zealously to provide the individual with minimum procedural safeguards in union disciplinary matters.[113] To the extent that these safeguards were provided by the union constitution, the courts refused to interfere and viewed the union constitution as an enforceable contract. Yet, contrary to the courts' attitudes with regard to the grounds for union discipline, the courts have not hesitated to interfere when they believe

that certain minimum procedural standards have not been met. In these cases, the argument that the individual was bound by a contract is not heeded.

Under Common Law the courts normally insist that the individual be afforded safeguards with regard to sufficent notice, a "full" hearing and an unbiased tribunal.[114]

Sufficient notice

Sufficient notice has usually meant that the individual be informed of the specific offense of which he is accused and given an opportunity to prepare a defense. This basic requirement takes precedent over constitutional provisions.

A rather early case (1900) in Texas involved an individual who was fined for accepting wages which were less than union scale.[115] Neither the complainant nor the court questioned the reason for the discipline. What they did question was the disciplinary procedure. Without prior notice, and while at a regular meeting, the individual was found guilty and fined. He protested and asked to defend himself but his protests were ignored. In deciding that this could not be allowed the court said:

> In such cases the weight of authority tends to support the doctrine that a bylaw providing for discipline without notice or trial will be held invalid.[116]

The courts have also usually held that the charges against an individual must be stated in specific terms. For example, in a 1944 case involving the Theatrical and Stage Employees' Union, the court disallowed the expulsion

of a union member who had been involved in a fight.[117] The court's decision was based on the fact that prior to the union hearing the individual was only told that he was charged with "articles and sections" of the union constitution.

The courts have not applied the above principles unyieldingly. For example, in a 1930 Massachusetts case a carpenter was fined for working with an "unfair employer."[118] When he was notified of the impending disciplinary action, he was not informed of the specific charges. The court refused to interfere because at the time of the hearing the union member did not object to the proceedings and he admitted that he did know, in advance of the hearing, why he was being disciplined.

Full hearing

The courts normally hold that a union member must be given an opportunity to defend himself. For example, in the *Cotton Jammers* case (the 1900 Texas case) the disciplined protested the summary nature of the proceedings and asked to defend himself. He was ignored. The court held that, regardless of the constitution, the individual must be given a chance to speak on his own behalf.

This principle does not apply in cases in which the defendant voluntarily waves this right. For example, in a 1914 New York case, the constitution of the Dock Workers Union provided that an accused member had a right to counsel and to cross-examine witnesses.[119] The defendant was advised

of these rights by the tribunal and he refused the aid of counsel. The court found that the union had done all it could to assure the individual of a fair trial.

With regard to the "full" hearing, the courts do not apply their own principles as to what constitutes a "fair" trial to the affairs of unions. While the courts do normally hold that an individual must be allowed to defend himself, they do not require that he be permitted to cross-examine witnesses,[120] have access to counsel[121] or be exempt from retrial.[122]

Unbiased tribunal

The courts have attempted to insure that the individual is tried by an unbiased tribunal. This has been very difficult except in cases in which impartiality has been flagrant.

In a 1936 New Jersey case a painter had written a newspaper article which was critical of the union leaders.[123] He was charged with "intent to promote dissent," tried and found guilty by the union. The jury which found the individual guilty was drawn from the District Council which consisted of the union leaders. The court disallowed the decision of the union tribunal on the grounds that the tribunal consisted of "interested" parties.[124]

The inherent problems of assuring impartiality are exemplified in a 1945 case in which a union member was tried and expelled for "conduct unbecoming a member."[125] Although the charge seemed to be a valid one, it was apparent

that the individual, prior to the hearing, alienated nearly all her coworkers through her efficiency and constantly energetic attitude. Actually, the individual was so disliked that a walkout was threatened by a great majority of the union members. The jury that found her guilty was made up of fellow union members. The court was unable to find evidence of a biased tribunal.

With regard to the problem of trying to assure that the tribunal is unbiased, Clyde Summers, in 1950, wrote:

> Shrewd officers do not sit on trial boards but use their power within the union to place "yes men" in such strategic spots. Elected committees reflect the prejudices of the majority which elects them, and a few union members have had the experience necessary to develop judicial temperament. These subtle forms of bias can never be reached by the courts, for such bias is an inevitable product of the procedure itself.[126]

Procedural Requirements and the Landrum-Griffin Act

Section 101(a)(5) of the Landrum-Griffin Act states:

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

Thus, the minimum requirements found under Common Law were made statutory by the Landrum-Griffin Act.[127] These minimum standards are enforced in cases in which the provisions of the constitution to not offer comparable protection. If the union constitution provides comparable protection or more protection than Section 101(a)(5) then the courts enforce the constitution.

Standards have been set with regard to sufficiency of charges, opportunity to prepare a defense, the nature of the hearing itself, and the right to an unbiased tribunal.[128]

Sufficiency of charges

The courts have usually required that the charges against an individual be reasonably specific. With regard to this point a United States District Court in Louisiana stated:

> We do not expect union officials to frame their charges and specifications technically as formal legal pleadings, however, we do require that they be so drafted as to inform a member with reasonable particularity of the details of the charges.[129]

The court went on to require that the individual be informed as to "time, place or particular circumstance."

Specification does not extend to information regarding the names of the other individuals involved. For example, in a 1965 Texas case a union steward was disciplined for not checking the credentials of men on a particular job.[130] In his appeal to the court he claimed that the charges were not sufficient because he was not informed of the specific complainants. The court held that this information was not necessary.

It is not sufficient for the union just to inform the individual of the constitutional provision which he has allegedly violated.[131] More specific information is required. The courts have ruled that charges were sufficient in cases in which an individual, after being served with a vague or general list of charges, demands and receives specific information.[132] Although the responsibility to supply

specific information lies with the union, this ceases to be a controlling factor as long as the individual does receive the necessary information.

With regard to sufficiency of notice, the general attitude of the courts is expressed in the following statement from a 1962 decision:

> While it may well be that a highly articulate and intelligent plaintiff fought against the resolution, nevertheless, we have no right, without any factual warrant, to draw the unrealistic conclusion that the lack of notice of written specific charges and of reasonable time to prepare his defense were not of moment to him.[133]

Adequate opportunity for prepartion

The courts have not established a specific time limit with respect to how long a union member must have to prepare his defense. They have consistently held that the union must allow at least the amount of time allotted for in the constitution.[134] Regardless of the constitution, the courts will intervene if they see that a reasonable opportunity for preparation of a defense has been denied.

In cases of this nature the courts seem to look to the surrounding circumstances in determining whether an individual was afforded a "reasonable" period of time.[135] For example, in a California case, the defendant received notice of impending disciplinary action several days prior to the hearing. This preliminary information was rather vague. Three hours prior to the actual hearing the individual was given the specifics of the charge. The court ruled that this specific information was necessary in

preparation of a defense and that three hours was not long enough for this preparation.[136]

Nature of the hearing

The courts have excused the unions from applying the same due process safeguard to their hearings as the courts apply to their own proceedings. Again, though, the individual must be afforded whatever safeguards are provided for in the union constitution.[137]

The courts have held that the individual is not necessarily entitled to an open hearing. In 1963, a Federal District Court in Tennessee found that an individual, who had refused to present witnesses and defend himself in protest of the closed hearing, acted to his own detriment.[138]

Likewise, the courts have held the individual need not be afforded the right to counsel. In 1960, a District Court found that the guarantee of the right to counsel by the Sixth Amendment of the United States Constitution does not apply to labor union hearings.[139]

The courts normally have looked to find whether the individual was allowed to present evidence on his own behalf and to cross-examine witnesses.[140] These seem to be the only two real requirements of the courts with regard to the actual hearing.[141]

Unbiased tribunal

Encompassed in the matter of providing a "full and fair" hearing is the matter of an unbiased tribunal. This has

been as difficult to control in the post-Landrum-Griffin years as it was prior to the Act.

The courts have been reluctant to intervene on the basis of a biased tribunal unless there is definite evidence of impartiality. An example of a clear-cut bias existed in a 1965 case that was eventually decided by the Fourth Circuit Court of Appeals.[142] In this case, the individual who filed charges not only testified at the hearing but deliberated with the Executive Board and eventually voted on the charges. The court did find that the tribunal had been biased.

In less clear-cut cases, the court will look to the general atmosphere of the hearing to determine if the tribunal was biased. For example, in a 1961 case, the court found that the tribunal had been biased when it proceeded under the Roberts Rules of Order and assumed that the accused was guilty until he proved otherwise.[143]

For the most part, though, the court will not interfere on the basis of the tribunal as long as no one on the tribunal is directly involved in the case or has been appointed by an "interested" party. In pursuing this policy, the courts recognize the inherent bias of the union member as the following statement from a 1965 decision attests:

> And often members of a Committee are not an independent tribunal entirely divorced from the affect of personal animosities which exist. But the Court cannot find in this record that the petitioner has sustained his contention that these Committee members connived with

> any members of the local union to accord the petitioner a mere pretense of a trial, with preconceived views as to the ultimate result of the proceeding.[144]

Judicial Review

.It should be noted that the courts do not take an active role with regard to union discipline. This must be approached by an individual who feels that he has been unjustly treated. The courts assume that the union has conducted a "full and fair" hearing. The burden to prove otherwise rests with the individual.[145]

The scope of judicial review exercised by the courts is exceedingly limited. Under the guise of insuring a "full and fair" hearing the courts will look at the evidence. Even in these cases, though, they look only to see whether there was "a sufficient quantum of evidence upon which the individual member was disciplined."[146] The courts will not reverse the decision of a union tribunal, even if it disagrees with its decision, as long as there is sufficient evidence to support the verdict.[147]

Concluding Comments with Regard to Disciplinary Procedures

The above analysis indicates Section 101(a)(5) of the Landrum-Griffin Act did little more than make into statutory law the procedural safeguards that had been provided under Common Law.

With regard to what constitutes a "full and fair" hearing, the courts have, in effect, formulated the following rules:

1. Individuals must be given a detailed description of the charges.

2. Individuals must be given time to prepare their defense.

3. Individuals must be allowed to defend themselves.

4. Individuals must be permitted to cross-examine witnesses.

5. Individuals must be tried by bodies that are not flagrantly biased.

These are the minimum requirements in order to comply with what the federal courts regard as a reasonably "full and fair" hearing.

NOTES

1. Zechariah Chafee, "The Internal Affairs of Associations Not for Profit," *Harvard Law Review*, XLIII (May, 1930), 993.

2. See, for example, *Truax v. Raich*, 239 U.S. 33 (1915).

3. Chafee, 1007.

4. Clyde Summers, "Legal Limitations of Union Discipline," *Harvard Law Review*, LXIV (May, 1951), 1058.

5. *Ibid.*, 1051.

6. *Ibid.*

7. *Lawson v. Hewell*, 118 Cal. Rep. 613 (1897).

8. *Krause v. Sander*, 122 N.Y.S. 58 (1910).

9. *Ibid.*

10. 177 N.E. 833 (1931).

11. *Ibid.*

12. *Smetherham v. Laundry Workers' Union*, 44 Cal. App.2d 131 (1941).

13. *Ibid.*

14. *Armstrong v. Duffy*, 103 N.E.2d 760 (1951).

15. *Sullivan v. Barrows*, 21 N.E.2d 275 (1939).

16. *Coleman v. O'Leary*, 58 N.Y.S.2d 812 (1945).

17. *McGinley v. Ice Cream Salesman*, 40 A.2d 16 (1944).

18. These general conclusions were reached by Summers in his 1949 study cited above.

19. 350 F.2d 1012 (1965).

20. This distinction is made here because it was made by Summers.

21. See Summers, 1061 and David Lew, "Landrum-Griffin Protections Against Union Discipline," *New York Law Forum*, XIII (Spring, 1967), 42.

22. See Summers, 1062.

23. *Polin v. Kaplan*, 177 N.E. 833 (1931).

24. Summers, 1061.

25. 341 F.2d 705 (1963).

26. *Ibid.*

27. 338 F.2d 309 (1964).

28. *Braswell v. International Brotherhood of Boilermakers, etc.*, F.2d 193 (1968).

29. Summers, 1063.

30. *Ibid.*

31. *Ibid.*, 1062.

32. For example, see *Brown v. Lehman*, 15 A.2d 513 (1940), and *Harris v. Detroit Typographical Union*, 108 N.W. 362 (1906).

33. For example, see *Margolis v. Burke*, 53 N.Y.S.2d 157 (1945).

34. See Summers, 1069.

35. *Ibid.*, 1068.

36. *Ibid.*, 1065.

37. For example, see *Monroe v. Colored Screwmen's Benevolent Association*, 66 So. 261 (1914), and *Nissen v. International Brotherhood of Teamsters*, 295 N.W. 858 (1941).

38. For example, see *Schmidt v. Rosenberg*, 49 N.Y.S.2d 364 (1944).

39. For example, see *Fales v. Musicians' Protective Union*, 99 A. 823 (1917).

40. For example, see *Meurer v. Detroit Musicians' Association*, 54 N.W. 954 (1893).

41. *Engel v. Walsh*, 101 N.E. 222 (1913).

42. *Opera on Tour, Inc. v. Weber*, 34 N.E.2d 349 (1941).

43. *Harper v. Hoecherl*, 14 So.2d 179 (1943).

44. Summers, 1005.

45. Archibald Cox. "Some Aspects of the Labor-Management Relations Act, 1947," *Harvard Law Review*, LXI (Jan., 1948), 33.

46. *Minneapolis Star and Tribune Co. and Carpenter*, 109 NLRB 727 (1953).

47. *The Radio Officers' Union and Willard Fowler*, 93 NLRB 1523 (1952).

48. *Ibid.*, p. 1544.

49. *NLRB v. Radio Officers' Union*, 196 F.2d 960 (1952).

50. *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954).

51. *United Auto Workers and Melvin Eck*, 92 NLRB 1073 (1948).

52. *Minneapolis Star*, p. 727.

53. *Pacific Intermountain Express Co.* and *Carlos Beall et al.*, 107 NLRB 837 (1952).

54. *Ibid.*, p. 844.

55. *Lummus Co. and James Kulvin*, 142 NLRB 517 (1963).

56. *Lummus Co. v. NLRB*, 339 F.2d 728 (1964).

57. *United Stone Workers and Gibsonburg Lime Products Co.*, 121 NLRB 914 (1958).

58. *The Radio Officers Case*, 40.

59. *United Stone*, 920.

60. *Ibid.*, p. 922.

61. *Printz Leather Co.* and *Edward Fabiszewski*, 94 NLRB 1312 (1950).

62. *Brotherhood of Painters, etc. and Charles Meyers*, 114 NLRB 1171 (1955).

63. *NLRB v. Brotherhood of Painters*, etc., 32 LC pp. 70, 571 (1957).

64. *Ibid.*

65. *Allen Bradley Co. and Tool and Die Makers, etc.*, 127 NLRB 44 (1959).

66. Dissenting judges and NLRB Members in the following cases frequently relied on this case.

67. *Allen Bradley Co. v. NLRB*, 286 F.2d 442 (1960).

68. *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958).

69. *Allen Bradley*, 446.

70. *Ibid.*

71. *International Brotherhood of Teamsters and Henry Rabouin*, 87 NLRB 972 (1947).

72. *International Brotherhood of Teamsters and DiGiorgio Wine Co.*, 87 NLRB 720 (1949).

73. *Ibid.*, p. 750.

74. *International Typographical Union and American Newspaper Publishers Association*, 87 NLRB 951 (1949).

75. *Ibid.*, p. 957.

76. *American Newspaper Publishers Association v. NLRB*, 193 F.2d 782 (1951).

77. *Minneapolis Star*, 727.

78. *Ibid.*, p. 738. The court quoted from U. S., *Congressional Record*, 80th Cong., 1st Sess., 1947, XCIII, Part 3, 4318.

79. *General Drivers, etc.* and *American Iron and Machine Works Co.*, 115 NLRB 800 (1956).

80. *Russell Scofield et al.* and *Local 283, United Auto Workers*, 145 NLRB 1097 (1964).

81. This is not a common practice but it does occur. For example, see: *U.A.W. v. Wisconsin Labor Board*, 11 Wis.2d 292 (1960) and *U.A.W. v. Waychik*, 5 Wis.2d 528 (1958).

82. *Scofield*, 1127.

83. *NLRB v. Local 639, International Brotherhood of Teamsters*, 362 U.S. 274 (1960).

84. *Scofield*, p. 1109. The case was: *Marlin Rockwell Corp.*, 114 NLRB 562 (1955).

85. *Scofield*, p. 1109. Member Leedom quoted from *Legislative History of the LMRA, 1947* Vol. II (Washington: U. S. Government Printing Office, 1949), p. 1139.

86. *Ibid.* Leedom quoted from *Legislative History of the LMRA, 1947* Vol. II (Washington: U. S. Government Printing Office, 1949), p. 1141.

87. *Ibid.* Leedom quoted from *Legislative History of the LMRA, 1947* Vol. II (Washington: U. S. Government Printing Office, 1949), p. 1200.

88. *Ibid.*

89. The fact that this was not a direct limitation of production was not really emphasized by the Board. Research had shown that the income limitation measures had coincided with a decrease in production.

90. *Scofield*, 1112.

91. *Scofield*, 1104.

92. *Local 248, United Auto Workers and Allis-Chalmers Manufacturing Company*, 149 NLRB 67 (1962).

93. *Ibid.*, p. 72.

94. *Allis-Chalmers v. NLRB*, 358 F.2d 656 (1966).

95. *Ibid.*, p. 661.

96. *Ibid.*

97. *NLRB v. Allis-Chalmers*, 87 S. Ct. 2001 (1967).

98. *Ibid.*, p. 2009. The court quoted from U. S. *Congressional Record*, 80th Cong., 1st Sess., 1947, XCIII, Part 3, 4016.

99. *Ibid.*

100. *Ibid.* The court quoted from U. S., *Congressional Record*, 80th Cong., 1st Sess., 1947, XCIII, Part 3, 4272.

101. Section 101(a)(5).

102. *NLRB v. Allis-Chalmers*, p. 2017. Justice Black quoted from 93 *Congressional Record* 6859.

103. *Ibid.*, p. 2014.

104. *Ibid.*, p. 2021. Justice Black quoted from U. S., *Congressional Record*, 80th Cong., 1st Sess., 1947, XCIII, Part 3, 4023.

105. *Ibid.*, p. 2022. Justice Black quoted from U. S., *Congressional Record*, 80th Cong., 1st Sess., 1947, XCIII, Part 3, 4025.

106. *Ibid.*, p. 2024.

107. *Ibid.*, p. 2025.

108. *Bay Counties District Council of Carpenters and Associated Home Builders of the Greater East Bay*, 145 NLRB 1775 (1964).

109. *Associated Home Builders v. NLRB*, 352 F.2d 745 (1965).

110. *Russell Scofield et al. v. NLRB*, 393 F.2d 49 (1968).

111. *Russell Scofield et al. v. NLRB*, 89 S. Ct. 1154 (1969).

112. For example, disciplinary procedures, election procedures and financial matters.

113. For a more thorough analysis of the Common Law see Summers, Note 4.

114. Summers, 1079.

115. *Cotton Jammers' and Longshoremen's Association v. Taylor*, 56 S.W. 553 (1906).

116. *Ibid.*

117. *Walsh v. International Alliance of Theatrical Stage Employees*, 37 A.2d 667 (1944).

118. *Clark v. Morgan*, 171 N.E. 278 (1930).

119. *Holmstrom v. Independent Dock Builders Benevolent Union*, 149 N.Y.S. 771 (1914).

120. Summers, 1081.

121. *Ibid.*

122. For example, see *Rueb v. Rehder*, 174 Pac. 992 (1918).

123. *Gaestel v. Brotherhood of Painters*, 185 A. 36 (1936).

124. *Ibid.*

125. *Dragwa v. Federal Labor Union*, 41 A.2d 32 (1945).

126. Summers, 1083.

127. For a more thorough analysis of the effects of the Landrum-Griffin Act on union discipline see David Lew, "Landrum-Griffin Protections Against Union Discipline," *New York Law Forum*, XIII (Spring, 1967), 42. Many of the following conclusions are taken from Lew's study.

128. These distinctions coincide with those made by Lew.

129. Lew, 30, quoting from *Jacques v. Local 1418, I.L.A.*, F. Supp. 857 (1965).

130. *Null v. Carpenters' District Council of Houston*, 239 F. Supp. 809 (1965).

131. *Magelssen v. Local 518, Operative Plasterers*, 233 F. Supp. 459 (1964).

132. *Rosen v. District Council No. 9 of New York*, 198 F. Supp. 46 (1961).

133. Lew, 33, quoting from *Rekant v. Schochtay Gasos Union*, 205 F. Supp. 289 (1962).

134. Lew, 44.

135. Lew, 34.

136. *Deluhery v. Marine Cooks' and Stewards' Union*, 211 F. Supp. 529 (1962).

137. Lew, 44.

138. *McGraw v. United Association of Plumbers*, 216 F. Supp. 655 (1963).

139. *Smith v. Local 407, General Truck Drivers' Union*, 181 F. Supp. 14 (1960).

140. For example, see *Leonard v. M.I.T. Employee's Union*, 225 F. Supp. 937 (1964) and *Salzhandler v. Caputo*, 316 F.2d 445 (1963).

141. See Lew, 38.

142. *Simmons v. Textile Workers*, 350 F.2d 1012 (1965).

143. *Nelson v. Board of Painters*, 41 CCH L. C. pp. 16, 755 (1961).

144. Lew, 39. Quoting from *Anderson v. Board of Carpenters*, 59 L.R.R.M. 2687 (1965).

145. *Corpus Juris Secundum*, Vol. 51, p. 768.

146. Lew, 47.

147. *Ibid.*

CHAPTER V

ARBITRATION AND REVIEW BOARDS

This final area of investigation is concerned with decisions of "disinterested" third parties which affect union discipline. Of specific interest are decisions by arbitrators and by review boards.

Arbitration

In general, arbitration has had a very limited effect on those aspects of union discipline which are of interest here. The reasons for this are discussed below, but first it should be noted that most of the decisions which have affected union discipline were made prior to 1947.[1] Usually, these decisions involved cases in which a union security agreement was in effect and an employer refused to discharge an individual who had been wrongfully expelled from the union.[2] Some arbitrators felt that the only relevant issue with which the employer should be concerned was whether the individual had lost his "good standing" in the union.[3] Other arbitrators decided that only those individuals who had been "rightfully" expelled should be discharged.[4] A consensus of opinion was never

really reached with regard to this question and the matter became irrelevant after passage of the Taft-Hartley Act.[5]

These seem to be three reasons which explain why arbitration has not played a significant role in union disciplinary matters. First, the arbitrators themselves view these matters as being beyond their jurisdiction.[6] They are concerned with the labor-management relationship and not the union-member relationship.

According to Morris Stone, Director of the American Arbitration Association, another reason for the lack of relevant arbitration is the fact that management seems to prefer to challenge union discipline by filing unfair labor practice charges with the NLRB.[7] These charges can be of the nature of those in the cases discussed in the previous chapter or they can involve "refusal to bargain" by the union. This latter group of cases involve the much larger and much debated issue of management "rights."[8] These matters again involve the union-management relationship and are not within the primary focus of this study.

Finally, there may be a general reluctance by management to become too deeply entangled in the issue of union discipline. With regard to this Clyde Summers, in 1950, stated:

> there is probably nothing less conducive to harmony between the employer and the union than for the employer to pry into the union's internal affairs,

> and no employer with any appreciation of the realities of union organization and a concern for future relations would permit himself to be dragged into the union's squabbles.[9]

Of course, these conclusions are subject to the limitations of the information available regarding the scope of arbitration.

Review Boards

Four unions provide for review of union discipline by outside review boards. The first union to institute this type of program was the Upholsterers' union. Its board was formed in 1953.[10] Since 1953 the United Auto Workers, the Marine Engineers' Beneficial Association and Packinghouse, Food and Allied Workers had made provisions for outside review of union discipline.[11] These review boards are normally made up of individuals from the fields of law, education or religion. In all cases except the Upholsterers' union, the board members are selected by the union president or executive board.[12] The Upholsterers select their board members by convention.[13] The four unions providing for review boards have approximately 1,250,000 members.[14]

The reason for their limited importance is that these boards, as their name implies, only review the decisions of the union. Archibald Cox, one time chairman of the Upholsterers' review board, described the board's function:

> Our function is not to substitute ourselves for the union's trial procedures. Our task as an appeal board is to see that the constitution and bylaws were faithfully followed and that the trial was conducted and the decision was rendered without unfairness to the accused.[15]

This general statement appears to hold true for all the boards.[16] The boards, in effect, only insure that the constitution of the union is abided by; they do not question the contents of the constitutions.[17] Therefore, in terms of the scope of their authority, the boards actually intervene with the internal affairs of unions less than the courts. In those unions in which they exist, they serve as the final step of the internal appeal process.

NOTES

1. Clyde W. Summers, "Legal Limitations of Union Discipline," *Harvard Law Review*, LXIV (May, 1951), 1099.

2. *Ibid.*

3. *Ibid.*, also see, *John Wood Manufacturing Co.* and *U.A.W.*, 17 Lab. Rel. Rep. 2671 and *American Tel. and Tel.* and *National Fed. of Tel. Workers*, 6 Lab. Arb. Rep. 31 (1947).

4. Summers, also see, *Electric Auto-Lite Co. and U.A.W.*, 14 Lab. Rep. 2631 (1944).

5. Summers, 1099.

6. For example, see *International Harvester Co. and United Farm Equipment and Metal Workers*, 1 Lab. Arb. Rep. 384 (1946) and *The Electric Boat Co. and United Electrical, Radio and Machine Workers of America*, 5 Lab. Rel. Rep. 258 (1946).

7. Letter from Morris Stone, Director of the American Arbitration Association, New York, New York, April 5, 1970.

8. Two interesting books on this matter are: Margaret K. Chandler, *Management Rights and Union Interests*, (New York: McGraw-Hill Book Co., 1964), and Eli Ginzberg and Berg, I.E. *Democratic Values and the Rights of Management*, (New York: Columbia University Press, 1963).

9. Summers, 1100

10. U. S., Bureau of Labor Statistics, *Disciplinary Powers and Procedures in Union Constitutions*. Department of Labor Report No. 1350 (Washington: U. S. Government Printing Office, 1963), p. 115.

11. *Ibid.*

12. *Ibid.*

13. *Ibid.*

14. *Ibid.*, p. 114.

15. *Ibid.*, p. 116.

16. *Ibid.*, p. 117.

17. Leonard Krouner, "The U.A.W.'s Public Review Board," *The Arbitration Journal*, XXV (Spring, 1970), 26.

CHAPTER VI

IMPLICATIONS FOR THE INDIVIDUAL

The previous four chapters each dealt with separate but related spheres of influence which affect the individual in union disciplinary matters. Acceptance or rejection of Hypotheses I, II and III will be based on the information in those chapters. In this chapter the evidence with respect to Hypotheses I and II is evaluated and Chapter VII similarly deals with Hypothesis III.

Hypothesis I

Hypothesis I, it will be recalled, stated:

> There has been a trend toward increased freedom in the use of discipline by unions in matters involving employer-employee interaction.

Based on the previous four chapters, it seems appropriate to reject Hypothesis I. In the area of legislation, the laws themselves, since 1935, have not increased the freedom of unions to exercise discipline. It is true that the Wagner Act probably greatly legitimized the use of discipline by unions, but subsequent legislation has not further increased this freedom. It is also true that the laws appear to have done little to curb union discipline

except in cases in which employment is at stake or discipline is flagrantly arbitrary.

The research also revealed that union constitutions are generally vague and normally give the union great disciplinary powers. At the same time, the degree of freedom in disciplinary matters granted by the constitutions to unions has not increased. On the contrary, union constitutions may have become slightly more definitive since 1959.

The NLRB and courts, likewise, have not caused a trend toward increased union disciplinary power. It is true that their decisions have resulted in tremendous freedom for unions in disciplinary matters. But the policy of the Board and the courts has been consistent and, therefore, they have not caused increased disciplinary freedom. In actuality the decisions of the NLRB and federal courts have left unions in virtually the same position with regard to discipline as they were in under Common Law.

This may not seem consistent with the decision of the Supreme Court with regard to one of the matters at issue in *Allis-Chalmers*. The Court decided that it was not an unfair labor practice for a union to enforce a fine through court actions. In making this decision the Court did little more than permit the state courts to continue their application of the "contract-property right" theory.[1] By declaring that it was not an unfair labor practice to

enforce fines, the Court did not give unions any additional power with regard to contractual (constitutional) enforcement.

The areas of abritration and review board decisions were found to have very limited relevance to union discipline.

For these reasons, it seems appropriate to reject Hypothesis I. At the same time, it does not seem unreasonable for the student of labor relations to receive the impression that unions have gained in their freedom to discipline members. Two factors are responsible for this initial impression. First, the Landrum-Griffin Act restrictions on union discipline have been less comprehensive than one might initially expect. Secondly, during the past few years, union discipline cases have received more publicity than in previous times. The decisions in favor of the unions were not unusual but the publicity brought about by the new civil libertarian dissent to these decisions has given the false impression that these decisions were indications of possible new policies.

Hypothesis II

Hypothesis II was stated as follows:

> The exercise of union discipline has resulted in the loss of individual freedom.

Rejection of Hypothesis I does not dictate that Hypothesis II also be rejected. There is really no question as to whether Hypothesis II should be accepted or rejected. Union constitutions are replete with rules indicating which activities a union member is at liberty to engage in or not engage in. The NLRB and court decisions also illustrate that there is not spontaneous consistency in union members' behavior and, therefore, certain activities are punishable. Thus, the more important issue to be discussed here is what the implications of union discipline are in terms of individual liberty.

Implications

The Individual as a Bargaining Unit

As the constitutional provisions and the NLRB and court decisions indicate, union discipline is often involved in matters which also involve the employer-employee relationship. The discipline is often used to enforce union rules which involve the very heart of this relationship. The individual union member finds that wages, hours, working conditions and almost all aspects of employment have been decided collectively. If he dissents by seeking to approach some aspect of the employer-employee relationship as an individual bargaining unit, he finds that he is subject to disciplinary action. Thus, by joining the union he loses

his status as an individual bargaining unit and whatever protection the market could offer him as a seller of labor. It should be noted that the individuals that do strike out on their own apparently feel it is their own advantage and do not feel that they will be at a disadvantage in the market place.[2]

Aside from the possible loss of pecuniary advantages of bargaining as an individual, a second implication of union discipline for the individual as a bargaining unit is the fact that by removing individual action as an alternative, the union may remove from the individual a potential source of psychological satisfaction. Although it would be difficult to present scientific evidence with regard to this, it does seem that there is a certain amount of satisfaction to be derived from acting and achieving as an individual. Whether it be a "boost" to an individual's ego or an increase in self-awareness or identity, this satisfaction is of value and it is quite possible that the pecuniary gains of passing up this psychological satisfaction are not always as great as the value of the psychological rewards foregone.

It appears that unions, in general, do not believe that collective bargaining and individual bargaining can coexist at all. With regard to the framework presented by John Stuart Mill, it appears that unions apply what might

be called an extremely "conservative" policy with regard to determining how much individual liberty is allowable before the general (union) welfare is endangered.

In short, in the United States, an individual is guaranteed the right to act collectively or as an individual. In the area of labor relations, the individual who "chooses" to act collectively seems to be bound to this position. In effect, he becomes what might be termed a "second class citizen." Some of the rights he had before he became a union member are no longer his when he decides to associate himself with a union.

One can not help but ask if this consistent policy of "conservatism" is really necessary. It is quite possible that the unions have experienced a type of ends-means inversion. It is, of course, true that the union serves to protect the members from the disadvantages of bargaining individually.[3] It is possible, though, that in attempting to "protect," unions may have become more concerned with the method used to maintain a "united front" than with the final outcome. It appears that unions have dealt the individual a serious injustice by not exploring the possibilities of coexistence between collectivism and individualism.

Rights of the Accused

The implications of union discipline are more specific when one considers the rights of the individual once he has been accused of an offense. As the previous analysis has shown, the rights guaranteed to individuals by the Sixth Amendment to the United States Constitution do not extend to the internal affairs of the union. These safeguards appear to be viewed by most unions as "unnecessary" legal technicalities and they are often not guaranteed to union members by the union. Yet if these safeguards have utility in the courts, then they would likely serve a useful purpose, from the point of view of the individual, in the internal affairs of the union.[4]

In discussing the rights of the accused, it should be noted that there is no intent to accuse all unions of denying these rights just because there are often no provisions for them. This fact, though, in no way lessens potential problems which may arise because these rights are not guaranteed. Archibald Cox stated the proposition very aptly when he wrote:

> it has never been seriously contended that minorities should not be granted protection against oppression on the ground that majorities do not abuse their power very often, nor have we been willing in other fields to forego erecting legal safeguards in the hope that the majority would learn to exercise greater self-control.[5]

Right to counsel

As indicated in Chapter III, 96 of the 158 union constitutions considered in the Bureau of Labor Statistics' study provided that an individual has a right to counsel. Frequently, though, professional attorneys were barred from serving in the role of counsel.[6] Also, it should be recalled that the "right to counsel" is not encompassed in the requirements of Section 101(a)(5) of the Landrum-Griffin Act.

Thus, the individual is often not afforded the opportunity to consult with someone, who is knowledgeable with regard to the member's rights within the union and under the labor laws. Indeed, it would be presumptuous to assume that the individual union member approaches the union disciplinary hearing with full knowledge of the protections afforded him by the union constitution and labor legislation. Even in those cases in which the individual is guaranteed the right to counsel, there is some question as to how valuable the assistance of a fellow union member can be.

Unbiased tribunal

Fifty-eight of the constitutions studied provided for an unbiased tribunal. This safeguard is to some extent guaranteed by Section 101(a)(5) of the Landrum-Griffin Act. The problems of enforcing this requirement were discussed earlier and it was revealed that the courts usually will

not intervene unless the tribunal is flagrantly biased. In view of the fact that 100 constitutions did not guarantee an unbiased tribunal, it should be recalled that the Landrum-Griffin Act does not call for the court to initiate action, but the individual must appeal to the court for relief.

The implications of an unbiased tribunal are too obvious to warrant discussion. But it should be noted that the absence of this safeguard does not mean that the tribunal will be biased. At the same time, the potential does exist. As important as the existence of the potential is the fact that the courts find it so difficult to intervene in cases involving what might be termed "subtle" impartiality, as described in Chapter IV.

Change of venue

Relevant to the problem of "subtle" forms of impartiality is the fact that only four constitutions provided for a change of venue. Again it would be presumptuous to assume that the mood of an entire local union would always be such as to deny the individual any chance of facing an impartial tribunal. At the same time, it does not seem presumptuous at all to suppose that there could be cases in which a union member has so alienated the local members that he would find it most difficult to obtain a strictly objective hearing from them. A change of venue to a different local would at least give the individual

more of a chance to have his case decided on the basis of the evidence.

Double jeopardy

As indicated in Chapter III, the union constitutional guarantees against "double jeopardy" are somewhat different than those in the courts. The union constitutions often provide that an individual may be tried by a different tribunal or at a different level. In this case one must at least grant the fact that the possibility for harassment exists.

Presentation of witnesses

As reported in Chapter III, only 58 of the 158 constitutions considered in the Bureau of Labor Statistics' study specifically granted the individual the right to invite witnesses on his own behalf. This right was also not guaranteed by Section 101(a)(5) of the Landrum-Griffin Act.

In short, here again the potential for injustice arises. While the individual may be allowed to cross-examine witnesses, this does not overcome the disadvantages of not being permitted to call on "friendly" witnesses.

Summary discipline, cross-examination and testimony on one's own behalf

The courts have interpreted section 101(a)(5) of the Landrum-Griffin Act to make it unlawful for a union to summarily discipline its members. In addition, the courts

have ruled that minimum standards of "fairness" include the right to cross-examine witnesses and to testify on one's own behalf.

The survey of union constitutions revealed that after passage of the Landrum-Griffin Act some unions specifically eliminated provisions for summary discipline. Yet a majority still maintained these provisions. Only 54 of the 158 constitutions guaranteed that the individual could testify on his own behalf and 45 provided that the individual could cross-examine witnesses. Again, it would not be appropriate to assume that the rest of the unions do not allow an individual to defend himself or cross-examine witnesses. Yet this does not lessen the importance of the instances when these individual liberties are denied.

These three areas are particularly interesting because they involve legislative guarantees that may not be included in the union constitution. Therefore, it is important to note that the courts do not take "affirmative action" but they must be appealed to by the individual.[7] This, of course, is not a realistic alternative for many individuals.[8]

The individual who wishes to file an unfair labor practice charge with the NLRB is, likewise, faced with feasibility problems. Especially in the case of the Board, the individual is faced with the prospect of a delay of several months.[9]

Voluntarism as Discipline Avoidance Technique

It is argued that an individual who joins a union voluntarily enters into a contract with the union and, therefore, voluntarily subjects himself to disciplinary action.[10] While this may be theoretically true, as a practical matter, voluntarism loses much of its potency as a protective device.

Even the most naive student of labor relations or the most ardent supporter of organized labor would probably admit that considerable pressure is often exerted on individuals to join unions in certain industries in so called "right to work" states.

In states which do permit union-shop agreements it is often contended that an individual can avoid union discipline by not becoming a "full" member of the union.[11] Here again, though, there are practical problems. The limitations of not becoming a "full" member as a discipline avoidance device were discussed by Justice Black in his dissenting opinion in *Allis-Chalmers*. He wrote:

> Few employees forced to become "members" of the union by virtue of a union-shop clause will be aware of the fact that they must somehow "limit" their membership. . . . Even those brash enough to attempt to do so may be unfamiliar with how to do it. Must they refrain from doing anything but paying dues, or will signing the routine union pledge still leave them with less than full membership.[12]

The problem is probably most concisely stated by Robert Kirk in a *Cornell Law Review* article. He states that

> many employees will not know they may limit their status, few will know how to do so, and few will dare test their status by exposing themselves to union suits.[13]

There is also some question of whether not becoming a "full" member is even a theoretically sound method of avoiding union discipline. It will be recalled that the Supreme Court in *Allis-Chalmers* partially justified its decision by claiming that the disciplined individuals had voluntarily become "full" members of the union. Yet the court specifically avoided the question of what their decision would have been had the individuals involved not been "full" union members.[14]

Regardless of the theoretical arguments, it does appear that the argument that an individual voluntarily subjects himself to union discipline is a questionable defense of union discipline. In addition, even if voluntarism is a theoretically and practically sound method of avoiding union discipline one must not forget that even voluntary, "full" union members must almost totally subordinate individualism to collectivism. This in itself, as discussed earlier, is of considerable importance.

Immunity

In 1958 Roscoe Pound published a work entitled *Legal Immunities of Labor Unions*.[15] In it he describes the immunities of labor unions with regard to employers and

the community. The information in Chapters II-V above suggests that the union, as an entity, enjoys considerable immunity with regard to the individual members.

As indicated in Chapter IV, an individual who believes that he has been disciplined arbitrarily can appeal to the courts on the basis of Section 101(a)(5) of the Landrum-Griffin Act. An individual who believes that he has been disciplined in a manner inconsistent with the union constitution may appeal to the courts on the basis of the "contract-property right" theory. Finally, the individual may appeal to the NLRB if he believes that the union has coerced or restrained him in the exercise of his Section 7 rights.

With regard to Section 101(a)(5) of the Landrum-Griffin Act, there are minimum safeguards afforded the individual. These safeguards are quite different than those deemed necessary in a court of law. With regard to the "contract-property right" theory, the courts have virtually exempted union members from the protection of Sections 8(b)(1) and 7 of the Labor Management Relations Act.

Thus the individual finds himself legally bound by the union constitution. As indicated in Chapters III and IV these constitutions embody a rather narrow view of how much individual liberty can be exercised. Due to the courts'

application of the contract-property right theory and the interpretations of the NLRB the union enjoys considerable immunity in the application of its constitution.[16] How representative the constitution is of the wishes of the union members is, of course, open to question. But, regardless of how representative the union constitution is, one who values individual liberty must be concerned for those individuals who are in the minority.

Finally, it should be noted that, aside from the immunities enjoyed by unions as a result of legal factors, it seems likely that a degree of immunity is afforded by some informal factors. Included among these factors are the ignorance of individuals with regard to labor legislation, the financial limitations of individuals and limitations due to time.

* * * * * * * *

The evidence supports the contention that Hypothesis I is disproved and that Hypothesis II is proved. There has not been a significant increase in the power of unions to discipline members. Yet the disciplinary freedom exercised by unions has greatly reduced individual freedom.

NOTES

1. See Robert C. Kirk, "Labor Policy: Judicial Enforcement of Fines After Allis-Chalmers," *Cornell Law Review*, LIII (July, 1968), 1094.

2. It is easy to imagine that an individual may at times wish to work faster or longer than other union members.

3. See F. W. Taussig, *Principles of Economics* (New York: The Macmillan Company, 1928), p. 300.

4. The utility of these safeguards is discussed in Francis Heller, *The Sixth Amendment* (Lawrence, Kansas: The University of Kansas Press, 1951) and Leo Pfeffer, *The Liberties of an American* (Beacon Press, 1963), Chap 6.

5. Archibald Cox, "Some Aspects of the Labor-Management Relations Act, 1947, *Harvard Law Review*, LXI (January, 1948), 293.

6. U. S., Bureau of Labor Statistics, *Disciplinary Powers and Procedures in Union Constitutions*, U. S. Labor Department Bulletin No. 1350 (Washington: U. S. Government Printing Office, 1963), p. 99.

7. The term *affirmative action* is used here to mean that the court would act on its own initiative in investigating union disciplinary matters.

8. Among the most obvious barriers are the costs of court action and the time involved.

9. It may take 6 months to a year before the Board decides. If an appeal is made, it could be several years before a final decision is reached.

10. For example see *NLRB v. Allis-Chalmers*, 87 S. Ct. 2002, 2015.

11. *Ibid.*

12. *Ibid.*, p. 2024.

13. Kirk., 1096.

14. *Allis-Chalmers.*, 2015.

15. Roscoe Pound, *Legal Immunities of Labor Unions* (Washington, D. C.: American Enterprise Association, Inc., 1958).

16. This "immunity" only exists, at least legally, to the extent that the union abides by the constitution. For example, see *Vaca v. Sipes*, 386 U. S. 171 (1967) and *Smetherham v. Laundry Workers' Union*, 111 P.2d 948. It should be noted that this immunity is most significant in the case of individuals or minorities.

CHAPTER VII

IMPLICATIONS FOR MANAGEMENT

It is not a purpose of this study to become involved in the philosophical arguments regarding the management "rights" issue. It does seem appropriate, though, to discuss two approaches used in studying the issue. It is believed that the implications of union discipline discussed here are relevant regardless of which approach is employed.

The "Rights" Issue

The management "rights" issue actually involves a variety of matters. First, there is concern with regard to how much decision making power has been transferred from management to organized labor.[1] Secondly, there has been concern with how and why this transfer has occured. Finally, there is consideration of the normative aspects of this transfer.

The Traditional Approach

As mentioned above, there are two approaches to the consideration of these three aspects of the management "rights" issue. The first approach might be called the "traditional" approach.[2] This approach assumes that

management and labor are separate entities. Management is viewed, initially, as having a "fund of rights" which flows from the fact that they represent those with property rights. According to this approach, organized labor has been involved in a steady process of taking these "rights" from management.[3] This "erosion" has occured primarily as a result of the negotiations between management and labor.

Much of the research and writing conducted on the basis of this approach seems to be inspired by the belief that this transfer of "rights" from those representing property interests has political overtones.[4]

The New Approach

The second approach to the study of the management "rights" issue is relatively new. This approach was initiated in 1964 by Margaret Chandler, a professor of sociology at the University of Illinois.[5] Chandler developed this new approach largely as a reaction to what she perceived as inadequacies in the "traditional" approach. With regard to the three matters usually considered in a study of management rights, the new approach deemphasizes the question of how much decision making power has shifted from management to labor. Chandler holds that the traditional approach has actually become a "win-losses, last-inning scorekeeping approach," as a result of too much concern

for ascertaining exactly how much decision making power has shifted.[6]

The new approach also deemphasizes the concern over the political overtones of the "rights" issue. Although there do appear to be implicit normative judgments embodied in Chandler's work, this is deemphasized as a basis for the research.

The new approach is quite different from the traditional approach in matters relating to how and why the transfer has occurred. According to Chandler, the traditional approach is primarily concerned with "how" the transfer has occurred and it seeks to explain this through union-management negotiations, arbitration and past practices.[7] In formulating this new approach, she attempted to deemphasize how the transfer has occurred and place more emphasis on why it has occurred. In order to do this, the new approach considers legalistic, organizational and collective bargaining aspects as they exist within a larger intercultural, economic and technological matrix. Particular emphasis is placed upon the impact of the technical organization of work, the implications of technical change and the alignment of organizational interest groups both inside and outside the firm.

Thus, legalistic and collective bargaining factors are deemphasized but not eliminated in the new approach.

This Study

As will be discussed below, it is believed that union discipline has aided the union in negotiation over issues which management once regarded as its prerogatives. Thus, union discipline appears to be relevant to the "rights" issue from the point of view of the traditional approach.

It is also believed that the implications discussed are relevant from the newer approach. There are two reasons for this. First, the newer approach actually appears to encompass the traditional approach but it is broader and just places emphasis in different areas. Secondly, the implications discussed here are not just the result of union-management negotiations but the interaction of the union and management with government. Thus, the matters fit into the expanded scope of Chandler's approach. It should be noted that Chandler criticized the traditional approach because it failed to consider the importance of "negotiations between the government and the employers."[8]

Regardless of which approach is taken, or any normative judgments made, there seems to be universal agreement that there has been a decline of management's exercise of what it assumed in the past were its prerogatives. This, in actuality, is the only necessary area of agreement in order to proceed.

Implications

Hypothesis III

Hypothesis III, in actuality, deals with the implications of union discipline for management. It will be recalled that Hypothesis III was posited:

> Union discipline has contributed to the decline in management's exercise of what it assumed in the past were its prerogatives.

Two limitations of this hypothesis should be noted. First, there is no intent to become involved in a discussion of whether management or labor is entitled to, or should be entitled to, certain rights or prerogatives. Secondly, rejection or acceptance of the hypothesis depends upon whether union discipline has contributed to this decline. It is not hypothesized that union discipline is a necessary, sufficient, or necessary and sufficient cause.

It seems appropriate to accept Hypothesis III. Three different aspects of the union discipline matter lead to this conclusion. First, union discipline has, to a great extent, contributed to the decrease in opportunities for employers to bargain with employees as individuals. As has been pointed out, employees theoretically have the right to bargain collectively or as individuals. But, as noted in Chapter IV, the effect of union discipline is to bind the individual very closely to the collectively made agreement whether he agrees with specific aspects of the agreement.

This also has the effect of decreasing the employer's opportunity of bargaining with individuals. Of course, the majority of union members may find little or nothing objectionable about the contract and, therefore, they do not stand as potential individual bargainers. At the same time, though, the threat of union discipline removes from management the opportunity to bargain with potential dissenters.

The second matter with regard to the acceptance of Hypothesis III deals with the individual who is faced with the prospect of disciplinary action by both management and the union with regard to a particular aspect of employment. Cases have been presented in which the union had rules which related to aspects of employment which were traditionally assumed by management to be within the scope of their prerogatives (e.g., *Scofield, Associated Home Builders*). In these cases, when the individual adhered to the union rule rather than the wishes of management, the effect was to remove from management its ability to control that particular aspect of employment.

The final matter with regard to the acceptance of Hypothesis III deals with an indirect effect of union discipline. Negotiations between unions and employers often deal with issues which were once believed by management to be within the scope of its prerogatives.[9] How well the union will do in the negotiations is dependent upon many factors.[10] Among these factors is the ability of the union

to call everyone out on strike and, thus, present a united front. A significant factor in maintaining a united front is union discipline. The cases in this study which exemplify this use of union discipline were those which involved strike breaking (e.g., *Allis-Chalmers, Minnesota Star*). A consideration has not been made of cases in which union discipline was confined to the internal affairs of the union because this would be beyond the scope of this study. There is, however, considerable evidence to suggest that these internal union discipline cases also involve efforts to promote a united front.[11] Thus, to the extent that the union employs disciplinary measures to promote a united front to aid in negotiations involving management "rights" issues, one must conclude that union discipline has contributed to a decline in the exercise of management's "prerogatives."

Other Implications

The implications of union discipline for management discussed with regard to Hypothesis III give the impression that management would always regard union discipline unfavorably. Other implications, though, indicate that management could take the opposite view.

Since 1959, employers have found that strict union discipline may, from their point of view, have advantages. A recent item in *Business Week* reported:

> Laws passed to assume democracy within unions give a guaranteed opportunity to malcontents and minority groups to challenge union authority and perhaps upset agreements negotiated by the officers. As some employers ruefully will admit, the Landrum-Griffin Act of 1959 not only ended heavy-handed union leadership but also undercut leadership. . . .[12]

This statement is primarily concerned with the safeguards contained in the "Bill of Rights" of the Landrum-Griffin Act to insure union democracy. Encompassed in this "Bill of Rights" is Section 101(a)(5) which limits union discipline.

Needless to say, the agreements that are "upset" are often the result of dissatisfaction with the wage settlement.[13] In actuality, today, one out of every seven agreements is rejected by the rank and file.[14] At one time, according to *Business Week*, rejection was an oddity. It is likely that an employer faced with the prospect of a rejection of a negotiation settlement or a wildcat strike would look quite favorably upon increased use of union discipline. The article summarizes the situation:

> The upshot of all this is that union leaders dare not come back with a package that does not contain something for every group within the membership. Any unsatisfied group—young, old, ethnic, skilled or unskilled—may become the core of rebellion.[15]

To the extent that the lack of arbitrary disciplinary power has contributed to increased union democracy, it appears that the Landrum-Griffin Act's safeguards against arbitrary disciplinary action have contributed to the recent necessity for union leaders to be more responsive.

The removal of at least some of his disciplinary powers has contributed to the fact that the union leader must respond.

Union discipline may also be viewed favorably by management when the union has the role of enforcing certain aspects of the contract between the union and management. If an employer has already lost control of some aspect of employment which it had previously regarded as its prerogative, there may be utility in assuring that there will still be consistency in the administration of this aspect of employment. For example, if the power to control employees with regard to quality of output passes from management to the union, it is quite possible that management would look favorably upon the union's attempt to curb shoddy workmanship.

It is obvious that the implications for management of union discipline are rather paradoxical. As discussed above, union discipline may contribute to a decline in management's exercise of what it once considered its prerogatives. This can happen directly as a result of the threat of union discipline with regard to aspects of employment on which there are no contractual provisions. Union discipline can also contribute indirectly to this decline by aiding the union in its efforts to present a united front when bargaining over these issues.

With regard to this second factor, though, the experience of the 1960's has indicated that union discipline can act as a "two-edged sword" from the point of view of management. While the use of discipline may act to strengthen the union in its negotiations with management, the lack of disciplinary power can act to make union leadership more responsive and, therefore, possibly, more likely to make higher demands. Also, while union discipline may contribute to the loss of what were once considered to be management's prerogatives, it is not unreasonable for management to desire that the union then use its disciplinary power to force members to conform to the requirements of the contract.

At this time it is impossible to determine the complete significance of all these implications of union discipline for management. It may be, though, that 1970, because of the high number of contracts that expire, will be the year that determines what the attitude of management toward union discipline should be.

Immunity

The immunity of unions with regard to the disciplined individual was discussed in Chapter IV. In many cases discussed in Chapter IV, the employer was the party which filed the unfair labor practice charges (e.g., *Allis-Chalmers*, *American Iron*). As a result of the

decisions of the NLRB and the courts, it is evident that unions also enjoy immunity from management in union disciplinary matters. The Board and the courts justify this policy by holding that disciplinary matters are the internal affair of the union.

There are two qualifications to this immunity. First, as indicated in Chapter IV, the union may not force an employer to discharge an individual for any reason except nonpayment of dues. This is an unfair labor practice under Section 8(b)(2) of the Taft-Hartley Act. Secondly, an employer can indirectly interfere with union discipline in some cases by filing unfair labor practice charges under Sections 8(b)(3) or 8(b)(4) of the Taft-Hartley Act. Section 8(b)(3) deals with the duty to bargain, while 8(b)(4) concerns secondary boycotts. If the union is ordered to cease practices in violation of these sections, they are, in effect, forced to cease disciplinary action in support of these activities. It should be noted, though, that both these methods only indirectly interfere with disciplinary action by the union. For example, in the *Swiss Colony* case, the Board did not find that the disciplinary action itself was unfair but only that the secondary boycott was unfair.[16] Thus, the effect on union discipline was only incidental. Therefore, management finds a rather broad interpretation of what the "internal affairs" of the union are and it finds

that it is generally not able to interfere with these affairs.

* * * * * * * * *

The evidence supports Hypothesis III. Union discipline has contributed, both directly and indirectly to the decline in management's exercise of what it assumed in the past were its prerogatives.

NOTES

1. See, for example, George Torrence, *Management's Right to Manage* (Washington, D. C.: B.N.A. Books, 1968).

2. This approach is exemplified in Neil Chamberlain (ed.), *Union Challenge to Management Control* (New York: Harper and Row, Inc., 1948).

3. See Margaret Chandler, *Management Rights and Union Interests* (New York: McGraw-Hill Book Co., 1964) p. viii.

4. For example, see, Eli Ginzberg and Berg, I. E. *Democratic Values and the Rights of Management* (New York: The Columbia University Press, 1963).

5. Chandler, p. viii. Chandler develops the approach and applies it to the matter of subcontracting.

6. *Ibid.*, p. 6

7. *Ibid.*, p. 4.

8. *Ibid.*

9. For example, see, Lloyd G. Reynolds, *Labor Economics and Labor Relations* (Englewood Cliffs: Prentice-Hall, Inc., 1964), Chap. 7-9.

10. Richard A. Lester, *Economics of Labor* (New York: The Macmillan Co., 1949), pp. 602-603, 611-612.

11. See, U. S. Congress, Senate Select Committee on Improper Activities in the Labor or Management Field, *Interim Report of the Select Committee on the Improper Activities in the Labor or Management Field*, Report No. 1417, 85th Cong., 2d Sess., 1958.

12. "The U. S. Can't Afford What Labor Wants," *Business Week*, April 11, 1970, p. 105-106.

13. The *Business Week* article (note 12) includes a table showing the frequency of various demands. p. 107.

14. "The U. S. Can't Afford What Labor Wants," p. 106.

15. Regardless of how responsive the union leader becomes to minorities, it is believed that the individual still faces certain consequences as discussed in Chapter VI.

16. 87 NLRB 720 (1949).

CHAPTER VIII

SUMMARY AND SUGGESTIONS FOR FURTHER RESEARCH

Summary

In the preceding pages an effort has been made to determine the present ability of unions to discipline their members. In addition, the implications of union discipline for the individual and management have been discussed. The scope of the study was limited to union discipline which affects the employer-employee relationship. The investigation concerned four independent but related areas. These were: legislation, union constitutions, NLRB and court decisions, and other "third party" decisions.

In the area of legislation, particular attention was focused upon two amendments to the National Labor Relations Act (NLRA) made by the Taft-Hartley Act. Section 7 of the NLRA was amended to give individuals the right not to take part in any collective activities. Prior to this, Section 7 had only contained provisions permitting individuals to act collectively if they so desire. Section 8(b)(1) was also added by the Taft-Hartley Act and it made it an unfair labor practice for a union to restrain or coerce employees with regard to the rights guaranteed by

Section 7. A proviso to 8(b)(1) stated that the section was not to interfere with the right of unions to specify rules with regard to retention and acquisition of membership.

The Landrum-Griffin Act of 1959 also contained provisions which were relevant to the issue of union discipline. Particularly important was Section 101(a)(5) which prohibited arbitrary disciplinary action by the union.

All of these provisions were vague enough to leave room for interpretation. Thus, the real determinants of union disciplinary power appeared to be union constitutions, and the NLRB and courts.

Union constitutions were found to be rather vague and, in general, they gave the union great disciplinary power. Almost all constitutions contain some kind of "catchall" provision which allows discipline for whatever action is interpreted as being "improper." The constitutions were also found to be decidedly lacking in provisions for procedural safeguards. The investigation also revealed that union constitutions have varied slightly, if at all, with regard to procedural safeguards.

The NLRB and courts have, for the most part, refused to interfere with union disciplinary matters. The courts have continually taken the position that an individual, who becomes a member of a union, voluntarily enters into a

contractual relationship with the union. Therefore, the individual becomes subject to disciplinary action provided for in the contract if he violates it.

With regard to Sections 7 and 8(1)(b) of the Taft-Hartley Act, the NLRB has applied what has been called a "dual approach." The Board refuses to intervene in disciplinary matters which it perceives as being the "internal affairs" of the union. Supposedly, though, the Board will interfere if the union discipline goes beyond the "internal affairs" of the union. In pursuit of this policy the Board, and the courts in subsequent appeals, have applied a rather broad interpretation of what constitutes the "internal affairs" of the union. The only instances in which the Board does consistently intervene are those in which there is a loss of employment.

The Board and courts have justified this broad interpretation by reliance on the proviso to Section 8(b)(1). The proviso states that nothing in 8(b)(1) should "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Apparently, the Board has interpreted this proviso to mean that an individual loses his rights as guaranteed by Section 7 once he joins a union.

With regard to the Landrum-Griffin Act provisions against arbitrary discipline, the courts have been of the opinion that, as a minimum, the individual must be given

adequate time to prepare a defense before facing the union tribunal, he must be allowed to defend himself and he must be permitted to cross-examine witnesses. Thus, the courts do not come near demanding the same procedural safeguards in union hearings that they demand in their own proceedings.

The final area of investigation dealt with "third party" decisions. Specifically, the impact of arbitration and review boards was considered. The effects of arbitration were found to be very limited because the decisions usually dealt with the union-management relationship and not the union-member relationship. The decisions of review boards also had limited significance because the board actually played the role of an appellant body within the union. The board acts only to see that the union constitution, as it stands, is administered fairly.

Three hypotheses served as points around which the implications of union discipline for the individual and for management were discussed. With regard to Hypothesis I, it was decided that there has not been a significant increase in the degree of disciplinary freedom of unions. It was originally expected that in recent years there had been such an increase, but this initial impression was based on insufficient evidence.

With regard to Hypothesis II, it is believed that union discipline has greatly reduced individual freedom. The individual who joins a union finds that he is expected

to subordinate individualism, with regard to the employer-employee relationship, to collectivism. In addition, he potentially faces disciplinary action without the immediate protection of many of the procedural safeguards which are found in the courts.

With regard to Hypothesis III, it was concluded that union discipline has contributed to the decline in management's exercise of what in the past it assumed were its prerogatives. Most important, though, is the fact that union discipline has rather paradoxical implications for management. It is true that union discipline has directly and indirectly contributed to the decline in the scope of management control. At the same time, though, there are definitely some situations in which management might look favorably upon union discipline. This would be true in a case in which a dissonant minority within the union is forcing the union leaders to make greater demands than they would have normally made.

Finally, it was found that unions enjoy a type of "immunity" with regard to disciplinary matters. They are immune to the protests of the disciplined individual as long as they administer the discipline in compliance with the union constitutions. This is because the individual becomes legally bound to the union constitution when he joins. The union is immune to the protest of management

as a result of the broad interpretation of the NLRB and courts of what constitutes the internal affairs of the union.

The position of isolation within society that unions enjoy also has other implications. In this decade, the United States is faced with social and environmental problems that are of a magnitude that has never been experienced before. Yet as long as unions enjoy this privileged position, any hopes that organized labor will initiate significant and positive action toward the solution of these problems have very little concrete basis.

Suggestions for Further Research

A study of this nature often stimulates consideration of as many questions as it attempts to answer. Surely this investigation has proved no exception. There are so many gaps in the information available with regard to union discipline and the attitudes of individuals and employers toward it that one could spend considerable time pondering what is not known. A few things which would be particularly interesting to know more about and which might serve as areas for potentially rewarding research are worth noting.

This study has dealt primarily with the potential powers of unions, in general, in disciplinary matters. The potential misuse of power, as Archibald Cox so aptly stated,

is extremely important. Yet it would still be interesting to isolate particular unions and investigate the actual disciplinary hearings in order to ascertain what standards of fairness are actually employed.

With regard to the above information, it would also be interesting to determine whether particular groups of unions are similar in terms of their respect for procedural safeguards. For example, are older and more "mature" unions more likely to be cognizant of the needs of the individual? Or, for a second example, are secure unions or unions faced with less opposition by management more or less likely to be concerned with procedural safeguards?

Very little is known about the attitudes of union members with regard to the contents of union constitutions. There is a definite question of whether many union members even know what is in the constitution. Yet these individuals become legally bound by this document which they quite possibly have never read.

With regard to this general question of how well informed the union member is, it would also be interesting to find out how knowledgeable union members are with respect to labor legislation, the functions and operations of the NLRB and the legal limitations of union discipline.

In view of the paradoxical nature of the implications of union discipline for management, it would be interesting to discover exactly what employers think about the freedom

of unions to discipline their members. It would be particularly interesting to find out if employers have actually experienced, or are cognizant of, the paradoxical effects of union discipline.

It would probably be rather optimistic to suggest that unions themselves conduct research with regard to protecting the individual. Yet one can not help but believe that union members are being dealt a serious injustice if unions do not at least study the feasibility of educational programs to inform each member of the contents of his union constitution and the effects of labor legislation. Also it does not seem totally unreasonable for unions to explore the possibilities of extending to individuals such things as the right to counsel or an opportunity for a change of venue in discipline cases.

Finally, as mentioned previously, it seems that an automatic rejection by unions of individual bargaining is not warranted without first exploring the possibilities of allowing some individual bargaining to coexist with collective bargaining.

BIBLIOGRAPHY

Books

Bakke, Wright *et al.* (ed.). *Union Management and the Public.* New York: Harcourt, Brace and World, Inc., 1967.

Beal, Edwin F. and Wickersham, Edward D. *The Practice of Collective Bargaining.* Homewood, Ill.: Richard D. Irwin, Inc., 1963.

Blodgett, Ralph H. *Our Expanding Economy.* New York: Rinehart and Co., Inc., 1955.

Chamberlain, Neil W. (ed.). *Sourcebook on Labor.* New York: McGraw-Hill Book Co., 1964.

Chamberlain, Neil W. (ed.). *Union Challenge to Management Control.* New York: Harper and Row, Inc., 1948.

Chandler, Margaret. *Management Rights and Union Interests.* New York: McGraw-Hill Book Co., 1964.

Christensen, Thomas G. S. "Union Fines and Other Discipline: The Union, the Employer and the Employee," *Proceedings of the New York University 21st Annual Conference on Labor.* Edited by Thomas G. S. Christensen. New York: Mathew Bender, Inc., 1969.

Cohen, Sanford. *Labor Law.* Columbus, Ohio: Charles E. Merrill Books, Inc., 1964.

Corpus Juris Secundum. Vols. 51, 51A. Brooklyn, N. Y.: The American Law Book Co., 1967.

Corwin, Edward S. *The Constitution and What It Means Today.* Princeton, New Jersey: Princeton University Press, 1958.

Dewey, John. *Individualism: Old and New.* New York: Minton, Balch and Co., 1930.

Fairweather, Owen. *Labor Relations and the Law.* Ann Arbor: University of Michigan Press, 1968.

Ginzberg, Eli and Berg, I. E. *Democratic Values and the Rights of Management.* New York: Columbia University Press, 1963.

Griswold, Erwin N. *The 5th Amendment Today.* Cambridge, Mass.: Harvard University Press, 1955.

Grodin, Joseph. "Legal Regulation of Internal Union Affairs," *Public Policy and Collective Bargaining.* Edited by Joseph Shister *et al.* New York: Harper and Row, 1962.

Heller, Francis H. *The Sixth Amendment.* Lawrence, Kansas: University of Kansas Press, 1951.

Hicks, J. R. *The Theory of Wages.* London: The Macmillan Co., 1935.

Leiserson, William M. *American Trade Union Democracy.* New York: Columbia University Press, 1959.

Lester, Richard A. *Economics of Labor.* New York: The Macmillan Co., 1949.

Mill, John Stuart. *On Liberty.* Edited by Alburey Castell. New York: Appleton-Century-Crofts, 1947.

Myers, A. Howard. *Labor Law and Legislation.* Chicago: South-Western Publishing Co., 1968.

Peterson, Florence. *American Labor Unions.* New York: Harper and Row, 1963.

Pfeffer, Leo. *The Liberties of an American.* Washington, D. C.: The Beacon Press, 1963.

Pigou, A. C. *The Economics of Welfare.* London: The Macmillan Co., 1920.

Pound, Roscoe. *The Development of Constitutional Guarantees of Liberty.* New Haven: Yale University Press, 1958.

Pound, Roscoe. *Federalism as a Democratic Process.* New Brunswick: Rutgers University Press, 1942.

Pound, Roscoe. *Legal Immunities of Labor Unions.* Washington: American Enterprise Assn., Inc., 1958.

Rees, Albert. *The Economics of Trade Unions.* Chicago: University of Chicago Press, 1962.

Ross, Philip. *The Government as a Source of Union Powers.* Providence: Brown University Press, 1965.

Seidman, Joel. "Emergence of Concern with Union Government and Administration," *Regulating Union Government.* Edited by Martin S. Estey *et al.* New York: Harper and Row, 1964.

Seidman, Joel. "Some Requirements for Union Democracy," *Labor: Readings on Major Issues.* Edited by Richard A. Lester. New York: Random House, 1968.

Stein, Emanuel. "The Dilemma of Union Democracy," *Labor: Readings on Major Issues.* Edited by Richard A. Lester. New York: Random House, 1968.

Sosnoff, Eugene N. "Financing Democratic Ferment and Revolt Within Labor Unions Through Court-Awarded Counsel Fees," *Proceedings of the New York University 21st Annual Conference on Labor.* Edited by Thomas G. S. Christensen. New York: Mathew Bender, Inc., 1969.

Sultan, Paul E. *The Disenchanted Unionist.* New York: Harper and Row, 1963.

Taft, Philip. *Organized Labor in American History.* New York: Harper and Row, 1964.

Taussig, F. W. *Principles of Economics.* New York: The Macmillan Co., 1928.

Torrence, George W. *Management's Right to Manage.* Washington: Bureau of National Affairs Books, 1968.

Articles and Periodicals

Aaron, Ben. "The Union Members' 'Bill of Rights,'" *Industrial Relations,* I (February, 1962), 47-71.

Chafee, Zechariah. "The Internal Affairs of Associations Not for Profit," *Harvard Law Review,* XLIII (May, 1930), 993-1029.

Christensen, Thomas G. S. "Union Discipline Under Federal Law: Institutional Dilemmas in an Industrial Democracy," *New York University Law Review,* XLIII (April, 1968), 227-279.

Cox, Archibald, "Some Aspects of the Labor-Management Relations Act, 1947," *Harvard Law Review,* LXI (January, 1948), 293-315.

Decisions and Orders of the National Labor Relations Board. Vols. LXXVII-CLXIV. Washington: National Labor Relations Board, 1947-1967.

Federal Reporter. 2d Series. Vols. CCLXII-CDIXX. St. Paul, Minn.: West Publishing Co., 1959-1970.

Federal Supplement. Vols. CLXX-CCCVII. St. Paul, Minn.: West Publishing Co., 1959-1969.

Kirk, Robert C. "Labor Policy: Judicial Enforcement of Fines After Allis-Chalmers," *Cornell Law Review,* LIII (July, 1968), 1094-1107.

Kroner, Jack L. "Title I of the LMRDA: Some Problems of Legal Method and Methodology," *New York University Law Review,* XLIII (April, 1968), 280-304.

Krouner, Leonard. "The U.A.W.'s Public Review Board," *The Arbitration Journal,* XXV (Spring, 1970), 23-29.

Kvorsky, Irving. "Union Discipline," *Labor Law Journal,* XIX (November, 1968), 667-680.

Labor Relations Reference Manual. Vols. XL-LXXII. Washington: Bureau of National Affairs, 1957-1969.

Lew, David. "Landrum-Griffin Protections Against Union Discipline," *New York Law Forum,* XIII (Spring, 1967), 16-68.

Rosenberg, Linda. "Interpretation Problems of Title I," *Industrial and Labor Relations Review,* XVI (April, 1963), 405-427.

Ross, Philip and Taft, Philip. "The Effect of the LMRDA Upon Union Constitutions," *New York University Law Review,* XLIII (April, 1968), 305-333.

Supreme Court Reporter. Vols. LXVIII-XC. St. Paul, Minn.: West Publishing Co., 1947-1969.

Summers, Clyde. "Disciplinary Powers of Unions," *Industrial and Labor Relations Review,* III (July, 1950), 843-498.

Summers, Clyde. "Disciplinary Procedures of Unions," *Industrial and Labor Relations Review*, IV (October, 1950), 15-32.

Summers, Clyde. "The Law of Union Discipline: What the Courts Do in Fact," *Yale Law Journal*, LXX (December, 1960), 175-224.

Summers, Clyde. "Legal Limitations of Union Discipline," *Harvard Law Review*, LXIV (May, 1951), 1049-1101.

Summers, Clyde. "Union Powers and Workers Rights," *Michigan Law Review*, IL (1951), 805-837.

Taft, Philip. "Democracy in Trade Unions," *American Economic Review*, XXXVI (May, 1946), 359-369.

Taft, Philip. "Judicial Procedures in Labor Unions," *Quarterly Journal of Economics*, LIX (May, 1945), 276-285.

U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Vols. XC-XCII (1967-1969).

"The U. S. Can't Afford What Labor Wants," *Business Week* (April 11, 1970), 104-108.

Other Publications

A Layman's Guide to Basic Law Under the NLRA. A brochure published by the National Labor Relations Board. Washington, 1966.

New Labor Law of 1959 with Explanation. A brochure published by Commerce Clearing House. Washington, 1959.

Reports Required Under the LMRDA. A brochure published by the U. S. Department of Labor. Washington, 1967.

Rights and Responsibilities Under the LMRDA. A brochure published by the U. S. Department of Labor. Washington, 1967.

U. S., Bureau of Labor Statistics. *Disciplinary Powers and Procedures in Union Constitutions*. Department of Labor Bulletin No. 1350, Washington: U. S. Government Printing Office, 1963.

U. S., Senate, Select Committee on Improper Activities in the Labor or Management Field. *The Interim Report of the Select Committee on Improper Activities in the Labor or Management Field.* 85th Cong. 2d Sess., 1958.

BIOGRAPHICAL SKETCH

Jeffrey Lynch Harrison was born in Bluefield, West Virginia, on April 2, 1946. He lived in Massachusetts for two years before moving to Hallandale, Florida, where he attended public schools. He graduated from South Broward High School in June, 1963.

In September, 1963, he enrolled in the University of Florida. In August, 1967, he received the Bachelor of Science degree with a major in Management. He graduated with high honors. During his senior year he was awarded an N.D.E.A. fellowship for work toward the degree of Doctor of Philosophy.

He began graduate study at the University of Florida in September, 1967. He received a Master of Business Administration degree in August, 1968. In December, 1969, he was admitted to candidacy for the degree of Doctor of Philosophy with a major in Economics and Business Administration.

Jeffrey Lynch Harrison is married to Ann Arrowood Harrison. He is a member of Phi Kappa Phi and Beta Gamma Sigma.

This dissertation was prepared under the direction of the chairman of the candidate's supervisory committee and has been approved by all members of that committee. It was submitted to the Dean of the College of Business Administration and to the Graduate Council, and was approved as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

August, 1970

Dean, College of Business Administration

Dean, Graduate School

Supervisory Committee:

Chairman