

Summary of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)

Freedom and democracy within unions exist only when rank and file members are able to exercise their rights to participate in union life, to make their voices heard in union decisions to support candidates of their choice in union elections and to serve as officers. The Subcommittee on Employer-Employee Relations is undertaking an extensive examination of issues relating to union democracy and the rights of rank and file members to fully participate in their unions. Increasingly, there are reports of significant unrest among rank-and-file union members and of erosion in union democracy. The Subcommittee is reviewing protections under current law and examining violations of worker rights.

To protect democratic rights of union members, Congress passed the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). It included as its first title a union member "Bill of Rights." The LMRDA was intended to protect and promote democratic processes and democratic rights of union members, including the freedom to vote at meetings, to express any argument or opinions and to voice views upon union candidates and union business. Congress has an obligation to review the LMRDA and to examine how the law is performing after nearly 40 years. In particular, Congress must examine ways in which members' rights are not being adequately protected under the Act.

On May 4, 1998, the Subcommittee on Employer-Employee Relations held the first in a series of "union democracy" hearings. The intent of this investigation is to look at the issue from both a local and national union perspective, to listen to the rank-and-file, union leadership, federal agencies of jurisdiction, academics and other experts, and determine whether changes are needed in the law or whether the existing laws need to be better enforced. As Subcommittee Chairman Harris Fawell (R-IL) commented at the opening hearing: "Union members' right to participate in their unions is protected by a 'Bill of Rights' modeled on the protections of the U.S. Constitution. Unfortunately, too many unions are governed by 'one party' rule. When rank and file workers are denied a voice in their union, corruption and abuse are far more likely to occur."

Origins of the LMRDA

The LMRDA was signed into law on September 14, 1959. The Act passed in the House and Senate earlier that year following congressional investigations, led by Sen. John McClellan of Arkansas, into the growing problem of racketeering and corruption within the nation's labor unions.

Sen. McClellan's Select Committee on Investigation of Improper Activities in Labor Management Affairs began in 1957 a two and one-half year investigation of criminal activity in the labor movement, and provided the political momentum for passing legislation to regulate organized labor. The Committee's hearings prepared a foundation for major reform legislation by subpoenaing individuals who constantly invoked the Fifth Amendment, and

through the publicity created by the testimony of James R. Hoffa, president of the International Brotherhood of Teamsters (IBT).

Through democratic participation and the public disclosure to members of the unions' financial matters, the drafters of the LMRDA sought to ensure that union officials would be accountable to their members, thus protecting individual members from corrupt leadership.

It has been noted that the LMRDA was a "bastard," in that "it was a progeny of two groups who had nothing in common but became, for the moment and without any affection or interaction, political bedfellows." The two groups were "those who urged the statute not out of concern for better unions but out of a hope that unions would die away, and on the other side a small group of idealists who believed in unions who wanted them stronger, and who thought that strong unions could and should be democratic. Allied against these two groups was almost the entire labor movement ... It was a bill passed over the solid and adamant opposition of the leaders of organized labor."

Purpose of the LMRDA

Freedom and democracy within unions exist only as union members exercise their rights within unions by participating in union life, making their voices heard in its decisions, supporting candidates in union elections, and serving as officers. **The LMRDA adopts the labor movement's own basic commitment to union democracy and gives union members substantial protection in the exercise of democratic rights within unions.**

As pointed out by Professor Clyde Summers of Yale Law School, who is scheduled to appear as a witness at the May 4 hearing, and who served on a panel of experts at Sen. John F. Kennedy's request in 1957 to help fashion legislation to remedy the problems revealed during the McClellan hearings, while it was not the major thrust of the McClellan hearings, **the basic thrust of the LMRDA is to protect and promote democratic processes and democratic rights of members.**

Protections of the LMRDA

While each union's individual constitution affords its members specific rights, the LMRDA, through its Bill of Rights in Title I, provides for equal protection and freedom of speech and assembly, and ensures democratic participation by all union members. Title II imposes minimum standards on union officials regarding disclosure of information. Title III regulates the imposition of trusteeships upon a subordinate union body. Title IV sets forth procedures for fair elections of union officers. Title V provides standards of fiduciary duties owed to union members by union officers, and Title VI includes a catch-all provision making it a federal offense to deprive union members of their rights under the law by force or violence.

Title I – Bill of Rights

Title I of the LMRDA contains the Bill of Rights of union members, and its purpose is clear: to guarantee equal rights, freedom of speech and assembly, to regulate dues, initiation fees, and assessments, to protect union members' right to sue, and to provide safeguards against improper disciplinary action against union members. As Sen. McClellan said on the Senate floor, "If you would give to the individual members of the unions the tools with which to do it, they would pretty well clean house themselves. If we want fewer laws – and want to need fewer laws – providing regulation in this field, we should start with the basic things. We should give union members their inherent constitutional rights, and we should make those rights apply to union membership as well as to other affairs of life."

Any person whose Title I rights have been violated may bring action for appropriate relief (including injunctions) in a U.S. district court. [Title I specifically preserves for union members any rights under any existing State or Federal law].

The LMRDA's Bill of Rights includes:

1. Equal right to attend, participate in, and vote at meetings and elections, subject to reasonable union rules;
2. Freedom to meet and assemble with other members, to express any arguments or opinions, and to voice views upon candidates and business properly before a meeting (subject to reasonable union rules pertaining to the conduct of union meetings);
3. Protection from increases in union dues or the imposition of assessments except where specified procedures are followed (e.g., in local unions by secret ballot of the membership either at a membership meeting or by means of a referendum);
4. Protection of the right to testify, to communicate with legislators, and to bring suit after using reasonable organizational remedies (a member may be required to exhaust reasonable hearing procedures taking up to four months);
5. The right to obtain or inspect copies of collective bargaining agreements and to be informed by the unions of the rights granted by this law. The right to obtain bargaining agreements is enforced by the Secretary of Labor as well as by the individual whose rights have been infringed; and
6. The right to notice and a fair hearing before any disciplinary actions, except discipline for nonpayment of dues.

Title II – Financial Reporting Requirements

Title II guarantees the disclosure to union members of information regarding the financial condition of the unions and its officials, and also requires that unions file with the Secretary of Labor their constitutions and bylaws, containing provisions and procedures regarding membership requirements, disbursement of union funds, the calling of meetings, and discipline or removal of officers.

The idea behind Title II is that without full disclosure, members are unaware of internal union affairs and are unable to make informed decisions about union issues. The Senate Report to the LMRDA noted that "the bill is designed to prevent, discourage, and make unprofitable improper conduct on the part of union officials, employers, and their representatives by requiring reporting of arrangements, actions, and interests which are questionable ... [O]nly full disclosure will enable the persons whose rights are affected ... to determine whether the arrangements or activities are justifiable, ethical, and legal."

Every union required to file a report under Title II must make available to members the information required in each report. Any member may enforce this duty in any State court of competent jurisdiction or in a U.S. District Court, to permit the member for just cause to examine any books, records and accounts necessary to verify such report. In addition to the union having the duty to make this information available to all members, the Department of Labor itself has a duty under Title II to make these reports and documents available for inspection and examination.

Title II provides for both criminal and civil enforcement. Any person who willfully violates Title II, who knowingly makes false statements or representations of material facts, who willfully makes a false entry or destroys any books, records, reports, or statements required to be kept shall be fined not more than \$10,000 or imprisoned for not more than one year, or both. In addition, the Secretary of Labor may bring a civil action in a U.S. District Court, or, at the option of the parties, in the D.C. District Court.

Reports unions must file with the Department of Labor under Title II include:

1. A copy of the union's constitution and bylaws;
2. A financial report (LM forms) setting forth for that fiscal year, among other information, the union's assets and liabilities, receipts, officer salaries, loans, and other direct or indirect disbursements;

3. A Labor Officer and Employee Report must be filed by every officer and employee of the union (excluding those performing clerical or custodial duties), disclosing for themselves, spouses, and minor children as to any stocks, bonds, securities, any other interest, and any income or benefit which they derived directly or indirectly from an employer whose employees are represented by that union, as well as any transaction involving the above and the employer or union.

Title III – Trusteeships

Title III of the LMRDA provides controls on the use of trusteeships. Under the Act, a "trusteeship" is "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws." **Simply put, a trusteeship means an international administrator is sent in to run the affairs of the local union.**

A trusteeship is one of a number of disciplinary devices by which the international union can control the actions of the local and its members. In their original form, trusteeships were imposed by parent unions to remedy corruption by union officials at the local level. However, the use of trusteeships became so widely used and subject to enough abuse that the McClellan Committee included them in its investigation. Obviously, **legitimately utilized, a trusteeship can be indispensable to cleaning up a local and keeping the union strong, while a trusteeship imposed for improper or abusive reasons deeply violates the democratic rights of a local's membership and takes away their voice in union matters.**

Title III was designed to prevent abuses of the trusteeship remedy. Under Title III, **trusteeships may be established over subordinate unions only in accordance with the constitution and bylaws of the union imposing the trusteeship, and for one or more of the following purposes:**

1. Correcting corruption or financial malpractice;
2. Assuring the performance of a collective bargaining agreement or other duties of a bargaining representative;
3. Restoring democratic procedures; or
4. Otherwise carrying out the legitimate objects of such labor organization.

[It is illegal to establish a trusteeship simply to throw out a local leadership that does not go along with the international, or to suppress insurgency, or to get control of the local's money, etc.]

Unions which impose trusteeships must file with the Secretary of Labor special reports within 30 days of the establishment of a trusteeship and must report semiannually thereafter. In the initial report, the union must include, among other information, the date the trusteeship was established, a detailed report of the reason or reasons why the trusteeship was established, a complete account of the financial status of the trustee organization at the time the trusteeship went into effect, and statements regarding the extent to which members of the trustee organization take part in electing the officers of the union which has assumed the trusteeship, as well as in selecting delegates to represent them at union conventions or other policymaking meetings.

Under Title III, **a trusteeship is presumed valid for 18 months from the date it is established**, and cannot be attacked during that year and-a-half except upon "clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under [Title III]." **When the 18 months has expired, the trusteeship is presumed invalid in any proceeding and will be discontinued unless the union shows by "clear and convincing" proof that the continuation of the trusteeship is necessary for an allowable purpose.**

In administering a trusteeship, two practices are specifically prohibited: 1) It is unlawful to count votes of convention delegates from the subordinate organization unless they were elected by secret ballot in an election where all members in good standing could participate; and 2) It is unlawful to transfer any funds from a subordinate to a supervisory organization, except normal per capita taxes and assessments payable by other subordinate bodies.

Title III provides **two enforcement alternatives**:

1. A union member, or a subordinate body affected by a violation, can file a complaint with the Department of Labor, which must investigate. If the Department of Labor upholds the complaint and the union refuses to lift the trusteeship, the Department can file a civil action in district court [if the Department files suit, the court's jurisdiction is exclusive]; or
2. Any union member or subordinate body of a union affected by a violation of Title III can bypass the Department of Labor and file suit directly in district court.

Title IV – Elections of Union Officers

Title IV's aim is fair play during elections of union officers. The LMRDA requires national or international unions to elect officers at least once every 5 years either by secret ballot among members in good standing, or at a convention of delegates chosen by secret ballot. **Intermediate bodies** [such as general committees, system boards, joint councils, etc.] **are required to hold elections not less frequently than once every 4 years** either by secret ballot among members in good standing or by officers representative of such members who were chosen by secret ballot. **Local labor unions must elect officers by secret ballot among members in good standing at least once every 3 years.**

The LMRDA includes the following standards for conducting elections of officers:

1. Campaign literature must be distributed on equal terms for all candidates and lists of members under union security agreements must be made available for their inspection without discrimination;
2. Adequate safeguards must be provided to insure a fair election, including the right of any candidate to have an observer at the polls and at the counting of ballots;
3. A reasonable opportunity to nominate candidates must be provided;
4. In an election conducted by secret ballot, each member in good standing is entitled to one vote;
5. Every member in good standing is eligible to be a candidate and to hold office, subject only to reasonable qualifications and the prohibitions in Title V [against former members of the Communist Party and those convicted of certain crimes];
6. Notice must be given by mail to each union member at least 15 days before a secret ballot election;
7. No member is subject to disqualification as a voter or candidate by reason of default or delay in paying dues checked off by an employer; and
8. Use of union dues, assessments and similar levies by a labor organization and use of any monies of an employer to promote the candidacy of any person is prohibited.

Elections must be conducted in accordance with each union's constitution and bylaws unless they are inconsistent with the LMRDA. If the Department of Labor finds that the procedures of a union's constitution and bylaws for removing an elected local union officer guilty of serious misconduct are inadequate, members may then, for cause shown and after notice and hearing, remove such officer in a secret ballot referendum conducted by the officers of the local union.

A union member alleging a violation of Title IV must first use the remedies available within the union. If these internal remedies have been exhausted or a final decision has not been issued within three months after invoking such remedies, a complaint may be filed with the Secretary of Labor within one month.

A challenged election is presumed valid until a final decision is made. If the Secretary of Labor, after investigation, finds probable cause to believe a violation has occurred, which has not been remedied, the Secretary may bring suit in district court. If the court finds an election has not been held within the prescribed time or that a violation occurred which may have affected the outcome of an election, the court shall direct the conduct of a new election or procedure for the removal of officers under the Secretary's direction.

Title V – Safeguards

Among other provisions, Title V declares that **union officers, agents and other representatives occupy positions of trust in relation to the union and their members. Title V requires them to hold and use money and property of the union solely for the benefit of the members and in accordance with the union's constitution and bylaws**, and makes it a federal crime for an officer or employee to embezzle, steal or convert to his or her own or another's use any union funds.

Title V also provides for certain bonding requirements of union officers; sets forth limitations regarding loans; and prohibits those convicted of certain offenses from serving in certain union capacities.

Title VI – Miscellaneous

Title VI grants the Secretary of Labor express power to investigate, inspect records, and to question persons in order to determine whether any provision of the LMRDA (other than Title I) has been, or is about to be, violated; imposes criminal penalties for "extortionate picketing," other than for bona fide employee benefits, from an employer for the purpose of personal profit; and, among other provisions, makes it unlawful to retaliate against anyone for exercising their rights under the LMRDA, and **imposes criminal penalties for using force, violence, or threats to interfere with any of the rights available under the LMRDA.**

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