1960

The New Federal Labor Law

Lennart V. Larson

Follow this and additional works at: https://scholar.smu.edu/smulr

Recommended Citation
https://scholar.smu.edu/smulr/vol14/iss1/2

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.
THE NEW FEDERAL LABOR LAW

by

Lennart V. Larson*

DURING the past several years there has been mounting sentiment for new labor legislation and changes in the Labor Management Relations Act of 1947 (popularly known as the Taft-Hartley Act). Early in 1957 the Senate Select Committee on Improper Activities in the Labor or Management Field was appointed with Senator John McClellan as Chairman. The hearings and disclosures of the Committee over a two-and-a-half year period played a major part in causing Congress to enact what is accurately described as far-reaching labor reform legislation.

The contest in Congress was whether the reform legislation should be "mild" or "drastic." In June, 1958, a mild reform law, the Kennedy-Ives bill, was passed by the Senate but was rejected in the House of Representatives. In April, 1959, the Senate Labor Committee reported out the Kennedy-Ervin bill, a moderate reform law. The bill was passed in the Senate, but not before amendments were made, including the tacking on of a bill of rights for union members.

Meanwhile, the House Labor Committee had not been idle. On July 30, 1959, it reported out a bill. On the House floor three bills came up for choice: the Committee's bill (Elliott bill), the Shelly bill, and the Landrum-Griffin bill. President Eisenhower in a public address of August 6 gave his weighty support to the Landrum-Griffin bill. The Shelly bill, supported by labor, was rejected, and on August 13 the House adopted the Landrum-Griffin bill. Subsequently, the House-Senate Conference Committee met and reached agreement on September 2. The conference bill was approved by the Senate the next day and by the House on September 4. President Eisenhower signed the bill on September 14.

The new act is called the "Labor-Management Reporting and Disclosure Act of 1959." In important respects it follows the bill approved by the House and hence is popularly referred to as the "Landrum-Griffin Act." The new law has seven titles, the first six of

---

* B.S., J.D., University of Washington; S.J.D., University of Michigan; Professor of Law, Southern Methodist University.

† This article is an extension of a paper presented at the Southwestern Legal Foundation Institute on Labor Law (1959).


which became effective immediately. The seventh title contains amendments of the Taft-Hartley Act of 1947. The amendments became effective on November 13, 60 days after approval of the act by the President.

I. AMENDMENTS TO THE LABOR MANAGEMENT RELATIONS ACT, 1947

A. Elimination of No-Man’s Land

Three 1957 decisions of the United States Supreme Court established that if the National Labor Relations Board (NLRB) had jurisdiction over a case involving unfair labor practices or activities protected by the Taft-Hartley Act but declined to exercise its jurisdiction, a state court or agency was precluded from dealing with the case, unless tort liability arose out of violence or trespass. Thus, a no-man’s land was created—a realm of businesses and industry in or affecting interstate commerce where the procedures of the Taft-Hartley Act were unavailable and state remedies could not be applied. Under the new act the no-man’s land has been put under state authority if the NLRB declines to exercise its jurisdiction.

Section 701(a) of the new act adds subsection (c) to section 14 of the NLRA. The subsection permits the NLRB, “by rule of decision or by published rules,” to “decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.” But the Board may not decline to assert jurisdiction in any case wherein it would have asserted jurisdiction under standards prevailing on August 1, 1959. With respect to cases over which the Board declines to assert its jurisdiction, state and territorial agencies and courts may assume jurisdiction. It seems clear that the agencies and courts are free to apply local law.

A question arises as to what the NLRB’s jurisdictional standards were on August 1, 1959. On October 2, 1958, the Board published standards which were a revision of earlier standards issued on July 15, 1954. These latest standards, along with pertinent decisions between October 2, 1958, and August 1, 1959, would seem to constitute the jurisdiction within which the Board must exercise its powers.

---


*42 L.R.R.M. 96 (1958).*
Undoubtedly it will happen that a party to state proceedings will claim that the case is one over which the NLRB must take jurisdiction. If the ruling is against the party, must he suffer the state proceedings to run their course and then appeal to the United States Supreme Court? Or is there an easier way to secure a determination whether or not the case is one within the compulsory jurisdiction of the Board? In recent months the NLRB has been studying the matter of issuing jurisdictional guidelines. New rules and regulations have been promulgated under which a person or a state agency may secure an advisory opinion as to whether the Board would exercise jurisdiction over the parties to a particular controversy. Perhaps in doubtful cases state courts and agencies will require clearance (i.e., an advisory opinion) from the NLRB before assuming jurisdiction and applying local law.

Notice should be taken that the proviso to section 10(a) of the NLRA remains undisturbed. A negative implication from the proviso was the basis for the no-man’s land decisions of 1957. The proviso governs formal cessions of jurisdiction by the NLRB, allowing them only if state or territorial law is consistent with federal law. The proviso seems to be a dead letter with respect to cases over which the Board declines to exercise jurisdiction under section 14(c).

B. Representation Proceedings Before Regional Directors

Section 701(b) of the new act amends section 3(b) of the NLRA. The Board is now authorized to delegate to the regional directors its power to hear and decide representation questions. It should be noted that review of the regional directors’ orders may be had, and it is clear that the Board has the final say. However, the action of a regional director is not stayed pending review unless specifically so ordered by the Board. It is thought that delegation of the Board’s powers in petition proceedings will lessen the tremendous case load in Washington.

---

6 NLRB Rules and Regulations, Series 8, Nov. 13, 1959, Part 102, Subpart H.
7 The proviso empowers the Board to cede to a state or territorial agency jurisdiction “over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character)” if the local law governing the agency is consistent with the NLRA.
8 See cases cited note 4 supra.
9 The Board may delegate “its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof.”
C. Right of Economic Strikers to Vote in Representation Elections

Since the early days of the Wagner Act and up to the present time the NLRB has divided strikes into two classes. An unfair labor practice strike is one provoked or prolonged by an unfair labor practice. All other strikes are economic. Unfair labor practice strikers are entitled to reinstatement to their jobs and are entitled to vote in elections conducted by the Board. Economic strikers, on the other hand, take the chance that their jobs will be filled by permanent replacements and that they will not be able to negotiate a return to employment. If an economic striker’s job is filled by a permanent replacement, he has no right to reinstatement to the job when the strike ends. If the job is not filled by a permanent replacement, in general he has a right to reinstatement on abandoning the strike.16

Initially, under the Wagner Act, the NLRB allowed economic strikers to vote in representation elections, but not their replacements.17 Later, both the strikers and their permanent replacements were allowed to vote.18 The Taft-Hartley Act extended voting rights only to those employees who had a right to reinstatement.19 In other words, economic strikers who were permanently replaced were not permitted to vote in NLRB elections. Section 702 of the Labor-Management Reporting and Disclosure Act of 1959 changes this by amending the second sentence of section 9(c) (a) of the NLRA. Now economic strikers who have been permanently replaced are eligible to vote “in any election conducted within twelve months after the commencement of the strike.”

Eligibility to vote is subject to “such regulations as the Board shall find are consistent with the purposes and provisions of this Act.” Before the new act was passed, the employee relation of some economic strikers could be terminated regardless of whether they had been permanently replaced. The commission of serious acts of violence or trespass, striking in violation of a collective bargaining contract, and striking in the face of a specific statutory prohibition, have been deemed sufficient causes for discharge. Commission of an unfair labor practice may in some situations be cause for discharge. Undoubtedly the NLRB will develop new doctrine, as well as confirm old, that

---

19 Section 9(c)(3), second sentence: “Employees on strike who are not entitled to reinstatement shall not be eligible to vote.”
particular activities of economic strikers are inconsistent with the purposes and provisions of the NLRA and result in loss of eligibility to vote.

D. "Hot Cargo" Clauses

Section 704 of the new act makes important changes in the law governing secondary boycotts, prohibits agreements for "hot cargo" clauses, and bans organizational picketing in defined situations. It is convenient first to speak of section 704(b).

There has been uncertainty as to whether an agreement between an employer and a union that employees will not be required to handle or work on goods coming from an "unfair" employer is legal under section 8(b)(4) of the NLRA. Local 1976 v. NLRB" held that the agreement of itself was not illegal and that an employer might comply with it. But union inducement of the employees not to work on or handle the goods was held to be an unfair labor practice. The union was not permitted to force the employer to abide by his agreement by inducing the employees to strike or to refuse to work on or handle the "unfair" goods.

Section 704(b) adds a subsection (e) to section 8 of the NLRA and makes a new determination concerning the legality of "hot cargo" clauses. An unfair labor practice is committed by both parties where an employer and a union enter into contract, express or implied, "whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person." It follows that a union may not make demand for such an agreement in collective bargaining, and striking and picketing to gain it is made an unfair labor practice under section 8(b)(4)(A), as newly amended. The query has been raised whether section 8(e) makes illegal a provision often found in collective bargaining contracts restricting the employer’s right to subcontract out work. The purpose of the anti-subcontracting provision is to preserve the integrity of the bargaining unit and the employment opportunities of the men within the employer’s plant. It is not ordinarily agreed to for the purpose of putting economic pressure on third parties with whom the union has disputes. Doubt is expressed that the anti-subcontracting provision falls within the intent or letter of section 8(e).

A proviso states that nothing in section 8(e) "shall apply to an agreement between a labor organization and an employer in the con-

struction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." Stated more simply, the proviso permits an employer in the construction industry to agree with a union not to enter into contract with a subcontractor who does not maintain union standards. Argument has arisen whether it is lawful for an employer and a union to agree that fabrication of certain parts should be done at the construction site and not before. Senator Pat McNamara has expressed himself that the Senate and House conferees intended that the exemption of the proviso should extend to all work that can be performed at a construction site. Congressman Carroll D. Kearns has expressed a contrary view.¹¹

A second proviso makes the prohibition of section 8(e) inapplicable to the apparel and clothing industry.¹² The proviso has a complicated form, and a greater exemption is created than is allowed to the construction industry. This is immediately apparent when it is noted that the exemption extends to the prohibition of section 8(b)(4)(B) (dealing with secondary boycotts).

E. Secondary Boycotts

Section 8(b)(4) of the Taft-Hartley Act was difficult to understand, and the amendments of the new act do not make the section less of a problem in syntax and sentence diagramming. Perhaps the best procedure is to paraphrase and simplify and to compare the old and new sections. The old section made it an unfair labor practice for a union to engage in, or to induce "the employees of any employer to engage in, a strike or a concerted refusal" to use, handle or work on goods or to perform any services in order to gain any of several enumerated objects. Paragraph (A) included two objects: (1) forcing an employer or self-employed person to join a union or an employer organization; and (2) forcing "any employer or other person" to cease using, selling, handling or dealing in the products of any other producer "or to cease doing business with any other person." The language defining the latter object effectuated a broad prohibition of secondary boycotts. Paragraph (B) defined the object of forcing "any other employer" to recognize or bargain with a union unless it had been certified by the NLRB as the collective

¹² The constitutionality of section 8(e) has been attacked on the ground that the provisos make the section discriminatory. The argument was rejected, the court saying that Congress could reasonably conclude that special problems in the construction and apparel and clothing industries made exceptions desirable. Brown v. Local No. 17, Amalgamated Lithographers of America, 45 L.R.R.M. 2577 (N.D. Calif. 1960).
bargaining agent of the employees. By implication secondary boycott to compel the other employer to recognize and bargain with a certified union was lawful. Paragraph (C) defined the object of forcing an employer to recognize or bargain with a particular union if another union had been certified by the NLRB. Paragraph (D) defined the object of forcing an employer to assign particular work to employees in a particular union or craft rather than to employees in another union or craft, unless the employer was failing to conform to a Board order or certification designating the bargaining representative. Both paragraphs (C) and (D) contemplated primary strike situations. A proviso to the whole of section 8(b)(4) stated that nothing in subsection (b) should be construed to make unlawful a refusal by an employee to enter the premises of an employer (not his own) if the employees of such employer were on strike approved by a collective bargaining representative whom the employer was required to recognize.

The new section 8(b)(4) retains the exact language of old paragraphs (B), (C), and (D) and the proviso. It also retains in paragraph (A) the same language with respect to forcing an employer or self-employed person to join a union or employee organization. Added to the same paragraph is the object of forcing an employer or self-employed person to enter into a "hot cargo" agreement. The second object in the old paragraph (A) has been moved to the first part of paragraph (B) and has been reworded in important respects. The paragraph preceding the enumeration of objects has also been reworded in significant respects.

Limiting attention to the changes in section 8(b)(4) bearing on secondary boycotts, one finds that it is now an unfair labor practice for a union (i) to engage in, or to induce "any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment" to use, handle or work on any goods or perform any services "or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" in order to gain any of the defined objects in paragraphs (A) through (D). Paragraph (B) defines the object of forcing "any person to cease using . . . handling . . . or dealing in the products" of any other producer or "to cease doing business with any other person." A proviso declares that nothing in the paragraph "shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." A proviso at the end of section 8(b)(4) states:
That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

The prohibition of secondary boycotts in section 8(b)(4) has been tightened up in several ways. Reference to the italicized words and expressions will show how this has been done. First, under the old act an unfair labor practice was not established unless two or more employees were induced to engage in a strike or concerted refusal to use, handle, or work on goods or to perform services. Now inducement of a single individual is enough to constitute an unfair labor practice.

Second, under the old act an unfair labor practice was not established unless "employees" of an "employer," as those words were defined in the statute, were induced to strike or engage in a concerted refusal to work on or handle goods. Now it is sufficient to show inducement of "any individual employed by any person engaged in commerce or in an industry affecting commerce." The word, "person," includes employers outside the definition in section 2(2) of the Taft-Hartley Act, such as railroads, governmental units and municipalities. The word, "individual," includes employees outside the definition in section 2(3), such as supervisors and agricultural workers, not to mention employees of employers falling outside the definition in section 2(2).

Third, the old act said nothing about direct threats of violence or trespass applied to a secondary employer, or about coercion by methods not involving inducements to strike or to refuse to use, handle or work on goods. Now it is an unfair labor practice "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce." Certainly this language covers violence, trespass and threats thereof. Under the Taft-Hartley Act there was indication that picketing to cause consumers to cease patronizing was not an unfair labor practice because it did not in-

---

17 All italics in this paragraph are supplied by the writer.
duce employees to strike or to refuse to use, handle or work on goods. Under the new act it seems likely that such picketing is coercion and restraint within the language of section 8(b)(4)(ii). Support for this interpretation is to be found in the final proviso which states that nothing in section 8(b)(4) "shall be construed to prohibit publicity, other than picketing."

The proviso just referred to may be depended upon to give rise to much litigation. Publicity other than picketing is allowed for the purpose of truthfully advising the public (including consumers) that a neutral is selling or distributing products produced by an employer with whom the union has a (primary) dispute. But the publicity is not allowed if it has the effect of inducing any individual employed by a person other than the primary employer to refuse to handle or transport goods or to perform services at the neutral's place of business.

Building and construction unions hoped to secure an exception to the ban on secondary boycotts where a union strikes and pickets a construction site because a subcontractor fails to meet union standards. No such exception was made in the new law, however, and the doctrine of 

NLRB v. Denver Building & Construction Trades Council, United Brotherhood of Carpenters v. NLRB, and International Brotherhood of Electrical Workers v. NLRB still stands. Under this doctrine a general contractor may contract with a subcontractor who does not comply with union standards, and if a union pickets or calls a strike of employees of other subcontractors, section 8(b)(4)(B) is violated. The view has been expressed that the striking and picketing is really primary, since a union representing all the employees in an industrial plant has an undoubted right to strike and picket for the improvement of conditions of a part of the employees. President Eisenhower and Secretary of Labor James Mitchell have voiced the opinion that an exception should be made in favor of building and construction trade unions. At the present time the House Labor Committee is conducting hearings on the matter.

Since the prohibition of "hot cargo" agreements does not apply to the construction industry, may a union strike and picket to gain such an agreement? NLRB General Counsel Stuart Rothman has

---

19 NLRB v. Local 366, Brewery Workers, 272 F.2d 817 (10th Cir. 1959).
20 Emphasis added. See address by Stuart Rothman, supra note 18.
indicated a negative answer. However, one may argue that if a construction union may bargain for agreement that the general contractor will not deal with non-union subcontractors, it should have the right to use traditional peaceable means (striking, picketing) to cause the general contractor to yield. A distinction can be drawn between striking and picketing to gain such an agreement and striking and picketing to cause a neutral, not bound by a previous agreement, not to deal with the primary employer disputant.

Comment has been made concerning the exemption granted in the apparel and clothing industry with respect to "hot cargo" agreements. The exemption is stated in terms of a relationship and is more intelligible after section 8 (b) (4) (B) is studied. For the purposes of sections 8 (e) and 8 (b) (4) (B) "the terms 'any employer', 'any person engaged in commerce or an industry affecting commerce', and 'any person' when used in relation to the terms 'any other producer, processor, or manufacturer', 'any other employer', or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry." Since the ban of secondary boycotts in section 8 (b) (4) (B) does not apply to persons in the indicated relationships in the apparel and clothing industry, it would seem that striking and picketing may be carried on to secure a "hot cargo" agreement. The difference in treatment of the apparel and clothing industry in the second proviso to section 8 (e) may be basis for saying that unions in the construction and building industry (dealt with in the first proviso) may not strike and picket for a "hot cargo" agreement.

Brief notice should be taken of section 704 (e) of the new act, which simplifies section 303 (a) of the LMRA, 1947. The purpose of the whole of section 303 is to create a cause of action for damages in favor of a person injured in his business or property because of the commission of unfair labor practices described in section 8 (b) (4). Section 303 (a) formerly set out all the activities described in section 8 (b) (4). Now section 303 (a) merely says that it is unlawful for a union "to engage in any activity or conduct defined as an unfair labor practice in section 8 (b) (4)."

F. Recognition Picketing

Section 704 (c) of the new act adds a new paragraph (7) to section 8 (b) of the NLRA and creates a new unfair labor practice on

---

the part of unions. Three situations are set out in which it is an unfair labor practice to picket or to threaten or cause picketing where the object is (1) to force an employer to recognize or bargain with a union as the representative of his employees, or (2) to force his employees to accept or select the union as their collective bargaining representative:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing...

An unfair labor practice is not made out in these situations, however, if the picketing union "is currently certified as the representative of . . . [the] employees."

Situation (A) has a number of variations. An employer may have had contractual relations with a union for several years, and he enters into a new contract, believing that the union continues to represent the majority of his employees. Or their previous contract may be automatically renewed through failure to give notice to amend or terminate. Or the employer and the union may enter into a new contract during the 60-day "insulated period" at the end of their old contract when no rival union is permitted to file a representation petition. Or the employer may enter into a first contract with a union in good faith without committing an unfair labor practice, being convinced that the union represents his employees. In all these instances a question concerning representation cannot appropriately be raised for the life of the contract (not exceeding two years), and a rival union may not picket and demand collective bargaining privileges.

Situation (B) has variations, but the controlling fact is that an NLRB election has been held within twelve months preceding the picketing. Another union may have won or lost that election, or the picketing union may have lost it. In any event the picketing is an unfair labor practice. If another union won the election,

26 Temporary injunctions have issued in Consentino v. Local 344, Retail Clerks, 45
whether or not it has been recognized or has a contract seems immaterial.

It is to be noticed that section 8(b)(7)(A) and (B) complement section 8(b)(4)(C). Under the latter section striking and refusal to work to force an employer to recognize or bargain with one union when another has been certified as the collective bargaining agent for the employees is an unfair labor practice. Under section 8(b)(7)(A) and (B) picketing for this purpose is an unfair labor practice.

Situation (C) in section 8(b)(7) covers cases in which no NLRB election has been held within twelve months and a question concerning representation can appropriately be raised. An unfair labor practice is committed if a petition under section 9(c) is not filed by the picketing union "within a reasonable time not to exceed thirty days from the commencement of . . . [the] picketing." A proviso states that "when such a petition has been filed the Board shall forthwith without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof."

The proviso affords a speedy procedure for resolving a representation case where picketing is initiated and the picketing union files a petition within a reasonable time not exceeding thirty days. Until the procedure eventuates in an election which the union loses, the picketing is lawful. A danger exists that unions (and employers) may deliberately cause picketing to be instituted in order to gain the advantages of the expedited procedure. The NLRB has anticipated this possibility, and its new rules and regulations make the procedure available only if a charge of violation of section 8(b)(7)(C) has been filed. If the election petition is filed more than a reasonable time (or more than thirty days) after the picketing is commenced, the expedited procedure is not available. The picketing union is guilty of unfair labor practice, and the language of the proviso ("such a petition") limits the availability of the procedure to petitions which have been filed within the prescribed time.

A second proviso to section 8(b)(7)(C) states:

. . . That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not

L.R.R.M. 2660 (S.D. Ill. 1959); Elliott v. Dallas Gen. Drivers, 45 L.R.R.M. 2428 (N.D. Tex. 1959). In both cases the picketing union lost the earlier election.

12 Part 102, Subpart D, Sections 102.75 - 102.77. See address by Stuart Rothman, Gen-
employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

It is to be noticed that this proviso, as well as the first, qualifies subparagraph (C) of section 8(b) (7) and not subparagraphs (A) and (B). Hence it may be asserted that the prohibitions of picketing in (A) and (B) are absolute. It is also to be noticed that the proviso permits "picketing." This is in contrast to the second proviso to section 8(b) (4), which permits "publicity, other than picketing."

The second proviso to section 8(b) (7) (C) permits "picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization." But such picketing is not allowed if it has a boycott effect on the part of other employees, i.e., if it induces "any individual employed by any other person... not to pick up, deliver or transport any goods or not to perform any services." Three cases in the federal district courts have held that the proviso does not grant any immunity if a purpose of the picketing is to gain collective bargaining rights or to require the employees to accept the picketing union as their bargaining representative. Even though the picketing is informational,

... this is irrelevant if such picketing has as one of its objectives an unfair labor practice. ... Neither the proviso in §8(b) (7) (C), the First Amendment to the Constitution, nor the authorities cited justify non-coercive speech or picketing in furtherance of an unlawful objective as described in the Act as amended. Congress did not intend by the general language in the proviso in §8(b) (7) (C) to sanction that which it so expressly outlawed in the specific language immediately preceding the proviso.

The picketing is unlawful "whether or not the effect of such picketing is to induce any individual employed by any other person not to pick up, deliver or transport any goods or not to perform any services." One case is to the contrary, holding that the picketing is unlawful only if it has boycott effects on the part of other employees.

---

4. 34 To the contrary is an NLRB intermediate report discussed in 45 Lab. Rel. Rep. 366 (Feb. 15, 1960).
What Congress intended is a difficult problem to solve. On the one hand it may be argued that the prohibition of picketing in subparagraph (C) would be virtually nullified if the second proviso is interpreted as permitting picketing where collective bargaining rights are sought. The specification of the "purpose of truthfully advising the public . . . that an employer does not employ members of, or have a contract with, a labor organization" may imply that the purpose of securing collective bargaining rights renders the picketing unlawful. On the other hand, it may be argued that the latter purpose is inextricably tied up with the purposes specified in the proviso. If this is true, then the proviso permits picketing even though a purpose is to secure collective bargaining rights, so long as the picketing does not have boycott effects on the part of employees of third parties.

A principal question raised by the whole of section 8(b)(7) is its impact on NLRB doctrine that peaceful picketing by a minority union is an unfair labor practice under section 8(b)(1)(A). In *Curtis Bros.* and *Alloy Mfg. Co.* it was held that once it is established by election that a union is in the minority, picketing thereafter for collective bargaining rights is an unfair labor practice. The reason is that the picketing puts constraint on the employees to choose the union as their collective bargaining representative. The employer may also be constrained to cause his employees to accept the union.

It would appear that section 8(b)(7) now supersedes the *Curtis* doctrine. Section 8(b)(7) is a comprehensive regulation of picketing by minority unions and must be resorted to in the situations described. However, the last sentence of the section states that "nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b)." This may save such parts of the *Curtis* doctrine as are not dealt with specifically in section 8(b)(7). It is possible that the sentence will prevent the second proviso to subparagraph (C) from operating fully according to its terms. Indeed, the sentence may swing the balance in the ultimate determination whether the proviso operates

---

36 "It shall be an unfair labor practice for a labor organization or its agents — (1) to restrain or coerce (A) employees in the exercise of rights guaranteed in section 7 . . . ." Section 7 declares the right of employees to engage in concerted activities and to bargain collectively and "to refrain from any or all of such activities."


39 Later cases are *Valley Knitting Mills, Inc.*, 126 N.L.R.B. No. 56 (1960); *Retail Clerks Int'l Ass'n*, 126 N.L.R.B. No. 48 (1960); *Aetna Plywood & Veneer Co.*, 126 N.L.R.B. No. 40 (1960).
where a purpose of the picketing is to gain collective bargaining rights. Under the Curtis decision such picketing is an unfair labor practice where a minority union is concerned, and the proviso may well be interpreted consistent with this doctrine.

G. Pre-Hire Contracts

Section 705 of the new law adds a subsection (f) to section 8 of the NLRA which is applicable only in the building and construction industry. Declaration is made that no unfair labor practice is committed where an employer “engaged primarily in the building and construction industry” enters into contract with a union “covering employees engaged (or who, upon employment will be engaged) in the building and construction industry” even though

(1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area. . . .

Of course, the union may not be “established, maintained, or assisted by any action defined in section 8 (a) . . . as an unfair labor practice.”

Section 8 (f) was enacted on representations that special conditions in the building and construction industry justified the authorization of pre-hire agreements. The authorization goes a long way. The union need not have been established as the majority representative of the employees. A union shop provision may be included requiring employees to become union members after seven days. However, section 705 (b) of the new act saves the operation of state “right-to-work” laws. Nothing in section 8 (f) is to be construed as authorizing the execution of union shop agreements in a state or territory prohibiting them.

The third clause in section 8 (f) permits contract terms requiring the employer to notify the union of employment opportunities or giving the union an opportunity to refer qualified applicants. Speculation has been indulged as to whether the clause modifies the doctrine of Mountain Pacific Chapter of the Associated General Con-
In this case the exclusive union hiring hall was held an unfair labor practice under section 8(a)(3). But criteria were set up for a valid union hiring hall agreement. First, the selection of applicants for referral had to be independent of conditions based on union policies, charter or by-laws. There could be no discrimination against non-union applicants. Second, the employer must have the right to reject applicants referred by the union. Third, notices had to be posted at the hiring hall informing applicants how to obtain referrals and stating that union membership was not necessary for referrals. It is not clear that the third clause of section 8(f) authorizes more or less than is allowed under the Mountain Pacific doctrine. The clause does not seem inconsistent with the doctrine, and the case probably stands as authority with respect to hiring hall arrangements.

The fourth clause of section 8(f) permits agreements recognizing priority rights to employment based on training and experience or on length of service with the employer, in the industry or in the particular geographical area. Advantages will accrue to unions in negotiating such agreements, since their memberships usually include a considerable proportion of men with substantial training, experience, and length of service.

A proviso to section 8(f) states that any pre-hire agreement "which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e)." This means that after a building and construction employer hires his work force, the employees are free at any time to file a petition for determination of their collective bargaining representative or for decertification. Further, they can petition for an election withdrawing from the union its authorization to enter into a union shop contract.

The question has been raised whether a union may strike and picket against a building and construction employer in order to gain a pre-hire agreement. As in the case of "hot cargo" agreements, one may argue that if a union may negotiate for an agreement it may use traditional peaceful means to cause the employer to yield. A serious complication, however, is that if the union is not established as a majority representative (and usually it will not be), its picketing violates the terms of section 8(b)(7)(C). The situation is one where the ultimate authority with respect to hiring hall arrangements.

---

241"It shall be an unfair labor practice for an employer — (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . ."
mate holding may well be that agreement is legal but that picketing to achieve it is an unfair labor practice."

II. The Labor-Management Reporting and Disclosure Act of 1959

The caption of the Labor-Management Reporting and Disclosure Act of 1959 states that it is an act "to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes." Section 2 contains a declaration of findings, purposes, and policy. Recital is made that "it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities. . . ." In order "to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations." Finding is made on the basis of recent investigations "that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct" in the area of labor relations and within labor organizations. The conclusion is that enactment of the new law "is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort or defeat the policies" of the Labor-Management Relations Act, 1947, and the Railway Labor Act."

Section 3 sets forth a dozen definitions. These have application in Titles I through VI (except in section 505).

A. Title I: Bill of Rights for Union Members

Under section 101(a)(1) all members of a labor organization have equal rights and privileges "to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership

---

42 See address of Saul Jaffe, Associate Solicitor of the NLRB, reported in 45 L.R.R.M. 224 (Jan. 11, 1960).
meetings, and to participate in the deliberations and voting upon the business of such meetings." But these rights and privileges are "subject to reasonable rules and regulations in such organization's constitution and bylaws."

Section 101(a)(2) lists other rights of union members: "to meet and assemble freely with other members"; "to express any views, arguments, or opinions"; and to express at union meetings their views upon candidates in an election or upon any business properly before the meetings. These rights are subject to the union's established and reasonable rules pertaining to the conduct of meetings. Further, the union has a right "to adopt and enforce reasonable rules as to the responsibility of every member toward the . . . [union] as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual duties."

Section 101(a)(3) limits the power of unions to raise dues and initiation fees and to levy general or special assessments. In the case of local unions such action can be taken only after "majority vote by secret ballot of the members in good standing voting at a general or special membership meeting," and reasonable notice of intention to vote on the question must be given. Or the vote may be by membership referendum conducted by secret ballot. Section 101(a)(3) has no application to a federation of national or international labor organizations. In the case of a labor organization other than a local union or a federation of national or international unions, dues and initiation fees may be raised and general and special assessments may be levied only (1) after a majority vote of delegates attending a regular convention or a special convention called on at least 30 days' written notice, or (2) after majority vote of the members voting in a membership referendum conducted by secret ballot, or (3) after majority vote by "members of the executive board or similar governing body" of the organization, "pursuant to express authority contained in the constitution and bylaws of such labor organization." But the action of the executive or governing board is effective only until the next regular convention of the labor organization.

Section 101(a)(4) forbids a union from limiting the right of any

---

44 The right of a member to secure injunction to compel union officers to nullify adjournment of a meeting and to permit a vote on a motion to suspend a business agent pending his trial on charges of bribery and extortion was upheld in McFarland v. Building Material Teamsters Local No. 282, 45 L.R.R.M. 2544 (S.D.N.Y. 1960).

45 In Johnson v. Local 58, IBEW, 43 L.R.R.M. 2685 (E.D.Mich. 1960), a motion to dismiss was denied where plaintiff members sought injunction against threats and intimidation by a local union and its officers interfering with their right to assemble and petition for a charter from their international union.
member to bring suit in court, to institute proceedings before an administrative agency, to appear as a witness in administrative, judicial, or legislative proceedings, to petition any legislature, or to communicate with any legislator. But a member may be required to exhaust reasonable hearing procedures (not exceeding a four-month lapse of time) within the union before instituting legal or administrative proceedings against the union or the officers. An employer or employer association may not finance, encourage or participate in such proceedings except as a party.

Section 101(a)(5) protects a union member from discipline (fine, suspension, expulsion) unless he “has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.” Excepted from this procedure is discipline imposed for nonpayment of dues.

Civil enforcement of the rights declared in Title I is provided for in section 102. Suit may be brought in a federal district court “for such relief (including injunctions) as may be appropriate.”

Under section 105 all unions are under a duty to inform their members concerning the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

Under section 104 a local union must forward to a requesting employee a copy of any collective bargaining agreement that affects him. In the case of a labor organization other than a local union, when a collective bargaining contract is negotiated, a copy of it must be forwarded to any unit which has members affected by the contract. The secretary or “corresponding principal officer” of each labor organization must maintain at its main office copies of collective bargaining agreements negotiated or received by it. Employees affected by the agreements have a right to inspect them.

B. Title II: Reporting by Unions, Their Officers, and Employees, and Employers

Section 201(d) of the new act repeals section 9(f), (g) and (h) of the NLRA. This means that non-communist affidavits are a thing of the past. However, new and more extensive reporting requirements have been enacted. Under the Taft-Hartley Act compliance with section 9(f), (g) and (h) was necessary only if a union wished to make use of NLRB procedures. Now compliance with reporting re-

\[46\] But Title I has no application to a suit by a business agent against his union for wrongful discharge. Strauss v. International Bhd. of Teamsters, 179 F. Supp. 297 (E.D.Pa. 1959). Title I deals with relations between unions and their members, not relations between unions and their employees.
quirements is not a condition precedent to using Board procedures but is commanded generally.

Section 201(a) declares that every labor organization "shall adopt a constitution and bylaws and shall file a copy thereof" with the Secretary of Labor. A report must also be filed containing the information formerly required by section 9(f). But additional details are required concerning fees imposed for transferring members, issuance of work permits and fees therefor, selection of representatives to other bodies composed of labor organizations' representatives, discipline of union officers and agents, and discipline of union members.

Section 201(b) requires the filing of annual financial reports giving much the same information formerly required by section 9(f). More details must be supplied concerning disbursements, particularly those to officers and employees either as compensation or as loans. Direct and indirect loans to business enterprises must be reported. At the time that the annual financial report is made, changes in the information supplied under section 201(a) must be reported.

Labor organizations must make available to their members all the information supplied in the reports filed under Title II. Section 201(c) makes it a duty of a union to permit its members "for just cause to examine any books, records, and accounts necessary to verify . . . [a] report." This duty is enforceable in both state and federal courts.

Section 202(a) requires annual reports by union officers and employees (other than those performing exclusively clerical or custodial services) concerning financial transactions that may conflict with the loyalty they owe to members. The report must list stocks, securities, and other interests which an officer or employee or members of his immediate family have in an employer whose employees his union represents. Any income derived from such an employer (except wages or salary) must be reported. Transactions in which the officer or employee or members of his immediate family have engaged with the employer involving stocks, securities or loans must be reported. Information must be given as to stocks, securities, and interests (including income received) in any business that buys from, sells or lends to, or has other dealings with the employer. Similar information must be given as to stocks, securities, and interests in any business that buys from, sells or lends to, or otherwise deals with the union. Report must be made of any business transaction between a union officer or employee or member of his immediate family and an employer whose employees are represented by the union (except payment of wages
and salaries and bona fide purchases and sales of goods and services). Finally, any payment of money or thing of value by an employer or labor consultant must be reported. Section 202(b) makes section 202(a) inapplicable to "bona fide investments in securities traded on a securities exchange registered as a national securities exchange."

Section 203(a) requires employers to report annually all payments, loans, and promises therefor made to employees, unions, and union officers and representatives, except payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended (wages, checkoff of dues, payment of judgment or arbitration award, etc.). Report must be made of any payment to a group of employees or committee for the purpose of causing them to influence other employees in exercising the rights to organize and to bargain collectively, unless such payment was "contemporaneously or previously disclosed to such other employees." The same must be done as to any expenditure an object of which is to interfere with employees' rights to organize and to bargain collectively, or to obtain information as to union activities on the part of the employees in connection with a labor dispute. Report must be made of any agreement (and payment pursuant thereto) by which a labor relations consultant or organization undertakes to interfere with employees' rights to organize and to bargain collectively, or to obtain information concerning union activities by the employees in connection with a labor dispute. Under section 203(b) labor relations consultants must report agreements of this type within 30 days after they are entered into. A "detailed statement of the terms and conditions" of each "agreement or arrangement" must be made. A labor relations consultant making an agreement or arrangement which must be reported is required to file an annual statement of his receipts from employers "on account of labor relations advice or services, designating the sources thereof," and his disbursements in connection with the services. Excepted from the reporting requirement is an agreement between an employer and labor relations consultant by which the latter undertakes to obtain information "for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding."

Section 203(c) excepts from the previous subsections agreements whereby a person undertakes to advise an employer or to represent him before a court, administrative agency or arbitration tribunal or in collective bargaining. Section 203(e) excepts from the reporting requirements the employment contracts of regular officers, supervis-
ors, and employees of an employer. Section 204 extends an exception to attorneys with respect to “any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.”

The reports and documents filed with the Secretary of Labor are made public information by section 205. Inspection and examination are to be allowed under reasonable regulations. On payment of a charge based upon cost of the service, the Secretary is directed to furnish copies of reports and documents which have been filed. No charge is made to state agencies. Persons subject to Title II are under a duty to maintain records and basic data sufficient for verification of the reports filed. The records and data must be kept for five years after the filing of the papers based on them.

Section 209 prescribes criminal penalties ($10,000 fine or one year’s imprisonment or both) for willful violation of Title II, for falsifying or withholding material facts in reports, or for falsifying, concealing or destroying records. Under section 210 the Secretary of Labor may bring a civil suit for appropriate relief whenever it appears that a person has violated or is about to violate the provisions of Title II.

C. Title III: Trusteeships

Section 301 requires every labor organization which has or assumes trusteeship over a subordinate organization (usually a local union) to file a report with the Secretary of Labor within 30 days. Thereafter reports must be filed at semi-annual intervals. Reasons must be stated for the trusteeship and “the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization.” A “full and complete account of the financial condition of the subordinate organization” as of the time trusteeship was imposed must be given. The trustee organization has the responsibility for filing reports under section 201(b) in behalf of the subordinate organization. Falsification or concealment of material facts and records, as well as other willful violation of section 301, is punishable by fine and imprisonment.

Substantive law concerning trusteeships is declared in section 302:

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the
THE NEW FEDERAL LABOR LAW

subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

Under section 303 it is unlawful during a period of trusteeship to count votes of delegates of the subordinate union in any convention or election of officers of the trustee organization "unless the delegates have been chosen by secret ballot in an election in which all members in good standing of such subordinate body were eligible to participate." It is also unlawful to transfer to the trustee organization "current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship." Violation of the section is punishable by fine and imprisonment.

Section 304 creates a procedure whereby a trusteeship may be challenged. The subordinate organization or a union member may file a complaint with the Secretary of Labor. If he finds probable cause that section 302 or 303 has been violated, he may bring suit in a federal district court for appropriate relief (including injunction). The identity of the complainant need not be disclosed. Alternatively, a union member or a subordinate organization may bring suit in federal district court for violation of section 302 or 303. Section 306 states that rights and remedies provided for in Title III are in addition to other rights and remedies at law or in equity. But when the Secretary sues, "the jurisdiction of the district court . . . shall be exclusive and the final judgment shall be res judicata."

Section 304(c) raises a presumption that a trusteeship established pursuant to procedural requirements of the trustee's constitution and bylaws and authorized after a fair hearing continues valid for 18 months. Attack cannot be made "except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302." After 18 months the trusteeship is presumed invalid and its discontinuance will be decreed unless the trustee shows "by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302."

D. Title IV: Elections

Detailed regulations are made of election processes within unions.

47 But in Flaherty v. McDonald, 45 L.R.R.M. 2690 (S.D.Cal. 1960), a suit for removal of a trusteeship was dismissed on the ground that the Secretary of Labor had not acted or refused to act.
The officers of a national or international labor organization must be elected not less than once every five years by secret ballot of the members or at a convention of delegates chosen by secret ballot. Local organizations must elect their officers not less than once every three years by secret ballot of the members. Officers of intermediate bodies, such as system boards, joint boards, and joint councils, must be elected not less than once every four years by secret ballot of the members or by representatives of the members who have been elected by secret ballot. These restrictions do not apply to officers of a federation of national or international organizations.

Under section 401(c) national, international, and local labor organizations are under a duty to comply with reasonable requests of candidates to distribute campaign literature to union members at their (the candidates') expense. The duty is enforceable by suit of a bona fide candidate in federal district court. The labor organization may not discriminate in favor of or against a candidate with respect to the use of lists of members. If it distributes campaign literature on behalf of any candidate, "similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution." A bona fide candidate has a right, once within 30 days prior to the election in which he is a candidate, to inspect a list of names and addresses of all members of the union who are subject to union shop agreements. "Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots."

Section 401(e) enumerates rights and safeguards in connection with secret elections. Reasonable opportunity must be allowed for the nomination of candidates, and every member in good standing is eligible to be a candidate (subject to restrictions in Title V and to reasonable qualifications uniformly imposed). All members have the right to vote and to support candidates of their choice without being subject to penalties or reprisals. Not less than 15 days prior to an election, notice must be mailed to each member. One vote is permitted to each member in good standing. If his dues have been deducted pursuant to a checkoff agreement, he cannot be denied the right to vote or to be a candidate for office "by reason of alleged delay or default in the payment of dues." Votes cast by members of different local organizations must be counted, and the results published, separately. Ballots and records pertaining to an election must be preserved for a year. Likewise, the credentials of delegates at a convention at which
officers are elected and all minutes and records pertaining to the election must be preserved for a year. Neither union nor employer funds may be used to promote the candidacy of any person in an election. But union monies may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for holding an election.

Occasionally the constitution or bylaws of a union do not provide for the removal of an elected officer who has been guilty of serious misconduct. If the Secretary of Labor finds this state of affairs to exist, section 401 (h) provides a remedy. The officer may be removed, “for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization . . . .”

Section 402 creates a procedure for enforcing the requirements of section 401. A member of a union may file a complaint with the Secretary of Labor alleging violation of the section or of the constitution or bylaws of the union. This can be done only after exhausting remedies within the union or invoking available remedies without obtaining a final decision within three calendar months. The complaint must be filed within a calendar month after exhaustion of union remedies or the passing of three months. While the complaint is pending before the Secretary, the challenged election is presumed valid and the affairs of the union are conducted by the elected officers. If the Secretary finds probable cause that a violation of Title IV has occurred, he is under a duty to bring a civil suit in a federal district court within 60 days after he received the complaint. In the action the court may set aside an invalid election, direct the conduct of an election, or direct a hearing and vote upon the removal of an officer. The court has power to make orders deemed proper to preserve the union’s assets.

Section 402 (c) enlarges upon the remedy available when a court finds upon a preponderance of evidence that an election has not been held within the prescribed time limits or that a violation of section 401 may have affected the outcome of an election. The court may declare the election, if any, void and direct the conduct of a new election under the supervision of the Secretary of Labor. On certification by the Secretary, persons elected are declared by the court to be officers of the union. If the action is for the removal of an officer, the Secretary certifies the result of the vote and a court decree is entered accordingly. Section 403 preserves rights and remedies under union constitutions and bylaws before an election is held; but the
“remedy provided by this title for challenging an election already conducted shall be exclusive.”

E. Title V: Fiduciary Responsibility of Union Officers

Section 501(a) declares that union officers and representatives “occupy positions of trust in relation to such organization and its members as a group.” Therefore, it is the duty of each officer and representative to hold union funds and property “solely for the benefit of the organization and its members,” to manage and expend them in accordance with union laws, “to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization,” and to account for any profit received in connection with transactions conducted by him on behalf of the union. A general exculpatory provision in a union constitution (or bylaws) or a general exculpatory resolution by a governing body purporting to relieve an officer or agent of liability for breach of the duties declared in the section is void.

Under section 501(b) a union member may sue an officer or agent for violation of the duties declared in section 501(a) where the union or its governing board or officers fail to do so after request and within a reasonable time. The suit is brought in behalf of the union and may be instituted in a federal or state court. Damages may be recovered, and an accounting and other relief may be had. “No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.” A reasonable part of the recovery may be allotted to pay the fees of counsel prosecuting the suit and to compensate plaintiff for expenses incurred. Section 501(c) provides for criminal penalties ($10,000 fine or five years’ imprisonment or both) where an officer or agent embezzles or converts union assets to his own use or to the use of another.

Section 502 imposes bonding requirements on officers and agents who handle union funds and other property. Excepted are unions with property and annual receipts of $5000 or less. A bond is fixed at 10 per cent of the funds handled during the past fiscal year, but in no case more than $500,000. The bond must be “individual or schedule in form, and shall have a corporate surety company as surety theron.” A person who does not secure a proper bond is not permitted to exercise custody or control over union funds or over a trust in which the union has an interest. No bond may be placed
through an agent or with a broker in which a labor organization or any officer or agent has an interest. Violation of the section is punishable by fine and imprisonment.

Section 503(a) prohibits loans to union officers or agents which total in excess of $2000. Section 503(b) prohibits payment by a union of any fine imposed upon an officer or agent. Violation of these prohibitions is made a crime in section 503(c).

Section 504 prohibits certain persons from serving as union officers or agents, as labor relations consultants, or as labor relations representatives of employer associations. Included are persons who are or have been members of the Communist Party, who have been convicted of enumerated felonies, or who have been convicted of violation of Titles II or III of the new act. But this ban continues for only five years after a person has terminated his membership in the Communist Party or for five years after the end of his imprisonment (five years after conviction if no imprisonment is suffered). The five-year period in the case of a felon may be shortened if his citizenship rights, having been revoked as a result of the conviction, are fully restored; or if the Board of Parole of the United States Department of Justice "determines that such person's service . . . [as a union officer or agent, labor consultant, or labor relations representative for an employers' association] would not be contrary to the purposes of this Act." Violation of the section is punishable by fine and imprisonment.

Section 505 amends section 302 of the Labor Management Relations Act, 1947. The prohibitions of the old act are retained and expanded. It is unlawful for an employer, employer association, labor relations consultant, or other person acting in the interest of an employer to pay or lend money or other thing of value to any representative of the employees or to a union which represent or seeks to represent the employees. It is unlawful to pay or lend money or other thing of value to a group of employees to cause them to influence other employees in the exercise of their rights to organize and bargain collectively. The same acts are unlawful where a union or its officer or agent is the recipient of the money or thing of value and the purpose is to influence its or his actions and decisions as a representative of the employees. It is also unlawful for a person to receive what employers and their representatives are prohibited to pay or lend.

Section 302(c) lists exceptions to the prohibitions of the preceding subsections: wages, sales and purchases of articles at the prevailing market prices in the regular course of business, checkoff of dues,
monies paid to a trust fund established for the benefit of the employees and their families, and payments made in satisfaction of judgments, arbitral awards and other bona fide claims. Other exceptions are payments made to employees "whose established duties include acting openly for such employer in matters of labor relations or personnel administration;" and payments to a trust fund established by a union "for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs."

F. Title VI: Miscellaneous Provisions

Section 601 bestows investigatory powers on the Secretary of Labor. Section 602 prohibits "extortionate picketing"—picketing carried on as a part of a plan for "the personal profit or enrichment of any individual" by obtaining money or any thing of value from an employer. Under section 609 it is unlawful for a union or its agents to discipline a member for exercising any right to which he is entitled under the new law. Force, violence or threat thereof to coerce a union member and to interfere with the exercise of any right under the act is made a crime in section 610.

III. Conclusion

The amendments to the Taft-Hartley Act in Title VII of the Labor-Management Reporting and Disclosure Act of 1959 have effected important changes in national labor relations law. Constitutional questions as well as problems of construction have already presented themselves. A great deal of litigation will have to be done before answers can be given with assurance. It will be interesting to know, to say the least, what the ultimate impacts will be of the new provisions concerning secondary boycotts, "hot cargo" agreements, and recognition picketing.

One may assert, however, that Titles I through VI of the new act have greater significance than Title VII. Titles I through VI are new legislation, declaring federal rights and duties which previously did not exist or existed only in an incomplete or uncertain way. Title VII amends old legislation, and, while all of it is new and important, it relates to familiar situations under the old acts.

Title I is a bill of rights for union members of extensive scope, and Title II imposes reporting requirements calculated to expose improper influences existing between employers and labor consultants on one side and unions and officers on the other side. Title III sets
up standards for trusteeships to the end that the funds of the subordinate unions be preserved and that the rights of their members be protected. Title IV is a detailed regulation of election and removal procedures, and Title V spells out the fiduciary responsibilities of union officers, besides imposing a bonding requirement for those who handle union funds. All these rights and duties are enforceable by administrative and judicial procedures.

Titles I through VI have a heavy substantive content, and most of it places burdens and responsibilities on unions. Whether or not one believes that disclosures of corruption and arbitrary practice have justified their enactment, the legislation states principles with which few or none will disagree. Unquestionably time will prove that particular requirements and procedures of the titles are impractical, not worth the expense and effort they entail, or unwise. Changes will then be made. But the indications are that Congress' entry into the broad areas delineated by Titles I through VI is permanent.