1965

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Protection of a Union Member's Right to Sue Under the Landrum-Griffin Act

PATRICK C. O'DONOGHUE*

"[P]erhaps the most ambiguous provisions of all those contained in the . . ." 1 Labor-Management Reporting and Disclosure Act of 19592 is Section 101 (a) (4).3 Its complex language presents a thorny but important problem of statutory construction—important because, generally, the initial question in suits instituted under Title I of the LMRDA is the applicability of Section 101 (a) (4). The proviso of this section is at the heart of the problem—"whether it prescribe the maximum time the courts can require members to pursue union appeals before granting judicial relief or whether it only limits the union's power to discipline members for seeking legal protection".4 Equally difficult and important is the necessary corollary of whether a union is prohibited by Section 101 (a) (4) and its proviso from disciplin-
ing a member who failed to exhaust reasonable intra-union hearing procedures for four months prior to suing the union or filing charges with the National Labor Relations Board.

This article will examine the judicial precedent that has developed during the five and one-half year history of the LMRDA with a view toward determining whether the Courts, in resolving these questions of statutory construction, have effectuated the intent of Congress manifested by its enactment of Section 101 (a) (4) of the LMRDA.

THE CONFLICTING INTERPRETATIONS OF COMMENTATORS AND THE COURTS

Long before Title I was enacted, generally the threshold question presented to a court in a suit by a member against his union was the applicability of the doctrine of exhaustion of remedies. The concept, simply stated, is this: Whenever a union member feels he has been wronged by his union, before going to court he must first exhaust the internal remedies provided by his union. This requirement is made a part of virtually every union constitution, together with a detailed procedure of trials and appeals. The obligation to exhaust is often described as contractual. However, with courts having made such exhaustion a prerequisite to court action, even in the absence of an express provision in a union constitution, the doctrine of exhaustion may be a common law rule.

Although the doctrine of exhaustion of internal union remedies has been uniformly accepted over a period of years by both State and Federal Courts, such a variety of ill-defined exceptions have been engrafted to the doctrine that the exceptions have almost vitiated the rule. It was in such a back-
ground of judicial recognition and acceptance of the doctrine of exhaustion that Congress enacted Section 101 (a) (4).

Section 101 (a) (4) is entitled "Protection of the Right to Sue." Its language is of little help in determining the effect, if any, the provision was to have on the doctrine of exhaustion. The obscurity in this section has been attributed to the failure of the draftsmen to distinguish between two radically different kinds of limitations upon a union member's right to sue the organization. One limitation is the familiar provision in the union constitution which forbids suits against the union under penalty of discipline unless the union member has exhausted his internal union remedies. The other limitation is that imposed by the judicial doctrine that a court will not entertain a member's action against a labor organization until he has exhausted all adequate remedies within the organization. This limitation is a rule of judicial administration and applies, not only to suits involving the internal affairs of all forms of voluntary associations, but also actions upon ordinary contracts.11 "It is not clear from its language whether Section 101 (a) (4) affects both limitations upon suits by union members or only the first, leaving the courts free to apply the exhaustion of remedies doctrine whenever appropriate."12

In a statement on the floor of the Senate shortly before the final vote of the Conference Report, the then Senator John F. Kennedy made clear that the legislative intent of Section 101 (a) (4) was that the section was to affect only the limitation in union constitutions, not the limitation imposed by the judicial doctrine of exhaustion. Senator Kennedy stated:

In addition to these major changes in the Bill as it came from the House, there are a number of other provisions about which I believe the Senate should be fully informed. This is for the purpose of establishing some legislative history.

Protection of the Right to Sue (Sec. 101 (a) (4))
The protection of the right to sue provision originated in the Senate bill and was adopted verbatim in the Landrum-Griffin bill except that the first proviso limiting exhaustion of internal hearing procedures was changed from 6 months to 4 months. The basic intent and purpose of the provision was to insure the right of a union member to resort to the courts, administrative agencies, and legislatures without interference or frustration of that right by a labor organization. On the other hand, it was not, and is not, the purpose of the law to eliminate existing grievance procedures established by union constitutions for redress of alleged violation of their internal governing laws. Nor is the intent or purpose of the provision to invalidate the considerable body of State and Federal court

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12 Ibid.
decisions of many years standing which require, or do not require, depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case, the exhaustion of internal remedies prior to court intervention. So long as the union member is not prevented by his union from resorting to the courts, the intent and purpose of the "right to sue" provision is fulfilled, and any requirements which the courts may then impose in terms of pursuing reasonable remedies within the organization to redress violation of his union constitutional rights will not conflict with the statute. The doctrine of exhaustion of reasonable internal union remedies for violation of union laws is just as firmly established as the doctrine of exhausting reasonable administrative agency provisions prior to action by courts.

The 4-month limitation in the House bill also relates to restrictions imposed by unions rather than the rules of judicial administration or the action of Government agencies. For example, the National Labor Relations Board is not prohibited from entertaining charges by a member against a labor organization even though 4 months has not elapsed.

The learned commentators writing immediately after the enactment of the LMRDA relied heavily upon the above statement of Senator Kennedy in concluding that, properly construed, Section 101 (a) (4) was not intended to affect the doctrine of exhaustion of administrative procedures within the union as a defense to the proceeding instituted by the member. It applies only to union discipline of the member for filing a court action or administrative proceeding against the labor organization or its officers.

As the commentators have pointed out, the language of Section 101 (a) (4) and the structure of Title I give persuasive support to such a conclusion. The words of the section that "No labor organization shall limit the right of any member thereof to institute an action in any court . . ." literally refer only to limitations imposed by labor unions, not to judicial decisions. Since the opening sentence of the section speaks to a union limitation, isn't it reasonable to assume that the opening sentence of the proviso similarly speaks to a union requirement? Each of the provisions surrounding Section 101 (a) (4), namely the equal rights of 101 (a) (1), the free speech of 101


13 Ibid.
14 Cox, supra note 11, at 840.
(a) (2), the dues increases of 101 (a) (3) and the full and fair hearing of 101 (a) (5) all prohibit certain specific union conduct. Section 102 affords members, by court action, a right to enforce these rights and to protect themselves against the prohibited union conduct. Doesn't it also seem reasonable that Section 101 (a) (4), as simply one of these enumerated rights, has a similar objective—a limitation on union conduct, not on court action?

The Supreme Court of Pennsylvania, in Mamula v. Steelworkers, relied on the same reasoning as the commentators in reading Section 101 (a) (4) as a "limitation upon labor organizations and not upon the judiciary...."17 The Court distinguished Detroy v. American Guild of Variety Artists18 and Harris v. International Longshoremen's Association, Local 1291,19 on the grounds that it "read those decisions as merely adopting for the Federal Courts an exhaustion of remedies rule patterned upon the proviso clause in Section 101 (a) (4)."20 As persuasive as the reasoning of the commentators and the Supreme Court of Pennsylvania may be, the Courts' view of the Second Circuit's decision in Detroy v. American Guild of Variety Artists seems plainly wrong.

Fairly read, the Second Circuit in Detroy interpreted the proviso of Section 101 (a) (4) as not only a limitation on unions but also as a limitation on the Federal Courts and their exhaustion doctrine.21 In this connection, the Court of Appeals for the Second Circuit stated:

[It] appears clear that the proviso was incorporated in order to preserve the exhaustion doctrine as it had developed and would continue to develop in the courts, lest it otherwise appear to be Congress' intention to have the right to sue secured by 101 abrogate the requirements of prior resort to internal procedures. In addition, the proviso dictated an outside limit beyond which the judiciary cannot extend the requirement of exhaustion—no remedy which would require proceedings exceeding four months in duration may be demanded. We therefore construe the statute to mean that a member of a labor union who attempts to institute proceedings before a court or administrative agency may be required by that court or agency to exhaust internal remedies of less than four months' duration before invoking outside assistance (All italicized in original).22

18 286 F. 2d 75 (2nd Cir., 1961).
20 Mamula v. Steelworkers, supra note 17, at 511.
21 The Fourth Circuit, in Parks, et al v. BEW, 314 F.2d 886 at 925 (1963), cert. denied 372 U.S. 976, stated: "The Second Circuit has squarely held that the proviso in Section 101 (a) (4) is a limitation on jurisdiction in suits brought in the federal courts under Section 102 for violations of Title I of the LMRDA. Detroy v. American Guild of Variety Artists, 286 F.2d 75, 77-78 (2nd Cir), cert. denied 366 U.S. 929 (1961)." Consider also the statement in the dissenting opinion of Justice Stewart in Calhoon v. Harvey, 379 U.S. 134 at 145 that: "In addition to the injunctive relief authorized by Section 102 and the savings provision of Section 103, Section 101(a) (4) modifies the traditional requirement of exhausted internal remedies before resort to litigation."
22 Detroy v. American Guild of Variety Artists, supra note 18 at 78.
After holding that the proviso placed a four month limit on judicial inaction without barring earlier relief where appropriate, the Court correctly held that the Federal Courts were free to develop their own principles of exhaustion of remedies in determining whether earlier relief was appropriate.\(^2\) In developing its criterion that is very analogous to that employed on applications for temporary injunctions,\(^3\) the Court considered both the existing state laws with their comprehensive exceptions and the Congressional policy of permitting unions to correct their own wrongs so as to "stimulate labor organizations to take the initiative and independently to establish honest and democratic procedures."\(^4\)

*Detroy* is the leading Section 101 (a) (4) decision to date and has received wide acceptance and been readily adopted in other jurisdiction.\(^5\) The Federal Courts who have differed with the Second Circuit have not rejected the holding that Section 101 (a) (4) is a limitation on the Courts and a statutory codification of the exhaustion rule. Rather, the point of departure has been over whether relief may be granted prior to the expiration of four months' exhaustion of remedies.\(^6\) Having accepted the premise that Section

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\(^{4}\) *Detroy v. American Guild of Variety Artists*, *supra* note 18 at 79. The Court, in explaining its criteria, stated: "Taking due account of the declared policy favoring self-regulation by unions, we nonetheless hold that where the internal union remedy is uncertain and has not been specifically brought to the attention of the disciplined party, the violation of federal law clear and undisputed, and the injury to the union member immediate and difficult to compensate by means of a subsequent money award, exhaustion of union remedies ought not to be required. The absence of any of these elements might, in the light of Congressional approval of the exhaustion doctrine, call for a different result." This criteria was unreasonably criticized by Thatcher in *Rights of Individual Union Members Under Title I and Section 610 of the Landrum-Griffin Act*, 52 Geo. L. J. 339 (1964). For constructive analysis of criteria, see *Note, Right of Union Members: The Developing Law Under LMRDA*, 48 Va. L. Rev. 78 at 93, 94 (1962).


\(^{6}\) The leading case for the restrictive view is *Smith v. General Truck Drivers Union*, 181 F.Supp. 14 at 18 (S.D. Cal., 1960), where the Court said:

The referred clause [101 (a) (4)] specifically says that any member may be required to exhaust "reasonable hearing procedures" before instituting administrative or court proceedings. This clause is *unconditional*. So we are not bound to follow any state decisions which hold that such exhaustion of remedy is not necessary where the action would be futile ... More, as we are not bound by State law, we decline to read exceptions into the specific language of the federal statute under discussion, which makes exhaustion of the intra-union remedy provided by the union's constitution or by-laws a condition precedent to the institution of court action.

Protection of Union Member's Right to Sue

101 (a) (4) is a limitation on the Courts, it is difficult to understand how the District Courts that have espoused this restricted view can find an "unconditional requirement of four months' exhaustion" in the phrase "may be required to exhaust reasonable hearing procedures."28

Although the Federal Courts have concluded the proviso of Section 101 (a) (4) is a limitation on both the unions and the Courts, they have not foreclosed a union from disciplining a member for suing the organization prior to exhausting reasonable hearing procedures for four months. In McCraw v. U.A.,29 one of the issues before the Court was whether a union's fining a member $100 for filing charges with the National Labor Relations Board without first complying with the provisions of his union's constitution for exhausting remedies violated Section 101 (a) (4). The Court found that Section 101 (a) (4) had been violated because, as a matter of fact, McCraw had exhausted his internal union remedies before filing NLRB charges. However, the Court implicitly recognized that the union could require exhaustion for four months and could discipline for a failure to comply with such a requirement of a union constitution.30

Such a holding, recognizing a union's right of discipline for violation of a four month exhaustion provision, is consistent under either the interpretation by the commentators and the Supreme Court of Pennsylvania or that of the Second Circuit in Detroy. Regardless of whether the proviso be considered a limitation on both the union and the courts, it seems evident that the primary thrust of Section 101 (a) (4) is to regulate limitations on the right to sue imposed and enforced by a labor organization. Having restricted unions to a four month limitation, it necessarily follows that the union can discipline for a failure to comply with any four month limitation incorporated in its constitution. Recognition of a right to promulgate in a union constitution a valid exhaustion rule not to exceed four months would seem

28 The restrictive view has been severely criticized. See Note, Rights of Union Members: The Developing Law Under The LMRDA, 48 Va. L. Rev. 78 at 93-94 (1962).
30 Consider the following statement of the Sixth Circuit in McCraw:
   With respect to the validity of the fine and suspension, we look to the provision of Section 222 of the Constitution of the International Union, the alleged violation of which is the basis for the disciplinary action taken. Section 222 is not an absolute prohibition of the resort by a union member to court proceedings. Section 411 (a) (4), Title 29, U.S. Code, would make such a prohibition invalid. The statute does permit, however, a requirement that a union member exhaust reasonable hearing procedures, not exceeding four months lapse of time, before resorting to court action. In keeping with this permission, Section 222 requires an exhaustion of available remedies within the union. Since this requirement was complied with by McCraw, his filing of the complaint with the National Labor Relations Board was not a violation of Section 222 of the Constitution, and the disciplinary action taken, based on such alleged violation, was invalid (Emphasis added).
necessarily to carry with it the right to enforce, by disciplinary action, such a lawful constitutional requirement.

The National Labor Relations Board strongly disagrees with such a conclusion. In *Local 138, International Union of Operating Engineers and Charles S. Skura*, the Board found that a union fine imposed on a member for failing to exhaust his internal union remedies prior to filing an unfair labor practice charge with the Board restrained or coerced the member in violation of Section 8(b)(1)(A) of the National Labor Relations Act, as amended. The Board rejected the contention of the respondent union that Section 101(a)(4) authorized the imposition of a fine to compel members to exhaust their internal union remedies. Section 101(a)(4) was construed as outlawing any and all union discipline for failing to exhaust remedies. In effect, the Board viewed the blanket prohibition and the proviso of Section 101(a)(4) as independent substantive provisions. The blanket prohibition prohibits any union restrictions on the institution of a lawsuit or Labor Board charges and the proviso relates only to requirements imposed by courts or administrative agencies and does not empower any union reprisals. But such a result seems to ignore the elementary rule of statutory construction that "the office of a proviso is well understood. It is to except something from the operative effect, or to qualify the generality of the substantive enactment to which it is attached." (All italicized in original.)

The Board, in its opinion, agreed that the prohibition of Section 101(a)(4) applied to union-imposed restrictions. Logically it would follow that the exception contained in the proviso must, likewise, apply to union im-

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81 148 NLRB No. 74.
82 61 Stat. 136, 29 USC §151, et seq.
83 The principal argument of the respondent union was that the whole range of inter-union affairs is expressly excluded from the coverage of the statute. Reliance was placed upon the legislative history surrounding the adoption of Section 8(b)(1)(A); the proviso to Section 8(b)(1)(A) recognized the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; and prior decision of the Labor Board itself recognized that intra-union fines were outside the scope of Section 8(b)(1)(A), even if they were imposed for the exercise of Section 7 rights. Minneapolis Star and Tribune Co., 109 NLRB 727 (1954) (fine for failure to perform picket duty); Wisconsin Motor Corp., 145 NLRB No. 109 (1964) (fine for union established production ceilings). See also Allis-Chalmers Mfg. Co., 149 NLRB No. 10 (1964) (fine for working behind picket line during strike).
84 Cox v. Hart, 260 U.S. 427, 435 (1922) (Emphasis added). See also Sutherland, *Statutory Construction, Section 4932, page 469* (3rd Ed., 1945). The Board has previously been rebuffed for giving independent substantive content to a provision. See Teamsters Local 760 v. NLRB, 308 F.2d 311 (D.C.Cir., 1962); judgment vacated and court order set aside 377 U.S. 58 (1963). Cf. NLRB v. Servette, Inc., 377 U.S. 46, 12 L.Ed.2d 121, 128 (1964): "There is nothing in the legislative history which suggests that the protection of the proviso (to Section 8(b)(4) of the NLRB) was intended to be any narrower in coverage than the prohibition to which it is an exception and we see no basis for attributing such an incongruous purpose to Congress."
85 Skura, supra, note 31.
posed restrictions. In rejecting such logic and in considering the proviso as an independent substantive provision only applying to the Courts, the Board would appear to be out of step with the Courts who have, at the very least, considered the proviso as authorizing union constitutional provisions requiring exhaustion of reasonable procedures for four months. Such a valid authorization, if it is to be at all meaningful, should be enforceable.

Although there has been increasing acceptance of the Detroi interpretation in Federal Courts, the ambiguities surrounding Section 101 (a) (4) still have not been definitively resolved. The Board's decision in Local 158, IUOE and Charles S. Skura has revived the controversy with the advocates of each of the conflicting interpretations relying on the legislative history. A reexamination of this history is warranted to ascertain whether it sheds heat or light on the problems of Section 101 (a) (4).

**LEGISLATIVE HISTORY OF SECTION 101 (a) (4)**

The largest credit for the enactment of the Landrum-Griffin Act, and particularly Title I, must go to the McClellan Committee investigation. The revelations of this Committee created the compelling pressure in Congress for a labor reform bill. To carry out the McClellan recommendations, Senator Kennedy, during the 85th Congress, introduced S. 3974, the Kennedy-Ives Bill. After extensive hearings on that bill and related bills, the Senate Committee on Labor and Public Welfare, on June 10, 1958, filed its report which accompanied the Kennedy-Ives Bill (S. 3974). Senator Goldwater in his minority views objected strenuously to the omission of a bill of rights from the bill. But no amendment for a bill of rights was offered during the

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36 The Board relied heavily upon the views of Professor Cox as set forth in “LAW AND NATIONAL LABOR POLICY”, (University of California Monograph Series 5), pages 105-105 (1960) and cited the case of Sheridan v. Carpenters, 191 F.Supp. 347, 355. The Board's citation of the District Court's decision without reference to its reversal on appeal is rather surprising but understandable, particularly in view of the comment concerning Section 101 (a) (4) by Judge Hastie in a concurring opinion that: It is reasonable to read both the general restriction and its qualification as statements of what a union may or may not do. Indeed I think any other reading of the language is artificial and unwarranted. In effect, Congress has said that a union may not restrict a member's resort to the courts except that it may require that the member first devote not more than four months to reasonable grievance procedures within the organization. 306 F.2d 152 at 160.

37 See cases cited in note 26, supra.

38 One of the first interim recommendations was for legislation to insure union democracy. S. REP. No. 1417, 85th Cong., 2nd Sess. (1958).


41 S. REP. No. 1684, 85th Cong., 2nd Sess. (1958) 52, 53. Although Goldwater was critical of the failure of the Kennedy-Ives bill for failing to deal with such matters as freedom of speech, equal treatment of members, and union disciplinary proceedings, the Senator's own principal bill made no provision for such rights or those that the American Civil
The Kennedy-Ives Bill was passed by the Senate on June 17, 1958, but was defeated in the House of Representatives.

Immediately upon the convening of the 86th Congress, Senator Kennedy introduced S. 505, known as the Kennedy-Ervin Bill. This labor reform bill was new but similar to the Kennedy-Ives Bill and was eventually to become the Labor-Management Reporting and Disclosure Act of 1959. During the extensive hearings that were held on this bill, Senator McClellan appeared before the sub-committee to explain his bill, which included a Title I, entitled "Rights to be Guaranteed in Charters of Labor Organizations." His plea for a bill of rights went unheeded. S. 1555, as reported out of the Senate Labor Committee on April 14, did not include a bill of rights. Once again, Senators Goldwater and Dirksen filed minority views, vigorously protesting the failure to guarantee certain rights proposed by the American Civil Liberties Union.

A. Senate Debate and McClellan Amendment

On April 22, 1959, the second day of the Senate debate on S. 1555, Senator McClellan offered an amendment which proposed to establish a "Bill of Rights" for union members in the form of a new Title I to the main bill. Included among Senator McClellan's six basic rights was the protection of the right to sue in Section 101 (a) (5):
(5) Protection of the Right to Sue.—No such labor organization shall limit the right of any member or officer thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member or officer of such labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member or officer may be required to exhaust reasonable hearing procedures within such organization, not requiring longer than three months to final decision, before instituting legal or administrative proceedings against such organization or any officer thereof.

As is apparent, this Section is the predecessor, and substantially the same, as Section 101 (a) (4) of the finally enacted bill. Section 102 of the McClellan amendment provided criminal penalties, and Section 103 empowered the Secretary of Labor to enforce the provisions of the amendment by civil suit, including injunctions in Federal courts “whenever it shall appear that any person has violated or is about to violate any of the provisions of this title . . . .”

The legislative debates concerning the protection of the right to sue are sparse. Senator Mundt did in a colloquy with Senator McClellan immediately following the latter’s reading of Section 101 (a) (5), point out that the Section in question would protect men such as Roy Underwood who “was charged by the Union and later expelled from it by the Executive Board of the International” after he had successfully instituted an action against the International Union of Operating Engineers. Senator Kennedy, like Senator Mundt, seemed to view this Section in terms of a restriction upon union disciplinary actions for members filing suits rather than as a restriction upon the time when a Court could entertain a member’s suit. Quoting at length from the case of Spayd v. Ringing Rock Lodge, a case in which the Pennsylvania Courts had set aside the expulsion of a member by the Brotherhood of Railroad Trainmen for testifying in the State Legislature against state legislation which the Union favored, and referring to an article in the Harvard Law Review for May 1951, wherein Professor Summers cited numerous cases in which the courts had protected union members from union discipline because of their political activities outside and inside unions, suits against unions, etc., Senator Kennedy argued that state courts provided

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60 105 CONG. REC. 5810 (daily ed. April 22, 1959).
61 2 LEG. HIST. 1105.
62 2 LEG. HIST. 9.
63 Ibid.
64 In opposition to McClellan’s amendment as a whole, Senator Kennedy pointed to the broad and unqualified language of the amendment and to the preemptive effect of the enactment of the amendment upon the body of established state law on the subject. 105 CONG. REC. 5813-16 (daily ed. April 22, 1959). Senator McClellan met the latter objection by amending his proposal to make clear that “Nothing in this Act shall take away any right or
ample protection from union discipline for appearances before the legisla-
tures and suits against the union, and that McClellan's provision would de-
prive members of rights and protection they already had under state law.
Senator Kennedy's arguments failed to carry the day and Senator McClel-
lan's amendment, with the protection of the right to sue provisions, was
twice approved by a one-vote margin on April 22.55

The debates up to this point are devoid of any meaningful statements
evidencing that McClellan's protection of the right to sue provision was in-
tended as a limitation upon the courts. Although the statements of Senators
Mundt and Kennedy are thin reeds to lean upon for support that this pro-
vision was intended solely as a union limitation prohibiting unions from
disciplining members who had instituted suits without complying with the
exhaustion requirements of their union constitution for at least three
months, the structure of Senator McClellan's bill of rights strongly sup-
ports this conclusion. It is difficult to justify reading McClellan's exhaustion
proviso as a condition precedent to a member's court action for violations of
Title I in face of Section 103 of the McClellan amendment providing that
violations were to be enforceable by suits by the Secretary of Labor.56 Section
103 contains no requirement for exhaustion of remedies by a member before
filing a complaint with the Secretary of Labor and is to be contrasted with
Section 402 of S. 1555 which did contain such a requirement. Moreover, if
exhaustion were a condition precedent before the Secretary could sue, why
was provision made in Section 103 for injunctive actions not only against
violations, but also threatened violations of Title I? In the absence of a per-
suasive legislative history to the contrary, the most reasonable interpreta-
tion of the protection of the right to sue provision of the McClellan amend-
ment would seem to be that this provision had nothing to do with common law
rules of exhaustion of remedies of the courts but was a limitation upon a
union's disciplining a member because he had previously instituted suit
against the labor organization without exhausting internal union remedies
for at least three months.

THE KUCHEL SUBSTITUTE

On April 24, 1959, two days after the adoption of the McClellan amendment,
Senator Kuchel, for himself and a bi-partisan group of nine senators, who

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55 105 CONG. REC. 5817 (daily ed. April 22, 1959). Senator Kennedy also pointed out
that the provision for enforcement by the Secretary of Labor was inconsistent with the
elimination of the scheme for federal enforcement from the civil rights bill. 105 CONG.
REC. 5822 (daily ed. April 22, 1959).
56 105 CONG. REC. 5816 (daily ed. April 22, 1959).
were of the opinion that the McClellan amendment was too loosely drafted and went far beyond what was required to protect the basic rights of union members, introduced an amendment to the McClellan bill of rights which became known as the Kuchel Substitute.\textsuperscript{5}\textsuperscript{7} Section 101 (a) (4) of this so-called compromise entitled "Protection of the Right to Sue," was, for all practical purposes, the same as 101 (a) (4) of the McClellan bill of rights. The proviso was changed to read as follows:

\begin{quote}
Section 101 (a) (4).—Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a six month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.\textsuperscript{5}\textsuperscript{8}
\end{quote}

Although one of the major points of difference from the McClellan amendment was the substitution of private civil suits in Section 102 for those filed by the Secretary of Labor,\textsuperscript{5}\textsuperscript{9} there is nothing to indicate in the short debate that followed the introduction of the Kuchel Compromise before its overwhelming adoption\textsuperscript{6}\textsuperscript{0} that its authors intended that Section 101 (a) (4) was, in addition to limiting union action, to be a limitation on the courts. On the contrary, Senator Kuchel stated there was no intent to change the basic objectives and purposes of Title I.\textsuperscript{6}\textsuperscript{1}

Further, after the Senate passed S. 1555, the Joint Sub-committee of the House Committee on Education and Labor heard extensive testimony in opposition to the bill of rights provision of the Senate-passed bill.\textsuperscript{6}\textsuperscript{2}

\textsuperscript{5}\textsuperscript{7} 105 CONG. REC. 5997-98 (daily ed. April 24, 1959). For the test of the Kuchel Amendment, and a list of its sponsors, see 2 LEG. HIST. 1220. See also Cox, \textit{Preparation of Compromise}, 58 MICH. L. REV. 819, 833 (1960).

\textsuperscript{5}\textsuperscript{8} An additional proviso was also added restricting an employer's participation in civil suits by members.

\textsuperscript{5}\textsuperscript{9} Section 102 of the Kuchel Compromise provided:

\begin{quote}
Any person whose rights secured by the provisions of this Title have been infringed by any violation of this Title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located. 105 CONG. REC. 6030 (daily ed. April 25, 1959).
\end{quote}

It is to be noted that the scope of relief was somewhat limited with the deletion of the words "about to violate any of the provisions of this Title" from Section 103.

\textsuperscript{6}\textsuperscript{0} 105 CONG. REC. 6030 (daily ed. April 25, 1959).

\textsuperscript{6}\textsuperscript{1} 105 CONG. REC. 5997 (daily ed. April 24, 1959). Further, in presenting the amendment, Senator Kuchel, after reading Section 101 (a) (4), stated:

Mr. President, in this section we have changed the three-month provision of the amendment of the able Senator from Arkansas to six months. 105 CONG. REC. 6030 (daily ed. April 25, 1959).

Goldwater, in testifying before this Committee that the Kuchel Substitute was inadequate, made clear that he viewed Section 101 (a) (4) as union limitation that gave unions a right to discipline a member who failed to exhaust reasonable hearing procedures for six months prior to filing a charge with the NLRB or instituting a suit.

Although the legislative history of the Landrum-Griffin Act in the Senate, and the statements of certain of its important actors supports a conclusion that, properly interpreted, the proviso of Section 101 (a) (4) was intended as a restriction upon unions, and not upon the courts, the legislative history in the House is confusing, contradictory, and strongly suggestive of a contrary result.

The Bills and Debates in the House

On July 30, 1959, the Subcommittee of the House Committee on Education and Labor reported H.R. 8343, the so-called Elliott Bill. The Committee eliminated from Section 101 (a) (4) the six-month time limit in S. 1555, and changed the proviso to read:

Provided, that any such member shall be required to exhaust the reasonable remedies available under the constitution and by-laws of such labor organization and of any national or international labor organization of which said labor organization is an affiliate or constituent body before instituting any judicial or administrative proceeding against such labor organization or any officer thereof for violation of such member's rights in such organization.

At the same time, the Committee changed Section 103 to make six-months exhaustion of remedies a condition precedent to a suit. At about the same

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63 Hearings, supra, note 62 at 2234-57, 2284-86.
64 Said Goldwater:
If, in order to be eligible for the protection of his right to sue under this provision of the bill of rights, a union member must wait 6 months while exhausting his internal union hearing procedures, he finds that the NLRB will refuse to process his unfair labor practice charge because the Taft-Hartley Act's 6-month time limitation on the filing of charges has run out. On the other hand, if having failed to exhaust his union hearing procedures, he fails to wait the required 6 months and files his charge with the NLRB in order to escape the Taft-Hartley time limitation, he loses the protection of the right to sue provision of the bill of rights, and the union, if it wishes, may discipline him for having filed the charge. The draftsmanship of this provision is an open invitation to unions to discipline and penalize their members for using the processes of the NLRB against unions which have committed unfair labor practices against any of their members. Ibid.
65 1 Leg. Hist. 687.
66 Id., at 698.
67 Section 102 provided, in part:
Sec. 102. (a) Any person—
(1) who is aggrieved by any violation of Section 101; and (2) who has exhausted the reasonable remedies available under the constitution and bylaws of a labor
time the Committee reported H.R. 8342, Congressmen Landrum and Griffin
introduced H.R. 8400,68 and Congressman Shelley introduced H.R. 8490.69
Both bills contained a Title I Bill of Rights. Section 101 (a) (4) of the
Landrum-Griffin Bill was identical with Section 101 (a) (4) of S. 1555 as
passed with the important exception that the time limit of six months was
reduced to four months,70 while Section 101 (a) (4) of the Shelley Bill was
identical with that of the Committee.71

It is arguable that the Committee by its changes to Section 101 (a) (4)
and 102 gave recognition to the distinction between a limitation on union
action and a limitation on the courts—that the objective of Section 101 (a)
(4) was the former and the objective of Section 102 was the latter. However,
the statements in the debates by the proponents of the Elliott Bill give little
assistance in clarifying the intent of the Committee bill. If anything, they
tend to support the view that the proviso of 101 (a) (4) of the Landrum-
Griffin Bill, the bill passed by the House, was intended as a limitation on
both the unions and the courts. The proponents argued that, by the dele-
tion of a time requirement in Section 101 (a) (4) of their bill, they had left
the matter of exhaustion of remedies in the courts which they stated was a
wholly reasonable and desirable result. On the other hand they attacked
Section 101 (a) (4) of the Landrum-Griffin Bill, which except for a four
rather than six month time limitation, was identical with Section 101 (a)
(4) of S. 1555, as passed, on the grounds it improperly imposed a time limit
on the courts in applying the exhaustion of remedies doctrine.72 Such an in-

organization and of any national or international labor organization with which
such labor organization is affiliated, or has diligently pursued such available reme-
dies without obtaining a final decision within six calendar months after being in-
voked;
may bring a civil action in any district court of the United States having jurisdiction
of the labor organization involved to prevent and restrain such violation. . .
68 1 LEG. Hist. 619.
69 Id. at 865.
70 Compare 1 LEG. Hist. 520 with 1 LEG. Hist. 630.
71 Compare 1 LEG. Hist. 698 with 1 LEG. Hist. 877.
72 Consider the following statements of Congressmen Thompson, McCormack and
O’Hara:
The Landrum bill provides that a member may seek redress in the courts or adminis-
trative agencies and it purports to require exhaustion of internal remedies prior to
going to court. But it nullifies this exhaustion, within the union, by providing that it
shall not exceed a four-months lapse of time . . . The point I wish to make is that it
is wise to permit the courts to continue on this case-by-case approach. It is fairer to
both the union membership as a whole and the individual member litigant. We should
not sweep aside this body of well established law by adopting an across-the-board
limitation which would work an injustice to both honest unions and their members.
As the courts have pointed out, there are no limitations in existing law requiring ex-
haustration of remedies before administrative agencies of the government before resort-
ing to courts. Thompson, 2 LEG. Hist. 1572-73;
There is no reason why Congress should seek to impose an across-the-board limita-
tion on exhaustion of internal union remedies which would work an injustice both
to honest unions and their members. McCormack, 2 LEG. Hist. 1667;
terpretation of Section 101 (a) (4) is obviously in conflict with the previously quoted statement of Senator Kennedy made during the debate on the Conference Report. It is, however, the very interpretation that the Second Circuit adopted in Detroy. In fact the Circuit Courts have relied on the statements of the proponents of the Committee bill as to the intent of Section 101 (a) (4) of the Landrum-Griffin Bill in concluding that Congress intended a limitation upon the Courts.

An explanation that might reconcile such statements by the proponents with the interpretation of Senator Kennedy that Section 101 (a) (4) was not intended as a limitation upon the courts’ doctrine of exhaustion is that the proponents considered this doctrine as essentially contractual. Since Section 101 (a) (4) of the Landrum-Griffin Bill limited unions to provisions requiring exhaustion for not more than four months, they reasoned that even if Section 101 (a) (4) was not a limitation on the courts it would indirectly have this effect since the courts, following the contractual theory, could not require exhaustion for more than four months in the absence of a provision of the union constitution requiring a larger exhaustion of remedies. However, with the statements of the proponents of Landrum-Griffin also characterizing Section 101 (a) (4) of that Bill as granting a member the right to sue immediately after four-months’ exhaustion, there is support for concluding from the legislative history in the House that Section 101 (a) (4) of H.R. 8400 was considered as limiting a union to requiring in their constitution the exhaustion of reasonable hearing procedures not to exceed four months while, at the same time, limiting the courts to a four-month rule of exhaustion.

The Landrum-Griffin Bill was offered as an amendment to the Committee bill on the floor of the House on August 12, 1959 and the entire bill was adopted on August 13, by a vote of 229-201. The engrossed bill was approved on August 14, by a vote of 303-125.

Supporters of the substitute also make some to-do over the fact that in the subsection protecting the right to sue the Committee bill restates the common law doctrine that a member before bringing suit should exhaust such available remedies under the union’s constitution and by-laws as are reasonable under the particular circumstances of his case. The Landrum-Griffin bill does likewise but it tends to qualify this requirement by providing that it shall not apply for an excess of four months. O’Hara, 2 Leg. Hist. 1632.

See text accompanying note 13, supra.


CONFERENCE REPORT

The only difference between Section 101 (a) (4) of the Senate and House bills was the time limitation in the proviso. The Conference accepted and substituted the House Amendment of Title I—more particularly, four months in place of the Senate's six months in Section 101 (a) (4).79 The Senate adopted the Conference Report by a vote of 95-2 on September 3, 1959,80 and the House did likewise on September 4, 1959, by a vote of 352-52.81

During the Senate debate on the Conference Report Senator Kennedy made the previously quoted statement as to the legislative intent of Section 101 (a) (4).82 Since Senator Kennedy was Chairman of the Conference Committee which dealt with the bill, his explicit utterances on the Senate floor in explanation of the meaning of the proviso ordinarily would be entitled to great weight. However, it should be observed that Senator Kennedy uttered his statement on the Senate floor in connection with the transmission to that body of the Report of the Conference Committee on the bill. The House conferees were, of course, in no position to challenge before the Senate the statement made by Senator Kennedy. House discussion of the Report of the Conference Committee took place on September 4, 1959, the day following Senator Kennedy's remarks, but the proviso to Section 101 (a) (4) was not considered in detail. Representative Griffin did, however, have inserted in the Appendix to the Congressional Record his interpretation of Section 101 (a) (4) which appears to be contrary to that of Senator Kennedy. Griffin, for the avowed purpose of “clarifying legislative intent” stated:

Section 101 (a) (4) of the bill of rights is designed to protect the right of a union member to resort to courts and administrative agencies. The proviso which limits exhaustion of internal remedies is not intended to impose restrictions on a union member which do not otherwise exist, but rather to place a maximum on the length of time which may be required to exhaust such remedies. In other words, existing decisions which require, or do not require, exhaustion of such remedies are not to be affected except as a time limit of 4 months is superimposed. Also, by use of the phrase “reasonable hearing procedures” in the proviso, it should be clear that no obligation is imposed to exhaust procedures where it would obviously be futile or would place an undue burden on the union member.83

Griffin's statement is the final contradiction in an already confused legislative history. Kennedy's statement was consistent with the legislative in-
tent as evidenced in the debate in the Senate and was on balance more consistent with the language and structure of Section 101(a)(4) and Title I than the Griffin statement. Further, Title I was the creature of the Senate not the House. Yet Griffin's statement was equally consistent with the House debates, and it was Title I as amended by the House that was adopted by the Conference.

But even if the legislative history is resolved in favor of the Griffin interpretation of Section 101(a)(4) which is essentially the interpretation adopted in *Detry*, neither the legislative history in the Senate or the House supports the conclusion of the Board in *Local 138, IUOE and Charles S. Skura supra*, that Congress intended, at the same time it superimposed a four month exhaustion rule on unions and the courts, to prohibit a union from disciplining a member who failed to comply with a four month exhaustion requirement prior to filing a suit or charges with the National Labor Relations Board. On the contrary, it was because of the possibility of a union's disciplining a member for failing to exhaust, prior to suit or NLRB charges, that the six-months’ time limit of Section 101(a)(4) in S. 1555, as passed, was reduced from six to four months. As Senator Goldwater pointed out, when appearing before the Joint Subcommittee, the Senate bill, with its six-month time limit, placed the union member in a dilemma if he wanted to file unfair labor practice charges and he failed to exhaust for six months; "...if, having failed to exhaust his union hearing procedures, he fails to wait the required six months and files his charge with the NLRB ... he loses the protection of the right to sue provision of the bill of rights, and the union, if it wishes, may discipline him for having filed the charge." On the other hand, if he waited to exhaust for six months, "he finds that the NLRB will refuse to process his unfair labor practice charge because the Taft-Hartley Act's 6-month time limitation on the filing of charges has run out..." It was to meet this criticism of Senator Goldwater that Representatives Landrum and Griffin, in their bill, H.R. 8400, reduced the time limitation in Section 101(a)(4) from six months to four months. The two cosponsors explain this change as follows:

Since the Taft-Hartley law prescribes a 6-month statute of limitations for the filing of unfair labor practice charges, the Senate's 6-month limitation might prevent a member's access to remedies provided under the National Labor Relations Act. In the substitute, we have specified a 4-month limit for pursuit of internal union remedies under the bill of rights.87

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84 105 Cong. Rec. 9108 (June 8, 1959).
85 Ibid.
This modification satisfied the objections of Senator Goldwater.8

As previously pointed out, there has been disagreement about the effect, if any, of Section 101 (a) (4) on the traditional doctrine of the Courts that members of private organizations such as labor unions must exhaust their internal remedies before going to court to sue their organization. Detroy represents one view, Mamula the other. But regardless of this, it is evident that the primary thrust of Section 101 (a) (4) is to regulate limitations on the right to sue imposed and enforced by a "labor organization." The language of the section and its legislative history show this. Consequently, when Congress reduced the maximum exhaustion period from six months to four months for the explicit purpose of preventing a union from foreclosing unfair labor practice charges by its members, does it not necessarily follow that Congress was recognizing the right of a union to forbid its members to file charges with the NLRB unless they have first pursued internal remedies for a period of four months?

No other reading of the revised proviso to Section 101 (a) (4) seems to make any sense in the context of unfair labor practice charges. Unlike the courts, the NLRB has never applied an exhaustion of remedies rule, and Congress knew this.89 And both Senator Kennedy and Representative Griffin made plain that the four-month rule would not affect the Labor Board's handling of charges. Said Senator Kennedy:

The 4-month limitation in the House bill also relates to restrictions imposed by unions rather than the rules of judicial administration of the action of Government agencies. For example, the National Labor Relations Board is not prohibited from entertaining charges by a member against a labor organization even though 4 months has not elapsed.80

Representative Griffin, who differed with Senator Kennedy over the proviso's effect on court proceedings, was in accord regarding the status of Labor Board proceedings:

Furthermore, the proviso was not intended to limit in any way the right of a union member under the Labor-Management Relations Act of 1947, as amended, to file unfair labor practice charges against a union, or the right of the NLRB to entertain such charges, even though a 4-month period may not have elapsed.81

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8 Senator Goldwater said:
The Landrum-Griffin bill, both as introduced and as passed, cut such waiting period to 4 months thus eliminating the gimmick and preserving the union member's rights both under the bill of rights and under the Taft-Hartley Act. 105 CONG. REG. A8510 (daily ed. Oct. 2, 1959), 2 LEG. Hist. 1844.


In the light of this demonstrated irrelevance of Section 101 (a) (4) to the capacity of the NLRB to process charges, the great concern manifested about reducing the allowable exhaustion period from six months to four months becomes utterly inexplicable unless the proposition is sound that the proviso applies to internal union discipline of members filing Labor Board charges or court suits. Congress in revising the proviso was intent only on preventing union disciplinary rules from requiring exhaustion for such a long period that a member who complied with the union's rules would be barred by the six-month statute of limitations from subsequently filing charges with the NLRB if intra-union relief was not obtained. Implicit in this approach is congressional acceptance of union rules requiring exhaustion of internal remedies for the lesser period of four months before filing unfair labor practice charges.

CONCLUSION

The clearest statement of legislative intent is that of Senator Kennedy. The language of Section 101 (a) (4), the structure of Title I, and the debates and bills in the Senate support the position that Section 101 (a) (4) was not intended as a limitation on the courts but only limits the unions' power to discipline members for seeking legal protection. Save for the Supreme Court of Pennsylvania, this interpretation has found little support in the courts. It is the Detroy interpretation, that Section 101 (a) (4) prescribes the maximum time the courts can require members to pursue union appeals before granting judicial relief, that is being followed.

The courts have resolved the conflict in favor of Congressman Griffin and the House. But in doing so, have the courts given proper weight to the fact that Title I, as enacted, is the creature of the Senate? Title I is, for all practical purposes, the Kuchel substitute that was fashioned after intensive debate and efforts at a compromise. Shouldn't the legislative history of the Senate control particularly where the avowed objective of Congressmen Landrum and Griffin, in so far as Title I of their bill was concerned, was to re-enact or substitute Title I of the Senate bill which they believed the Committee bill had diluted with qualifying phrases?

The statement of Congressman Griffin, cited so often by the courts, is post-legislative history. Further, in this statement, Griffin agreed with Senator Kennedy that "... the proviso was not intended to limit in any way the right of a union member under the Labor-Management Act of 1947, as amended, to file charges against a union, or the right of the NLRB to entertain such charges, even though a 4-month period may not have elapsed." But such

52 Ibid.
50 Ibid.
Protection of Union Member's Right to Sue

...an interpretation of Section 101 (a) (4) is only consistent with the Kennedy interpretation that the Section was only a limitation on union action and not on the courts or administrative agencies. Under Detroy, certain criteria must be met for the court to excuse a member from exhausting internal union remedies for four months.\(^4\) Isn't an administrative agency in the same position as the courts by the very terms of Section 101 (a) (4)? No rational distinction exists under Section 101 (a) (4) for concluding that a court must require exhaustion for four months unless certain equitable criteria are met but an administrative agency, such as the Board, never has to require exhaustion. Logic dictates that if the Detroy criteria apply in the courts, they apply to the Board. However, the statements of the legislators are clear as to the effect of Section 101 (a) (4) on the Labor Board and the filing of charges. This legislative intent is only consistent with the Kennedy interpretation that Section 101 (a) (4) was only intended as a limitation on unions.

The adoption of the Kennedy interpretation recognizing Section 101 (a) (4) as a union limitation and not a limitation on the courts would not hinder the courts in their enforcement of Title I. Rather, it would effectuate the purposes of the Act. They would be left completely free to develop their own equitable exhaustion of remedy criteria of the appropriate time to entertain a suit without the restriction of the inflexible 4-month time limitation.

The National Labor Relations Board accepts the conclusion of the Kennedy interpretation that the Board need not consider whether a member has exhausted his union remedies before entertaining a charge. However, the Board has, in Local 138, IUOE and Charles S. Skura, supra, refused to accept the conclusions' basic reasoning that Section 101 (a) (4) is a union limitation because, logically, if Congress permitted a union to promulgate provisions requiring exhaustion for four months, it should necessarily follow that Congress recognized the right to discipline for a violation of such valid provisions. To avoid this result, the Labor Board has adopted an artificial interpretation of Section 101 (a) (4) that is not supported by the legislative history or judicial decisions. To consider, as the Labor Board has done, the prohibitory clause and its proviso as two independent statutory rights, is to ignore all canons of statutory construction. Further, if the proviso does not apply to unions, then any exhaustion of remedies provision in their constitutions is wholly unenforceable and probably null and void under the prohibitory sentence of Section 101 (a) (4). Even under Detroy, in the absence of the existence of certain equitable considerations, a union provision requiring exhaustion for four months is enforceable. Necessarily, the right to require exhaustion includes the right to discipline for a failure to exhaust.

\(^4\) Detroy v. American Guild of Variety Artists, supra, note 18 at 81.
To conclude, there are compelling considerations why the Labor Board and the Federal courts should re-examine their interpretations of Section 101(a)(4). They should give consideration to construing Section 101(a)(4) as directed at union conduct, not court conduct, and the proviso as applying to internal union discipline of members. Implicit in this approach is congressional acceptance of union rules requiring exhaustion of remedies for the lesser period of four months before filing court actions or unfair labor practice charges. All this is in keeping with one of the guiding principles recognized by Congress in enacting Landrum-Griffin, viz., "the desirability of minimum interference by Government in the internal affairs of any private organization." As the Supreme Court said in its first major consideration of the new Act, "the general congressional policy" was "to allow unions great latitude in resolving their own internal controversies." Calhoon v. Harvey, 33 U.S. Law Week 4039, 4041 (U.S. Sup. Ct., Dec. 7, 1964).

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**S. REP. No. 187, 86th Cong., 1st Sess., 7 (1959).**
The Catholic University of America

Member, National Conference of Law Reviews

Law Review

VOLUME XIV • MAY 1965 • NUMBER 2

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